

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

**In the Matter of:**

**SATSOP COMBUSTION TURBINE  
PROJECT**

**COUNCIL ORDER No. 812**

**ORDER ON FINANCIAL  
ASSURANCES FOR SITE  
RESTORATION**

Duke Energy Grays Harbor, LLC ("Company") and Energy Northwest are the Certificate Holders of the Site Certification Agreement ("SCA") governing the Satsop Combustion Turbine Project. By letter dated January 18, 2005, the Company advised the Council of a proposed change in its corporate ownership. In connection with the proposed change in ownership, the Company requested that the Council accept a letter of credit to secure the Certificate Holder's obligations for site restoration in place of the corporate guaranty currently securing those obligations.

The Council has reviewed this request and finds as follows:

- (1) On February 21, 2001, the Council adopted Resolution No. 297, adding the Company as a co-holder of the SCA with Energy Northwest. At that time, the Company was wholly owned by Duke Energy North America, LLC.
- (2) On December 27, 2004, Duke Energy North America, LLC, entered into an agreement to sell the Company to Invenergy Grays Harbor LLC (the "Transaction"). Invenergy Grays Harbor LLC is a wholly-owned subsidiary of Invenergy Investment Company LLC. After the Transaction closes, the name of the Company will be changed to "Grays Harbor Energy LLC".
- (3) The SCA contains requirements related to the restoration of the project site. Article II.G. provides:

The Certificate Holder is responsible for site restoration pursuant to Council rules. At least six months prior to beginning construction, the

Certificate Holder shall present to the Council its initial site restoration plan. Construction may not begin until the Council has approved a plan adequately providing for site restoration and for the funding of site restoration in the event of the Satsop Combustion Turbine Project being terminated before it has completed its planned useful operating life. A detailed Satsop Combustion Turbine Project site restoration plan shall be submitted to the Council, consistent with its rules.

(4) The Company and Energy Northwest submitted the Satsop Combustion Turbine Project Initial Site Restoration Plan ("Site Restoration Plan") prior to commencing construction, and the Council approved it on June 18, 2001. The Site Restoration Plan included the following provisions concerning financial assurances:

5.0 Provision of Corporate Guarantee

Within six (6) months of the start of continuous construction activities at the site, the Certificate Holder agrees to provide EFSEC with a corporate guarantee from Duke Energy North America, LLC, the parent of Duke Energy Grays Harbor, LLC, in the amount of \$5 million, to secure the Certificate Holder's obligations under this Initial Site Restoration Plan. The form for this guarantee is included in Appendix A. The guarantee shall remain in effect until the financial instrument described in the following paragraph is provided to EFSEC. Failure to deliver the assurances specified in this section and the following section shall be deemed a breach of the Initial Site Restoration Plan subject to enforcement under Article II, Section B, Paragraphs 1 and 2.

6.0 Provision of Financial Instrument

Within six (6) years of the commencement of commercial operations of the Satsop CT Project, the Certificate Holder agrees to provide EFSEC with a letter of credit, or other financial guaranty or instrument that is reasonably acceptable to EFSEC, in the amount of \$5 million (in 2001 dollars), to secure the Certificate Holder's obligations under this Initial Site Restoration Plan. The terms of the security and identify of the issuer of a letter of credit, or other financial instrument, shall be subject to approval by the Council, which approval shall not be unreasonably withheld. The calculation of 2001 dollars shall be made using the U.S. Gross Domestic

Product Deflator for Total Non-Residential Fixed Investment, as published by the U.S. Department of Commerce, Bureau of Economic Analysis or any successor agency.

(5) Pursuant to these requirements, the Council received a Limited Guaranty Agreement from Duke Energy North America, LLC, dated April 24, 2003 (the "DENA Guaranty"). The DENA Guaranty guarantees obligations under the Initial Site Restoration Plan not to exceed \$5,000,000 (in 2001 dollars, utilizing a 2.5% inflation factor).

(6) Invenergy Grays Harbor LLC has proposed to replace the DENA Guaranty with an "evergreen" Letter of Credit from an A-rated financial institution in the amount of \$5,000,000 in 2001 dollars, utilizing a 2.5% inflation factor (hereinafter referred to as the "Letter of Credit"). The Letter of Credit would have a 12-month term, but would provide that the Council may collect the full amount in cash if the Letter of Credit is not renewed or replaced with another comparable letter of credit thirty (30) days prior to its expiration.

(7) On February 23, 2005, the Council issued Order No. 809, approving the proposed transfer of control of the SCA subject to the conditions that Invenergy Grays Harbor LLC provides the Letter of Credit described in Finding No. 6 above, and that the Council approves the Letter of Credit provided. Order No. 809 provides that the Council will issue a Resolution amending the SCA upon receipt and approval of the Letter of Credit and upon notification that the Transaction has closed.

(8) On March 15, 2005, Invenergy Grays Harbor LLC provided the Council with the form of the Letter of Credit. The Letter of Credit will be issued by an A-rated financial institution in the amount of \$5,000,000 in 2001 dollars, utilizing a 2.5% inflation factor. The Letter of Credit will have a 12-month term, but will provide that the Council may obtain the full amount in cash from the issuing institution if the Letter of Credit is not renewed or replaced with another comparable letter of credit thirty (30) days prior to its expiration. By its terms, the Letter of Credit will take effect automatically upon closing of the Transaction.

(9) After closing of the Transaction, a Letter of Credit of the form submitted on March 15, 2005, will be delivered to the Council. The Letter of Credit will provide security for the obligations of the Site Restoration Plan that is equal to or greater than the DENA Guaranty initially securing those obligations, and satisfies the financial assurance requirement of the SCA. After closing of the Transaction, the Company has agreed to cooperate with the Council to establish a standby trust into which the proceeds will be payable from any drawing on the Letter of Credit.

