

**WASHINGTON STATE
ENERGY FACILITY SITE EVALUATION COUNCIL**

RESOLUTION NO. 298

***TECHNICAL AMENDMENTS REGARDING FACILITY DESIGN AND BACKUP FUEL
SOURCE***

Nature of the Action. By letter dated March 8, 2001, Energy Northwest, through its Manager of Regulatory Affairs, Douglas W. Coleman, and Duke Energy Grays Harbor LLC, through its Director, Kevin R. Johnson, respectively (collectively, “Duke”) requested that the Council approve amendments to the Satsop Combustion Turbine Site Certification Agreement (the “SCA”) to accommodate certain changes in the design of the facility, and to eliminate diesel oil as a backup fuel source. Attached to the March 8 letter was a marked-up copy of the SCA and sections of the Application for Site Certification indicating the specific textual changes that Duke has requested. The above letter and attachments are hereby incorporated by reference.

Background. The current SCA was based on turbines manufactured by Westinghouse. According to Duke, current market conditions, including immediate availability of equipment owned by Duke Energy North America, compel Duke to utilize turbines manufactured by General Electric Company.

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 Duke’s amendment request, on April 3, 2001, the Council held a public meeting in Elma, Washington, to receive comment. Notice was mailed to approximately 230 interested persons, agencies and organizations on March 23, 2001. The Council received five written and seventeen oral comments on the amendment request. The Council has reviewed the requested amendments 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. As explained below, the change from Westinghouse to General Electric turbines, the change in the plant’s configuration from a dual “one-on-one” configuration to a single “two-on-one” configuration, and the elimination of diesel oil as a backup source of fuel does not adversely affect the environment or constitute a substantial alteration of any provisions of the SCA. Accordingly, the Council’s action to amend the SCA to reflect these changes is strictly technical in nature.

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 amendments are 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 amendments are consistent with public health, safety, and welfare, including environmental aspects of the public welfare.

The Council finds that the amendments are consistent with public health, safety and welfare. The plant's permitted output will increase from 490 megawatts to 650 megawatts as a result of the amendments, thereby enhancing the supply of electrical energy in the state and the region. In addition, the elimination of diesel oil as a backup fuel will eliminate potential health and safety issues relating to the transportation, storage and combustion of diesel oil.

The Council further finds that the amendments will not have an adverse affect on the environment. The requested amendments will result in a significant reduction in air emissions of nitrogen oxides (NO_x), ammonia, sulfur, carbon monoxide, and volatile organic compounds, while particulate emissions will remain approximately the same. The Council finds that carbon dioxide emissions will increase by approximately 10%. However, an increase of 10% in carbon dioxide emissions is not adverse to the environment given the decrease in emission per megawatt, the Council's authority to compel carbon dioxide mitigation consistent with a plan it will approve pursuant to the SCA, and elimination of the use and storage of diesel oil. In addition, the amendments do not alter Duke's existing obligations under the SCA with respect to water quantity and quality, air emissions, vegetation, fish, wildlife, noise, and light/glare mitigation, and other matters affecting public health, safety and welfare or the environment.

The Council also finds that the proposed amendments do not constitute a substantial alteration of any provision of the SCA such that the Governor's approval of the amendments would be required.

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 determine whether a proposed action is exempt or could have a significant adverse affect on the environment. See WAC 197-11-305. Where the environmental effects of a proposed action have already been adequately addressed in a previously issued environmental document, the lead agency may issue an addendum to the adoption notice pertaining to the original document. *See* WAC 197-11-600(4)(c) and -625. In this case the Council's responsible SEPA official, EFSEC Manager Allen J. Fiksdal, has determined that any potential significant adverse environmental impacts from the construction and operation of the Satsop facility as proposed in the SCA amendments have been adequately addressed in the original environmental document adopted in connection with the Satsop Combustion Turbine facility. Consequently, Mr. Fiksdal has issued an Addendum to the Adoption Notice of the Existing NEPA Environmental Document, dated April 6, 2001. The Council finds that it has thus complied with applicable SEPA requirements in connection with the requested amendments.

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 (i) the proposed amendments have no environmental impact and no impact on public health, safety, and welfare; and (ii) do not constitute a substantial alteration to any provisions of the SCA, the Council finds that the amendments are "technical" in nature; they 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 amendments are 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's interests.

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 permitting the change in turbines and facility configuration and the elimination of diesel oil as a backup fuel source is consistent with this intent. The proposed changes will produce a net environmental benefit while increasing the facility’s electrical output. The amendments thus should assist Duke in ultimately operating a project that is beneficial to the state’s interests.

D. Conclusion.

The Council concludes that the proposed amendments providing for a change from Westinghouse to General Electric turbines, a change from a dual “one-on-one” configuration to a single “two-on-one” configuration, and the elimination of diesel oil as a backup fuel source, are 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 SCA as indicated in the March 8, 2001 letter and accompanying attachment from Duke to the Council: *Provided*, that the adoption of the amendments is made with the express acknowledgement that the Council is authorized under the SCA to compel Duke to prepare, submit and implement a Council-approved greenhouse gas and carbon dioxide mitigation plan. In the event that Duke fails to prepare, submit, and implement the Council-approved mitigation plan, this resolution shall be null and void: *Provided further* 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 are consistent with this resolution and that the Chair deems necessary or appropriate to effect the Council’s intent in this resolution.

DATED and effective at Olympia, Washington, this 13th day of April, 2001.

/S/

Deborah Ross, EFSEC Chair

Attachments:

- 1) Letter to Deborah J. Ross. EFSEC Chair, from Kevin R. Johnson, Director, Duke Energy Grays Harbor, LLC, and Douglas Coleman, Manager, Regulatory Affairs, Energy Northwest, Satsop Power Plant Site - Request for Approval of Revisions to Site Certification Agreement.
- 2) Site Certification Agreement and Sections of Application for Site Certification showing requested revisions.