

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

In the Matter of:

**WILD HORSE
WIND POWER PROJECT**

COUNCIL ORDER No. 815

**ORDER ON APPLICATION FOR TRANSFER
OF SITE CERTIFICATION AGREEMENT,
AND APPROVAL OF OTHER ASSURANCES
PURSUANT TO ARTICLE VIII.D.3 OF THE
SITE CERTIFICATION AGREEMENT**

Background

By letter dated August 4, 2005, Wind Ridge Power Partners, LLC (Wind Ridge) and Puget Sound Energy (PSE) requested that the Energy Facility Site Evaluation Council (Council or EFSEC) approve the transfer of control over the Wild Horse Wind Power Project (WHWPP) Site Certification Agreement (SCA) to PSE pursuant to WAC 463-66-100. Wind Ridge and PSE had notified the Council of this proposed sale in the fall of 2004.

Also by the same letter PSE requested that pursuant to Article VIII.D.3 of the WHWPP SCA, EFSEC consider and approve “other financial instruments or 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 the Federal Energy Regulatory Commission (FERC) and the Washington Utilities and Transportation Commission (WUTC).

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. PSE’s senior debt rating by S&P/Moody is BBB/Baa2 and its commercial paper rating with S&P/Moody’s is A3/P2. PSE filed copies of the 2004 Annual Report providing a more detailed description of PSE’s organization and its affiliation with the WHWPP. PSE is the largest and oldest utility in the state of Washington and is regulated by the WUTC.

WAC 463-66-100(4) outlines the relevant factors that the Council shall consider prior to a decision to transfer a SCA: (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.

Review of Request to Transfer SCA Pursuant to WAC 463-66-100.

Pursuant to WAC 463-66-100, and through the joint PSE and Wind Ridge Power Partners August 4, 2005 letter, PSE, the successor in interest, has filed a formal petition to continue operation or other activities at the certificated site.

EFSEC's procedure to consider and approve the transfer of a site certification agreement 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 joint PSE and Wind Ridge Power Partners August 4, 2005 letter, Wind Ridge has filed a formal application to transfer the SCA, including information about the new owner required by WAC 463-60-015 and WAC 463-60-075, to demonstrate PSE's organizational, financial, managerial and technical capability to comply with the terms and conditions of the SCA.

As described in more detail below, PSE agrees to comply with the assurances required by WAC 463-60-075 (previously WAC 463-42-075, and previously set out in Section 4.1 of the WHWPP Application for Site Certification (ASC).

Pursuant to WAC 463-66-100(3), and through the joint PSE and Wind Ridge Power Partners August 4, 2005 letter, the current Certificate Holder, Wind Ridge, has provided written consent to the transfer of the WHWPP SCA.

The Council mailed notice of this matter to approximately 340 people. The Notice advised that Wind Ridge and PSE had requested approval of the proposed transfer of control of the SCA, that a special meeting and informational hearing 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 gave oral comments and one written comment letter was received.

The Council has considered WAC 463-66-100(4) and has concluded that the proposed transfer would be consistent that section.

PSE is entitled to possession of the energy facility described in the SCA. Wind Ridge Power Partners, LLC and Puget Sound Energy 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, including the WHWPP.

In fulfillment of WAC 463-60-015, the 2004 PSE Annual Report provided an appropriate description of the new certificate holder's organization and affiliation with the WHWPP. As indicated above, at the conclusion of the Proposed Sale, assets of the WHWPP would be fully owned by PSE.

In fulfillment of WAC 463-60-075, PSE has set forth insurance, bonding or other arrangements as follows:

- PSE will meet all the assurances made by Wind Ridge Power Partners, LLC, as presented in Section 4.1 of the ASC.
- Because of the nature of PSE as a large utility with much greater assets than the original Certificate Holder 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 ASC.
- However, PSE will not provide business interruption insurance as referred to in Section 4.1.1.3 of the ASC, because PSE is not required to maintain such insurance by its customers and lenders.
- PSE further commits 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.

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.

Through its August 4, 2005 letter, PSE has shown that it agrees to abide by all of the terms and conditions of the SCA. PSE has also provided information showing 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.

Approval of “other assurances” pursuant to Article VIII.D.3 of the WHWPP SCA.

