

**WASHINGTON STATE
ENERGY FACILITY SITE EVALUATION COUNCIL**

RESOLUTION NO. 309

**SATSOP COMBUSTION TURBINE PROJECT
TECHNICAL AMENDMENT – WATER USE PROVISIONS**

Nature of the Action. Energy Northwest and Duke Energy Grays Harbor, L.L.C. (collectively “the Certificate Holders”), are parties to a Site Certification Agreement (“SCA”) executed October 27, 1976, and amended on March 18, 1982, May 21, 1996, August 12, 1999, February 12, 2001, and April 13, 2001, to construct and operate the Satsop Combustion Turbine (CT) Project. By a letter dated February 12, 2004, from Counsel Karen McGaffey, the Certificate Holders advised the Council that they had entered into a Memorandum of Understanding (“MOU”) with the Washington Department of Ecology (“Ecology”) and the Washington Department of Fish and Wildlife (“WDFW”) to clarify the water authorization and use provisions of the SCA and to govern the implementation of base flow restrictions contained in the SCA. By approval of this resolution, the Council adopts these clarifications to the SCA and confirms that the base flow restrictions shall be implemented as agreed upon in the MOU.

Background. The SCA for the Satsop CT Project (“Project”) includes a Water Authorization and various provisions concerning the use of water. In particular, the SCA authorized the Project to use a total of 9.5 cubic feet per second (“cfs”) of water to be withdrawn from the Ranney wells. The SCA further explained that, of the total, 8.6 cfs would be used for “power production” and 0.9 cfs would be used for “quench” water to cool the water discharged from the facility sufficiently so that it would comply with NPDES permit requirements. The SCA also restricted withdrawals pursuant to the SCA's Water Authorization at times when the flow in the Chehalis River near the Project site is below the regulatory minimum base flows established in WAC 173-522-020.

The Certificate Holders had met with members of the Council, EFSEC staff, and representatives from Ecology and WDFW during Project construction to discuss issues relating to the Project’s water use. It was apparent that ambiguities in the language of the SCA were being interpreted differently. Council members requested that the Certificate Holders, Ecology and WDFW try to reach agreement on an appropriate interpretation and propose language to clarify the SCA provisions.

The Certificate Holders, Ecology and WDFW entered into a MOU in which they agreed to jointly propose clarifying amendments to the SCA and they agreed upon a method of implementing the base flow restrictions regarding the SCA's Water Authorization.

A. Clarifying Amendments

The Certificate Holders, Ecology and WDFW request that SCA Article IV.A.1. be amended as follows:

The Certificate Holder is hereby authorized to withdraw water to be used for the operation of the Satsop Combustion Turbine Project as follows:

~~The Satsop Combustion Turbine Project is two combustion turbine units~~ are limited to a total of ~~9.5~~ 9.2 cubic feet per second, ~~of which 8.6 cubic feet per second will be for power production, including quench water to meet the temperature limits of the NPDES permit. The remaining 0.9 cubic feet per second is for quench water to cool the Satsop Combustion Turbine Project discharge below the temperature set in the NPDES Permit.~~ Withdrawal is subject to the terms as more particularly described in Attachment III, attached hereto and incorporated by reference.

The Certificate Holders, Ecology and WDFW request that SCA Article IV.A.4. be amended as follows:

Withdrawal of water for the Satsop Combustion Turbine Project from the Ranney wells shall be decreased (or stopped) as necessary to assure that the project does not affect the minimum base flows immediately downstream of the point of diversion. The required minimum base flows are established in Chapter 173-522-020, Washington Administrative Code, and set forth in Attachment III. All withdrawals are subject to the withdrawal restrictions set forth in Attachment III, ~~and the additional 0.9 cubic feet per second of quench water withdrawal is also limited to periods in which an additional withdrawal will actually reduce the temperature of the discharge.~~ The authorization is also subject to the provisions of Chapter 173-522 and Chapter 173-500, Washington Administrative Code.

The Certificate Holders, Ecology and WDFW request that the Water Authorization found in Attachment II of the SCA be amended at Section I.C. to read:

MAXIMUM QUANTITY

Instantaneous: ~~9.5~~ 9.2 cubic feet per second
Annual: 6,865.65 acre feet

The Certificate Holders, Ecology and WDFW request that Section I.D. be amended to read:

~~8.6~~ 9.2 cubic feet per second for power generation, ~~including quench water to meet the temperature limits of the NPDES permits; and 0.9 cubic feet per second for quench water and~~ to cool the discharge below the temperature set in the NPDES permit.

The Certificate Holders, Ecology and WDFW request that Section III.A. be amended to read:

Instream Flow – The rate of diversion for the Satsop Combustion Turbine Project is limited to a maximum of ~~9.2~~ 9.5 cubic feet per second. However, the diversion shall be decreased (or stopped) as necessary to ensure that the Satsop Combustion Turbine Project does not affect the minimum base flows immediately downstream of the point of diversion. The required minimum base flows are established in WAC 173-522-020 and set forth in subsection (B) below. All withdrawals for the Satsop Combustion Turbine Project are subject to the withdrawal restrictions set forth herein concerning periods of low flow.

