

BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of the Petition of

KVA RESOURCES, LLC, AND
CSW ENERGY, INC.

for a Declaratory Order
Regarding Phased Construction
Of the Northwest Regional Power Facility

COUNCIL ORDER NO. 709

DECLARATORY ORDER

SUMMARY

Proceeding: On May 20, 1997, KVA Power, LLC, and CSW Energy, Inc. (KVA/CSW or Certificate Holder) filed a Petition for Declaratory Order with the Energy Facility Site Evaluation Council. That petition seeks a ruling whether Article II.B.3. of the Site Certification Agreement between KVA/CSW and the State of Washington allows phased construction of the Northwest Regional Power Facility (NRPF).¹

Appearances: KVA Resources, LLC and CSW Energy, Inc. are represented by Darrel Peebles, attorney, Olympia.

Council Decision: A two-phased construction schedule is within the terms of the Site Certification Agreement (SCA), provided that KVA/CSW complies with all of the terms of the SCA.

¹ The petition was couched in terms of the possibility of phases of 300 to 500 MW. At the Council meeting discussion of the request, the petitioner stated that it was not asking approval for phasing of units in that size, but only clarification that the Council Order and SCA permit the phasing. We merely note that the SCA is based upon information in the application, and that changes from the approved configuration are not unusual but must receive approval.

MEMORANDUM

A. Procedural History

On September 19, 1996, KVA Resources, LLC/CSW Energy, Inc. (KVA/CSW or Certificate Holder), and the State of Washington executed a Site Certification Agreement (SCA) for the construction and operation of the Northwest Regional Power Facility (NRPF), a natural gas-fueled combustion turbine facility near Creston, Lincoln County, Washington.

After execution of the SCA, the Certificate Holder began post certification activities directed toward obtaining funding for the project and commencing construction. Certain potential financial backers of the project expressed concern about a perceived lack of specificity in the SCA on the issue of phasing. To address this concern, the Applicant filed a Petition for Declaratory Order on May 20, 1997, requesting the Council to clarify whether Article II.B.3. of the SCA allows phased construction of the project.

On May 29, 1997, the Council sent notice of the petition to the parties of record² in the case, inviting written comment or oral comment at the Council's regularly scheduled monthly meeting on June 9, 1997.

B. Council Discussion and Decision

The NRPF Site Certification Agreement provides, in relevant part, as follows:

Article II.B.3. Construction of any of the Northwest Regional Power Facility's units may begin within ten (10) years from the effective date of this Site Certification Agreement. Construction of each unit may begin separately or simultaneously within that ten (10) year period. Construction is deemed to begin upon the start of construction of a unit's major components (i.e., the combustion turbine or the air cooled condensers), excluding site preparation, upon a schedule and with the intention of completing construction within eighteen (18) months after commencement. If construction of either of the units' major components has not commenced within ten (10) years of the signing of this Agreement, rights to complete the unbuilt unit(s) shall cease.

Article II.B.4. Six (6) months before beginning construction, the Certificate Holder (a) during the first five (5) years after execution of this Site Certification Agreement shall identify to the Council any substantial relevant changes or certify the lack of substantial change in relevant environmental conditions, regulatory environment, or economically available technology, and (b) during the second five (5) years shall

² Parties in the Council's adjudicative hearing in this matter received notice of the Petition for Declaratory Order. They are KVA Resources, LLC/CSW Energy, Inc., Counsel for the Environment, Washington Department of Ecology, Washington State Energy Office, Washington Department of Fish and Wildlife, Confederated Tribes of the Colville Reservation, Spokane Tribe of Indians, the United States Department of Interior, Bonneville Power Administration, Board of Lincoln County Commissioners, Lincoln County Fire Protection District No. 7, Wilbur Public Schools, Creston School District No. 73, Washington Water Power Company, and Lincoln County Agriculture Coalition.

certify that the representations of the Application, environmental conditions, pertinent technology, and regulatory conditions remain current, or identify any changes and propose appropriate resulting changes in the Site Certification Agreement. Construction may begin only upon prior Council authorization, upon the Council's finding that no changes to the Site Certification Agreement are necessary or appropriate, or upon the effect of any necessary or appropriate changes.

Article IV.A. The NRPF consists of two combined-cycle units, each containing two combustion turbine generator (sic), one steam turbine generator, and two heat recovery steam generators. The maximum nominal electrical output of each of the four combustion turbines is 141,700 kilowatts (kW). Exhaust gases from the combustion turbines will be used to produce high energy steam in the four heat recovery steam generators (HRSGs). The steam from the HRSGs will then (sic) be piped to one of the two steam turbines in order to produce the remaining one-third of the plant's output.

The Certificate Holder requests a declaratory order ruling that this language allows the project to be built in two separate phases and allows the second phase to be constructed at any time during the term, pursuant to the conditions of the SCA.

The Council finds that a two-phased construction schedule is within the terms of the SCA.

FINDINGS OF FACT

1. The Energy Facility Site Evaluation Council is an agency of the state of Washington, vested by statute (Chapter 80.50 RCW) with authority to administer site certification agreements between enumerated energy facilities and the state of Washington.
2. On September 19, 1996, KVA/CSW and the state of Washington executed a Site Certification Agreement, establishing the terms and conditions for the construction and operation of the Northwest Regional Power Facility near Creston, Washington.
3. On May 20, 1997, KVA/CSW petitioned EFSEC for a declaratory order regarding phased construction of the NRPF.
4. KVA/CSW's petition requests EFSEC to find that Article II.B.3. of the SCA allows the project to be built in two separate phases and allows the second phase to be constructed at any time pursuant to the conditions of the SCA.

CONCLUSIONS OF LAW

1. EFSEC has jurisdiction over the parties and subject matter of this petition.
2. The Council finds that a two-phased construction schedule is within the terms of the NRPF Site Certification Agreement.

ORDER

The Council declares that the Site Certification Agreement issued to KVA/CSW pursuant to Council Order No. 697 allows the project to be build in two separate phases so long as construction is undertaken in compliance with the conditions of the Site Certification Agreement.

DATED and effective at Olympia, Washington, this _____ day of June, 1997.

ENERGY FACILITY SITE EVALUATION COUNCIL

C. Robert Wallis, EFSEC Acting Chair