

**WASHINGTON STATE  
ENERGY FACILITY SITE EVALUATION COUNCIL**

**RESOLUTION NO. 312**

***MODIFICATIONS TO THE SATSOP COMBUSTION TURBINE PROJECT  
SITE CERTIFICATION AGREEMENT***

**Nature of Action.**

Duke Energy Grays Harbor, LLC ("Company") and Energy Northwest are the Certificate Holders of the Site Certification Agreement ("SCA") governing the Satsop Combustion Turbine Project. By letter dated January 18, 2005, the Company advised the Council of a proposed change in its corporate ownership. The Company requested that the Council approve the transfer in control of the SCA, and accept a letter of credit to secure the Certificate Holders' obligations for site restoration in place of corporate guaranty currently securing those obligations. Energy Northwest also requested removal from the SCA as a Certificate Holder.

**Background.**

On May 21, 1996, an amended Site Certification Agreement authorizing the construction and operation of the Satsop Combustion Turbine Project was executed by the State of Washington and Energy Northwest (which was then known as the Washington Public Power Supply System). On February 21, 2001, the Council adopted Resolution No. 297, which added the Company as a co-Certificate Holder with Energy Northwest. At that time, the Company was a wholly-owned subsidiary of Duke Energy North America, LLC.

On December 27, 2004, Duke Energy North America, LLC entered into an agreement to sell the Company to Invenergy Grays Harbor LLC ("Transaction"). Invenergy Grays Harbor LLC is a wholly-owned subsidiary of Invenergy Investment Company LLC. After the Closing, the name of the Company was changed to "Grays Harbor Energy LLC". The Company requested that the Council approve the transfer of control and change of the Company name pursuant to WAC 436-66-100.

The Company also requested that the Council accept an "evergreen" letter of credit from an A-rated financial institution ("Letter of Credit") to secure the Company's obligations under the Site Restoration Plan, and to terminate the Duke Energy North America, LLC, Limited Guaranty Agreement dated April 24, 2003 ("DENA Guaranty"), releasing Duke Energy North America, LLC from any obligations under the Site Restoration Plan. The Company has agreed to cooperate with the Council in establishing a standby trust into which the proceeds will be payable of any drawing on the Letter of Credit.

On February 23, 2005, the Council approved of the proposed transfer of control of the SCA subject to conditions specified in Council Order No. 809. On March 15, 2005, Invenergy Grays Harbor LLC provided the Council with the form of the proposed Letter of Credit. The Council

approved of the form of the Letter of Credit on March 15, 2005, issuing Order No. 812. The Transaction then closed on March 24, 2005, and the Council received the Letter of Credit on March 24, 2005.

Invenergy Grays Harbor LLC is now the sole owner of the Company. At this time, Energy Northwest no longer has an ownership interest in or operational control of the Satsop Combustion Turbine Project. Accordingly, the Company and Energy Northwest are requesting that technical changes be made to the SCA to identify the Company as the sole certificate holder.

### **Procedural Status.**

EFSEC's amendment procedure is governed by chapter 80.50 RCW and chapter 463-66 WAC. Notice of this matter was mailed to approximately 300 people. The Notice advised that Duke Energy Grays Harbor, LLC and Energy Northwest had requested approval of the proposed transfer of control of the SCA, that a special meeting would be held on February 23, 2005, in Montesano, Washington, and that comments could be made either orally at that time or in writing prior to the conclusion of the public comment portion of the February 23, 2005 meeting. EFSEC considered the request at its February 23, 2005 special meeting. One oral comment and two written comments were received, expressing no objection to the proposed changes. The Council reviewed the request under the procedures outlined in chapter 463-66 WAC, and approved the proposed transfer of control subject to conditions set forth in Council Order No. 809.

In particular, Council Order No. 809 provided that upon the receipt and approval of financial assurances from Invenergy Grays Harbor LLC in the form of an "evergreen" letter of credit from an A-rated financial institution to replace the DENA Guaranty, and upon notification that the Transaction had closed, the Council issue a resolution that:

- (a) Terminates the DENA Guaranty referenced above and releases Duke Energy North America, LLC, its affiliates and subsidiaries and their respective directors, officers and employees from all obligations under the DENA Guaranty or the SCA,
- (b) Approves the Site Restoration Plan with the financial assurances provided by Invenergy Grays Harbor LLC; and
- (c) Amends the SCA to change the name of the Company and to remove Energy Northwest as a certificate holder and releases it from all obligations under the SCA (including plans approved in connection therewith) arising after issuance of the resolution.

On March 14, 2005, Invenergy Grays Harbor LLC provided the Council with the form of the Letter of Credit. At a public meeting on March 15, 2005, the Council approved the form of the Letter of Credit and issued Order No. 812. Order No. 812 provided that the DENA Guaranty would automatically terminate upon the Council's receipt of the Letter of Credit and Duke Energy North America, LLC, its affiliates and subsidiaries and their respective directors, officers

and employees would automatically be released from all obligations under the DENA Guaranty, the Site Restoration Plan and the SCA.

