

**WASHINGTON STATE
ENERGY FACILITY SITE EVALUATION COUNCIL**

RESOLUTION NO. 308

**COWLITZ COGENERATION PROJECT
TERMINATION OF SITE CERTIFICATION AGREEMENT**

Nature of Action. The Energy Facility Site Evaluation Council (Council) is considering whether the Site Certification Agreement (SCA or Agreement) issued to the Weyerhaeuser Company (Weyerhaeuser) to construct and operate the Cowlitz Cogeneration Project has terminated. The terms of the SCA specify that if construction did not begin by February 7, 2004, Weyerhaeuser's rights to construct and operate the Cowlitz Cogeneration Project (Project or CCP) would cease. Weyerhaeuser has notified the Council that it will not be constructing the Project. Approval of this resolution will formally acknowledge that the SCA and the state's authorization for Weyerhaeuser to construct and operate the Project has terminated pursuant to the SCA's terms.

Background. On February 7, 1994, the State of Washington issued an Agreement to Weyerhaeuser and Mission Energy Company to construct and operate the Project, a natural gas-fired steam and electric cogeneration facility at Weyerhaeuser's Longview Mill site in Cowlitz County. Article II, Paragraph 3, of the SCA specified that, "If construction on the project's major components has not commenced within three (3) years of the signing of this Agreement, rights under this Agreement to construct and operate the CCP shall cease."

In 1996, Amendment No. 1 to the SCA revised paragraphs 2 and 3 of Article II to extend the terms of the Agreement to July 14, 1997, with construction to commence by that date or the rights to construct and operate the CCP would cease. Amendment No. 1 also deleted Mission Energy Company from the SCA and transferred all rights and responsibilities held by Mission Energy Company to Weyerhaeuser.

In 1997, the Agreement was amended again. The time to begin construction was extended to February 7, 2004 and authorization to construct and operate the Project would cease if construction had not started by that date.

Throughout the life of the SCA, Weyerhaeuser has maintained the Agreement and its ability to begin construction of the Project, subject to the terms of the SCA. In late 2003, Weyerhaeuser notified Council staff that it would not be constructing the Project. It intended to let the SCA terminate in February 2004. The Council contacted Weyerhaeuser in early 2004, and confirmed that the company did not wish to extend the SCA to maintain its right to construct the Project. Weyerhaeuser understood that the SCA would terminate on February 7, 2004, pursuant to the terms of the Agreement.

Procedural Status. The procedure for terminating an SCA is set out in the Council's rules. WAC 463-36-020 states: "Termination of a site certification agreement (SCA) except pursuant to its own terms, is an amendment of the agreement." Because the Project SCA contains specific terms under which the Agreement and the rights provided in the Agreement cease, and because Weyerhaeuser has notified the Council that it intends to let the SCA lapse, the Council has initiated this action to formally acknowledge SCA termination effective February 7, 2004.

Conclusion. The Council concludes that Weyerhaeuser has decided to abandon its efforts to construct the Project. Therefore, subject to the terms of the Agreement, because construction did not start by February 7, 2004, the rights provided to Weyerhaeuser to construct and operate the Project cease and the Agreement is no longer in force, effective that date. In accordance with the Council's rules, Weyerhaeuser's decision to not proceed with the Project does not require an amendment to the SCA. Council acknowledgement of the termination of the Project SCA by resolution is the appropriate administrative instrument to recognize that the Agreement and the rights provided under the Agreement ceased effective February 7, 2004.

Resolution. The Council hereby acknowledges that pursuant to the terms of the Agreement, all rights provided to the Weyerhaeuser Company to construct and operate the Project ceased on February 7, 2004, and the Agreement terminated on that date.

Dated and effective this 1st day of March, 2004.

Washington State Energy Facility Site Evaluation Council

By: _____
Jim Luce, EFSEC Chair

Attest: _____
Allen Fiksdal, EFSEC Manager