

**WASHINGTON STATE
ENERGY FACILITY SITE EVALUATION COUNCIL**

RESOLUTION NO. 297

***ADDITION OF DUKE ENERGY GRAYS HARBOR LLC AS SATSOP COMBUSTION
TURBINE SITE CERTIFICATION AGREEMENT CO-HOLDER AND CO-PERMITTEE***

Nature of the Action. By letters dated January 9, 2001, and January 12, 2001, Energy Northwest, through its Manager of Regulatory Affairs, Douglas W. Coleman, and Duke Energy Grays Harbor LLC (“Duke”), through its Vice President, Kevin R. Johnson, respectively, requested that the Council approve an amendment to the Satsop Combustion Turbine (CT) Project (Project) Site Certification Agreement (the “SCA”) to add Duke as a SCA co-holder and co-permittee. By letter dated January 31, 2001, URS Corporation,¹ through its Manager of Pacific Northwest Environmental Services, Katy Chaney, submitted to the Council, on behalf of Duke and Energy Northwest, a marked-up copy of the SCA indicating the specific textual changes that Duke and Energy Northwest are requesting. All of the above letters and attachments thereto are hereby incorporated by reference.

Background. On January 3, 2000, Duke and Energy Northwest, the holder of the Site Certification Agreement for the Satsop CT Project, reached agreement upon a transaction in which Duke will purchase Energy Northwest’s interest in the Project. Under the terms of the agreement, Duke will construct the Project; Duke and Energy Northwest will jointly operate the facility; and Energy Northwest will retain an interest in a portion of the facility’s output. Duke Energy Grays Harbor LLC is a limited liability corporation formed under the laws of the State of Delaware, for the purpose of constructing, owning and operating the Satsop CT Project. Duke Energy Grays Harbor is wholly owned by Duke Energy North America, LLC, which is itself one of many subsidiaries of Duke Energy Corporation, a global energy company involved in the design, construction, and operation of energy generation, electric transmission, and gas transportation facilities. Energy Northwest and Duke are now requesting that the Satsop CT Project SCA be amended to add Duke as a co-holder of the SCA and co-permittee. They characterize this amendment request as making both parties responsible for fulfilling the requirements of the SCA.

Procedural Status. EFSEC’s amendment procedure is governed by chapter 80.50 RCW and chapter 463-36 WAC. Pursuant to WAC 463-36-030, in considering Energy Northwest’s and Duke’s amendment request, on February 7, 2001, the Council held a public meeting in Elma, Washington to receive comment. Notice was mailed to approximately 125 interested persons, agencies and organizations on January 30, 2001. The Council received comments from two members of the public at the February 7 hearing and several written comments were filed on the amendment request. Those comments generally urge the Council to require Duke to adhere to all requirements contained in the SCA, including mitigation measures for the natural gas pipeline. One comment expressed concern over the possibility that the plant will not be completed. Another requests that consideration be given to allowing Washington interests, private or

¹ URS Corporation is a consultant to Energy Northwest and Duke.

municipal, the right of refusal for energy produced by the facility. The Council does not interpret any of the comments as expressing opposition to the request.

The Council has reviewed the request for amendment under the procedures outlined in chapter 463-36 WAC and through this resolution amends the SCA as described herein.

Discussion:

The Council's action here is strictly technical in nature. The addition of Duke as a SCA co-holder and co-permittee does not affect Energy Northwest's organizational, financial, managerial, or technical ability to comply with the terms and conditions of the SCAs. Energy Northwest remains legally responsible for fulfilling the terms and conditions of the SCA to the same extent as it was prior to the amendment. The addition of Duke as a co-holder and co-permittee simply provides an additional party that the Council may hold responsible for fulfilling the requirements of the SCA. Accordingly, the Council's action to amend the SCA to reflect the addition of Duke as a co-holder and co-permittee is strictly technical in nature. No substantive term or condition in the SCA will be affected by the amendment.