B. Methodology for Implementing Base Flow Restrictions

The water authorization contained in the SCA is subject to the base flow restrictions set forth in Washington Administrative Code 173-500-020. The Certificate Holders, Ecology and WDFW have agreed upon a practical means of implementing these base flow restrictions. They request that the Council confirm its acceptance of the following approach by resolution:

1. Chehalis River flow will be monitored on a real-time basis using a gauge installed by the United States Geological Society ("USGS") at monitoring station 12.0350.02. The Certificate Holder will calculate the running 24-hour average flow rate at monitoring station 12.0350.02, based upon the real time data provided by the USGS gauge.
2. The SCA's restriction on the Water Authorization shall begin whenever the running 24-hour average flow rate falls below the base flow established by WAC 173-522-020.
3. The SCA's restriction on the Water Authorization shall end when both the instantaneous flow and the 24-hour average flow rate rises above the base flow established by WAC 173-522-020.

The MOU provided several examples of how this methodology would work, and those examples are incorporated herein by reference.

At any time when the USGS gauge located in the Chehalis River at monitoring station 12.0350.02 is not functioning, the flow rate will be determined by using the following formula:

$$\left(\begin{array}{l} \text{Chehalis River} \\ \text{Flow at Station} \\ 12027500 \end{array} + \begin{array}{l} \text{Satsop River} \\ \text{Flow at Station} \\ 12035000 \end{array} \right) \times \begin{array}{l} \text{Correlation} \\ \text{Factor} \end{array}$$

At this time, the correlation factor will be 1.5.

During periods in which the SCA's restriction on the water authorization is in effect, the Certificate Holder may continue to operate the Satsop Combustion Turbine Project using water purchased from the Grays Harbor Public Development Authority or from other water rights holders, so long as the water purchased is derived from water rights that are not subject to base flow restrictions. The Certificate Holder will provide documentation to EFSEC, Ecology and WDFW confirming that the water being purchased for use during below-base-flow periods is not subject to base flow restrictions.

The SCA requires the Certificate Holder to submit to EFSEC and Ecology annual summaries of static water level data and monthly totals of water pumped from the Ranney wells. (Attachment III, Art. III.F.) The Certificate Holder also agrees to submit annual reports to EFSEC, Ecology and WDFW indicating when base-flow restrictions were in effect, and describing the measures taken to comply with the SCA's base flow restrictions during those periods.

Procedural Status. EFSEC's amendment procedure is governed by chapter 80.50 RCW and chapter 463-36 WAC. Notice of the Certificate Holders' request was mailed to approximately 320 interested persons, agencies and organizations on March 5, 2004, and published in four newspapers. The Notice advised that the Certificate Holders had requested action on its request at the April 19, 2004, regular EFSEC meeting, and that comments could be made either orally at that time or in writing prior to 5 p.m. on April 16, 2004. EFSEC considered the request at its April 19, 2004, regular meeting. One written and no oral comments were received. The Council has reviewed the request for amendment under the procedures outlined in chapter 463-36 WAC and through this resolution amends the Satsop Combustion Turbine Project SCA as described herein.

Discussion.

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. The Council's conclusions are discussed below.

A. 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 original Satsop Combustion Turbine Project SCA included a Water Authorization and provisions governing the amount of water to be used by the Project. The Water Authorization was subject to "base flow" restrictions established by Ecology regulations.

The changes in the SCA are consistent with the intention of the original SCA to minimize the withdrawal of well water for Project use. In fact, the requested changes in the SCA would reduce the total amount of the water authorization from 9.5 cfs to 9.2 cfs.

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. The Council's responsible SEPA official, EFSEC Manager Allen Fiksdal, has reviewed the proposed changes to modify the water use authorization-related provisions of the Project's SCA and establish how base flow restrictions will be implemented. Mr. Fiksdal determined these actions will have no probable adverse significant environmental impact and that questions related to these and other water use issues were considered and adequately addressed in previous SEPA documents and findings regarding water use and flow for the Satsop Combustion Turbine Project; that no new information has been presented to indicate otherwise; and therefore no further action is required.

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 findings that the proposed amendment has no adverse environmental impact and no impact on public health, safety, and welfare, the Council finds that this amendment is technical in nature; it can and will be effective upon adoption of this resolution.

C. 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 adverse effect on the public health, safety and welfare, and in fact, may have a beneficial effect on the environment by reducing permissible water withdrawals from the Ranney wells. As noted above, this amendment is jointly requested by the Certificate Holders, Ecology and WDFW. As evidenced by the MOU, entered into between the Certificate Holders and those agencies, the amendment is intended to clarify the existing SCA requirements and will not adversely affect public health, safety or welfare.

D. Conclusion.

The Council concludes that the changes to the Project's Water Authorization and water use identified in the February 12, 2004, letter from the Certificate Holders, are consistent with public health, safety, and welfare; the applicable law; and the intent of the original SCA. The Council hereby determines that it is appropriate to approve a Technical Amendment to the Satsop Combustion Turbine Project SCA.

RESOLUTION

For the foregoing reasons, the Council approves the Technical Amendment to the Satsop Combustion Turbine Project Site Certification Agreement outlined above in Section A "Clarifying Amendments," and confirms that the base flow restrictions applicable to the SCA's water authorization will be implemented as agreed upon by the Certificate Holders, Ecology and WDFW, as described above in Section B "Methodology for Implementing Base Flow Restrictions." In approving this technical amendment, the Council accepts the agreements reached by the Certificate Holders and Ecology and WDFW in the attached Memorandum of Understanding.

Provided, that the Council hereby delegates to the Council Chair the authority to make such modifications to the SCA as the Chair deems necessary or appropriate to effectuate the Council's intent in this resolution.

Dated and effective this 19th day of April, 2004.

Washington Energy Facility Site Evaluation Council

By: _____
Tony Ifie, Acting EFSEC Chair

Attest: _____
Allen Fiksdal, EFSEC Manager

Attachment: Memorandum of Understanding