

**WASHINGTON STATE
ENERGY FACILITY SITE EVALUATION COUNCIL**

RESOLUTION NO. 305

***MODIFICATIONS TO THE CORPORATE STRUCTURE OF SITE CERTIFICATION
HOLDER WALLULA GENERATION, L.L.C.***

Nature of the Action. Wallula Generation, L.L.C., (Wallula Gen) is a party to a Site Certification Agreement (SCA) executed December 18, 2002, for the Wallula Power Project. By a letter dated January 16, 2003, from Darrel Peeples, Wallula Gen advised the Council of changes to its ownership structure. Although the Site Certification Agreement remains with Wallula Gen, and Wallula Gen will continue to hold the rights and carry the obligations given to it by the SCA, changes to the corporate structure have occurred which alter some of the disclosures contained in the Application for Site Certification (Application). Since the Application was incorporated by reference into the SCA, these changes must be recognized by Council resolution.

Background. At the time of the Application, Wallula Gen was majority owned in equal shares by Wallula Power, Inc., and Newport Wallula, Inc., with a small (5%) interest held by Wallula Land Company. Wallula Power, Inc., and Newport Wallula, Inc., were in turn owned by Newport Generation Ventures, L.L.C. The majority interest in Newport Generation Ventures, L.L.C., was held by Warburg Pincus equity partners, with a minority interest held by individual investors. Under the revised structure, Wallula Gen is owned in equal shares by Wallula Power, Inc., and Newport Wallula, Inc., with the former 5% interest of Wallula Land Company being eliminated through redemption by Wallula Gen. Another revision is that Wallula Power, Inc., and Newport Wallula, Inc., are now owned by Competitive Power Ventures Holdings, L.L.C., which replaced Newport Generation Ventures, L.L.C. Although there are some differences in the minority individual investors, Competitive Power Ventures Holdings, L.L.C., is majority owned by the same Warburg Pincus equity partners which held Newport Generation Ventures. Wallula Gen is now requesting that the Council recognize this change in its corporate structure through a resolution authorizing a technical change to the SCA, a change not to the language of the SCA, itself, but to portions of the Application incorporated therein.

Procedural Status. EFSEC's amendment procedure is governed by chapter 80.50 RCW and chapter 463-36 WAC. Notice of Wallula Gen's request was mailed to approximately 600 people. The Notice advised that Wallula Gen had requested action on its request at the March 10, 2003, regular EFSEC meeting, and that comments could be made either orally at that time or in writing prior to noon on March 10, 2003. EFSEC considered the request at its March 10, 2003, regular meeting. Two written comments were received, expressing no objection to the proposed changes. 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 change in the ownership structure of Wallula Gen does not affect Wallula Gen's ability to comply with the terms and conditions of the SCA. Wallula Gen, as the Certificate holder, remains legally responsible for fulfilling the terms and conditions of the SCA to the same extent as it was prior to the amendment. Accordingly, the Council's action to amend the SCA to reflect the change in corporate structure 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, Wallula Gen remains responsible for fulfilling the requirements of the SCA to the same extent as it was prior to the amendment.

The Council further finds that this amendment will not affect 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 effect on the environment. See, WAC 197-11-310. As authorized by statute, the SEPA rules provide categorical exemptions for specified agency actions that clearly have no significant effect on the environment. See, WAC 197-11-305. 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 recognizing changes to Wallula Gen’s corporate ownership structure 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 463-36-080 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 the (i) the proposed amendment has no environmental impact and no impact on public health, safety, and welfare; and (ii) does not alter Wallula Gen’s existing legal responsibilities under the SCA, 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 identified changes to Wallula Gen’s corporate ownership structure is consistent with this intent. Wallula Gen’s legal responsibilities under the SCA remain the same. The SCA will remain virtually identical.

D. Conclusion.

The Council concludes that the changes to the corporate ownership structure of Wallula Gen identified in the January 16, 2003, letter from Darrell Peebles to Allen Fiksdal, EFSEC Manager, are consistent with public health, safety, and welfare; the applicable law; and the intent of the original SCA. The Council, pursuant to WAC 463-36-100, has approved the change in ownership of the SCA by Order No. 775 (see attached). The Council hereby determines that it is appropriate to approve a Technical Amendment to the Wallula Power Project SCA necessary to reflect the change in corporate structure.

RESOLUTION

For the foregoing reasons, the Council approves the Technical Amendment to the Wallula Power Project SCA necessary to reflect the change in the corporate ownership structure of Wallula Gen identified above: *Provided*, that the Council hereby delegates to the Council Chair the authority to make such modifications to the SCA or to the Application as the Chair deems necessary or appropriate to effectuate the Council’s intent in this resolution.

Dated and effective this _____ day of March, 2003

Washington Energy Facility Site Evaluation Council

By: _____
Jim Luce, EFSEC Chair

Attest: _____
Allen Fiksdal, EFSEC Manager

Attachment