Chapter 463-36 WAC governs the Council's procedure for amending a Site Certification Agreement. WAC 463-36-040 outlines the relevant factors for consideration prior to a decision to amend. Specifically,

...[i]n reviewing any proposed amendment, the council shall consider whether the proposal is consistent with:

1. [t]he intention of the original SCA;
2. [a]pplicable laws and rules; and
3. [t]he public health, safety, and welfare.

WAC 463-36-050 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 concluded that the proposed amendment is consistent with each. Each of the Council's conclusions is discussed below.

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

Under WAC 463-36-040(3) and -050, the Council must consider whether the proposed amendment is 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. As noted above, Energy Northwest remains responsible for fulfilling the requirements of the SCA to

the same extent as it was prior to the amendment, and the addition of Duke simply provides an additional responsible party.

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

B. Consistency with applicable laws and rules.

Under WAC 463-36-040(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 463-36-070 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 affect on the environment. See WAC 197-11-305. The SEPA rules provide categorical exemptions for specified agency actions that clearly have no significant affect on the environment. If an agency action is categorically exempt, no environmental review is required. See WAC 197-11-720. Among the actions specified as categorically exempt are procedural actions of an agency, including the "...adoption of...resolutions...containing no substantive standards respecting use or modification of the environment..." WAC 197-11-800(20).

The Council finds that this amendment adding Duke as a SCA co-holder and co-permittee affects "no substantive standards respecting use or modification of the environment." Thus, the Council concludes that its action here is categorically exempt from environmental review under SEPA.

2. Consistency with WAC 463-36-070 and -080.

WAC 463-63-080 provides that

...[a]n [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 463-36-070 provides that

...[a]n amendment which changes a technical provision or requirement within the terms of the SCA, and constitutes no substantial alteration of any provisions of the SCA, and is determined to have no detrimental effect upon the environment, shall be effective upon adoption of a council resolution. (emphasis added)

Based on its previous findings that that (i) the proposed amendment has no environmental impact and no impact on public health, safety, and welfare; and (ii) does not alter Energy Northwest's

existing legal responsibilities under the SCA,² the Council finds that this amendment is “technical” in nature; it can and will be effective upon adoption of this resolution.

C. Consistency with intention of the original SCA.

Under WAC 463-36-040(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 adding Duke as a SCA co-holder and co-permittee is consistent with this intent. Energy Northwest’s legal responsibilities under the SCA remain the same. Moreover, as Energy Northwest’s January 9, 2001 letter to the Council points out, the requested amendment effectively permits “Energy Northwest to partner with Duke to bring the previously permitted CT Project into operation.” The amendment thus should serve to assist Energy Northwest in successfully bringing into operation the project authorized under the SCA.

D. Conclusion.

The Council concludes that the proposed amendment to add Duke as a SCA co-holder and co-permittee for the Satsop CT Project is consistent with public health, safety, and welfare; the applicable law; and the intent of the original SCA.

RESOLUTION

For the foregoing reasons, the Council adopts the amendments to the Satsop CT SCA as indicated in the January 31, 2001 letter and accompanying attachment from URS Corporation to the Council: *Provided*, that the Council hereby delegates to the Council Chair the authority to make such modifications to the requested amendments or to other provisions of the SCA and the attachments thereto as the Chair deems necessary or appropriate to effect the Council’s intent in this resolution.

² Because the amendment will not result in any diminution of Energy Northwest’s existing legal obligations and responsibilities under the SCA, the Council specifically finds that the requested amendment does not constitute a transfer of a site certification agreement under WAC 463-36-100.

DATED and effective at Olympia, Washington, this 12th day of February, 2001.

Washington State Energy Facility Site Evaluation Council

By: _____/s/_____
Deborah J. Ross, EFSEC Chair

Attest: _____/s/_____
Allen J. Fiksdal, EFSEC Manager