In the August 4, 2005 letter, PSE also requests that pursuant to Article VIII.D.3 of the WHWPP SCA, EFSEC consider and approve “other financial instruments or assurances” that would provide for the Certificate Holder’s performance of its Decommissioning obligations pursuant to Article VIII.C and VIII.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 the WUTC.

Article VIII.D. of the SCA requires that the Certificate Holder post funds sufficient for Decommissioning of the WHWPP in the form of a guarantee bond or a letter of credit to ensure the availability of said funds to EFSEC. However, Article VIII.D.3. of the SCA allows the

Council to consider and approve other financial instruments and/or assurances that would provide for the Certificate Holder's performance of its Decommissioning obligations if Project ownership is transferred pursuant to applicable EFSEC laws and regulations.

PSE proposes that the obligation to fully decommission the Project when due shall be a general obligation of PSE, in accordance with Section 6.4 of the March 4, 2005 Development Agreement entered into by Wind Ridge and Kittitas County (Attachment 4 to the SCA).

The Council has considered PSE's assurance to provide funding for decommissioning of the WHWPP as a general obligation of the utility at the end of the Project's life. Given that PSE is an investor-owned utility regulated by FERC and the WUTC, and given PSE's substantial assets in Washington state, the Council finds that such assurances meet the intent and requirements of the SCA for funding of Decommissioning activities for the WHWPP, and pursuant to Article VIII.D.3 of the SCA merit approval. Acceptance of this "other assurance" does not relieve PSE of compliance with any other applicable Decommissioning or site restoration requirements of the SCA or any plans approved in connection therewith, including those approved prior to transfer of the SCA during the WHWPP previous ownership by Wind Ridge Power Partners.

Findings

The Council has reviewed the joint Wind Ridge PSE request to transfer the WHWPP SCA and finds as follows:

Transfer of the SCA

- (1) By letter dated August 4, 2005, Wind Ridge Power Partners LLC, and Puget Sound Energy jointly request that the Council approve the transfer of control over the Wild Horse Wind Power Project (WHWPP) Site Certification Agreement (SCA) to PSE pursuant to WAC 463-66-100.
- (2) Wind Ridge Power Partners LLC and Puget Sound Energy 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.
- (3) The Council has considered the factors outlined in WAC 463-66-100(4) and finds that:
 - (a) PSE satisfies the provisions of WAC 463-60-015 and 463-60-075;
 - (b) PSE is entitled to possession of the energy facility described in the certification agreement; and
 - (c) PSE 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.

(4) The Council finds no substantive term or condition of the SCA will be modified by the proposed change in the Certificate Holder and in accordance with WAC 463-66-090 the Council's approval of the transfer request and amendment to the Wild Horse Wind Power Project Site Certification Agreement shall be by resolution.

Approval of "other financial instruments or assurances" pursuant to Article VIII.D.3 of the WHWPP SCA

(5) PSE also requests that pursuant to Article VIII.D.3 of the WHWPP SCA, EFSEC consider and approve "other financial instruments or 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 investor-owned electrical utility regulated by FERC and WUTC.

(6) The Council finds that the PSE proposal that the obligation to fully decommission the Project when due shall be a general obligation of PSE, in accordance with Section 6.4 of the March 4, 2005 Development Agreement entered into by Wind Ridge and Kittitas County, will provide adequate Decommissioning funding for the WHWPP.

(7) This Order is not intended to affect the Washington Utilities and Transportation Commission in any way from independently exercising its statutory authority.

THEREFORE, IT IS HEREBY ORDERED that:

(1) The proposed change in control of the WHWPP is approved pursuant to WAC 463-66-100;

(2) The Council approves pursuant to Article VIII.D.3 of the WHWPP SCA, "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 investor-owned electrical utility regulated by FERC and WUTC.

(3) Upon the Council's receipt of notification that the Proposed Sale has closed, the Council shall issue a resolution that amends the WHWPP SCA to replace Wind Ridge by PSE as the Certificate Holder.

DATED at Olympia, Washington and effective on this _____ day of August, 2005.

WASHINGTON ENERGY FACILITY
SITE EVALUATION COUNCIL

James O. Luce, Chair