During the March 15, 2005 public meeting, the Council also considered this resolution and, by motion, authorized the issuance of this resolution upon receipt of the Letter of Credit. The Council has been notified that the Transaction closed and received the Letter of Credit on March 24, 2005.

**Discussion.**

The change in the Company's ownership structure does not affect its status as a Certificate Holder or its obligation to comply with the terms and conditions of the SCA (and plans approved in connection therewith). The Company remains legally responsible for fulfilling the terms and conditions of the SCA to the same extent as prior to the amendment. Under its new ownership, the Company retains all obligations under the SCA (or plans approved in connection therewith) that arose during the Company's previous ownership, and the Company retains credit for actions taken in compliance with such obligations during the Company's previous ownership.

Likewise, the proposed removal of Energy Northwest as a co-Certificate Holder will not effect the Company's obligation, as the remaining sole Certificate Holder, to comply with the terms and conditions of the SCA (and plans approved in connection therewith).

Accordingly, the Council's action to amend the SCA to reflect the change in the Company's name and ownership and to remove Energy Northwest as a certificate holder is strictly technical in nature. No substantive term or condition in the SCA will be affected by the amendment.

Chapter 463-66 WAC governs the Council's procedure for amending a Site Certification Agreement. WAC 463-66-040 outlines the relevant factors for consideration prior to a decision to amend:

In reviewing any proposed amendment, the council shall consider whether the proposal is consistent with:

1. The intention of the original SCA;
2. Applicable laws and rules; and
3. The public health, safety, and welfare.

WAC 463-66-050 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 has concluded that the proposed amendment would be consistent with each. Each of the Council's conclusions is discussed below.

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

Under WAC 463-66-040(3) and .050, the Council must consider whether the proposed amendment would be 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, the Company remains responsible for fulfilling the requirements of the SCA to the same extent as the Certificate Holders were prior to the amendment. The Council further finds that this amendment does 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 463-66-040(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. The Council's responsible SEPA official, EFSEC Manager Allen Fiksdal, has reviewed the proposed changes to SCA and has determined they do not have any probable adverse significant environmental impact. EFSEC issued a Determination of Non-Significance on February 7, 2005.

2. Consistency with WAC 463-66-070 and -080.

WAC 463-66-080 provides:

An [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 463-66-070 provides:

An amendment request which does not substantially alter the substance of any provisions of the SCA, or which is determined not to have a significant detrimental effect upon the environment, shall be effective upon approval by the council. Such approval may be in the form of a council resolution.

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 the Company's legal responsibilities under the SCA, the Council finds that this amendment may be approved by Council resolution pursuant to WAC 463-66-070.

**C. Consistency with intention of the original SCA.**

Under WAC 463-66-040(1), the Council must consider whether the proposed amendment is consistent with the intention of the 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 the proposed changes to the Certificate Holder are consistent with this intent. The Certificate Holder's legal responsibilities under the SCA will remain the same. The SCA will remain virtually identical.

**D. Conclusion.**

The Council concludes that the proposed changes in the Company's ownership and the removal of Energy Northwest as a Certificate Holder are consistent with public health, safety, and welfare; the applicable law; and the intent of the original SCA. The Council, pursuant to WAC 463-66-100, has approved the proposed change in ownership of the SCA subject to conditions specified by Order No. 809, which have now been met. The Council hereby determines that it is appropriate to approve an amendment to the Satsop Combustion Turbine SCA necessary to reflect the proposed change in the certificate holder.

**RESOLUTION**

For the foregoing reasons, the Council:

(1) Amends the Satsop Combustion Turbine Project SCA to reflect the change in the Company's name and corporate ownership. This amendment does not affect the Company's status as a Certificate Holder or its obligation to comply with the terms and conditions of the SCA (and plans approved in connection therewith). Under its new ownership, the Company retains all obligations under the SCA (or plans approved in connection therewith) that arose during the Company's previous ownership, and the Company retains credit for actions taken in compliance with such obligations during the Company's previous ownership.

(2) Amends the Satsop Combustion Turbine Project SCA to remove Energy Northwest as a Certificate Holder, and releases Energy Northwest from all obligations under the SCA (including plans approved in connection therewith) arising after issuance of this Resolution).

(3) Will establish, within sixty (60) days after closing, a standby trust into which the proceeds of the Letter of Credit will be payable if the Council draws on the Letter of Credit.

Copies of the Amended SCA; Notification of Transaction Closing Letter; and Letter of Credit are attached to this Resolution.

DATED at Olympia, Washington and effective on this 24<sup>th</sup> day of March, 2005.

WASHINGTON ENERGY FACILITY SITE EVALUATION COUNCIL

By: \_\_\_\_\_

James O. Luce, Chair

Attested: \_\_\_\_\_

Allen J. Fiksdal, EFSEC Manager

Attachments:

1. Satsop Combustion Turbine Project Site Certification Agreement, Amendment No. 3, as modified by EFSEC Resolution No. 312
2. Perkins Coie letter dated March 24, 2005 – Notification of Transaction Closing and Delivery of Letter of Credit
3. U.S. Bank National Association “Irrevocable Letter of Credit No. SLCWMIL01539