

**WASHINGTON STATE  
ENERGY FACILITY SITE EVALUATION COUNCIL**

**RESOLUTION NO. 319**

***AMENDMENT NO. 3 TO THE WILD HORSE WIND POWER PROJECT  
SITE CERTIFICATION AGREEMENT***

**Nature of Action**

Puget Sound Energy (PSE) is the Certificate Holder of the Site Certification Agreement ("SCA") governing the Wild Horse Wind Power Project (WHWPP or Project). By letter dated December 12, 2006, PSE requested that the Council amend the SCA for the WHWPP to allow the following change:

- Installation of a permit exempt well pursuant to RCW 90.44.050 (withdrawing less than 5,000 gallons per day) at the Operations/Visitors Center. Water from this well will be used for bathroom and kitchen uses at the Operations/Visitors Center, during operation of the Wild Horse Wind Power Project.

**Background**

On July 26, 2005, Governor Christine Gregoire executed on behalf of the State of Washington a Site Certification Agreement authorizing the construction and operation of the WHWPP. On August 30, 2005, the Energy Facility Site Evaluation Council (EFSEC or Council) approved the transfer of the WHWPP SCA to PSE. PSE began construction of the WHWPP in October 2005.

The original SCA provided for a single Operations and Maintenance (O&M) facility at the site for the present Operations/Visitors Center. The original O&M facility was to have its domestic water supply provided by onsite potable water tanks with water trucked to the site. The Maintenance Facility was subsequently moved to a location near the Vantage Highway pursuant to Amendment No. 1 to the SCA, which then designated the original O&M site for an Operations/Visitors Center, with domestic water still to be provided by onsite potable water tanks. Amendment No. 1 to the SCA also provided that the Maintenance Facility was to be provided water from an exempt well pursuant to RCW 90.44.050. This well has been installed at the site of the Maintenance Facility.

During the design review of the plans for the Operations/Visitors Center it was determined that Washington State Department of Health (DOH) regulations do not allow the use of trucked in water for a public water system. Although EFSEC was not bound to follow DOH regulations because of its preemptive authority pursuant to RCW 80.50.110, meetings with Puget Sound Energy, DOH, Kittitas County and EFSEC staff established the need to follow the substantive requirements of the DOH regulations.

As a result of those meetings it was agreed that the best option was to install a well at the Operations/Visitors Center and comply with the DOH requirements for a Transient

Noncommunity water system. It was also agreed that the well and water system at the Maintenance Facility was to be operated and maintained as a Non-Transient Noncommunity water system pursuant to the applicable DOH standards.

### **Procedural Status**

EFSEC's amendment procedure is governed by chapter 80.50 RCW and chapter 463-66 WAC.

PSE and EFSEC have complied with procedural requirements of Chapter 463-66 WAC as follows:

- Pursuant to WAC 463-66-030, the request for amendment of the SCA was submitted in writing, on December 12, 2006.
- The Council considered the request at its February 13, 2007 Monthly Meeting.
- Notice of this matter was mailed to approximately 340 people. The notice advised that PSE had requested an amendment to the SCA, and that a hearing to consider the matter would be conducted on February 13, 2007. The notice also said that comments could be made either orally at that time or in writing prior to the conclusion of the public comment period ending at 12:00 noon on February 13, 2007.

### **Public Comment**

Public Comments regarding this matter are summarized in Attachment 1 to this Resolution.

### **Discussion**

WAC 463-66-040 outlines the relevant factors that the Council shall consider prior to a decision to amend a SCA:

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.

1. Consultation with DOH and Kittitas County Health Department.

In support of their November 2006 request, PSE has met with DOH, Kittitas County and EFSEC to determine procedures necessary to comply with applicable regulations. As a result, the following procedures will be followed:

- The well will be installed by a well contractor, licensed pursuant to Chapter 173-162 WAC, and in compliance with the requirements and standards of Chapter 173-160 WAC.
- The well will be installed consistent with Kittitas County Environmental Health Department and Washington Department of Ecology requirements for new domestic wells.
- The water system will be operated as a Group A Transient Noncommunity system as defined by DOH and will be designed and operated in accordance with the applicable provisions of WAC 246-290 and 246-292. This will include compliance with provisions for system design, water quality, operations, reporting and operator training.

Because of the minimal use, it is unlikely that the use of water from this well would have a direct effect on groundwater quantity, quality and flow direction in the immediate area below the proposed facility. The well will be installed in a permanently disturbed area. The change does not substantially alter the substance of the SCA or result in detrimental effects on the environment.

2. Consistency with public health, safety, and welfare, including environmental aspects of the public welfare.

This amendment will have no effect on the health and safety of the public. All activities associated with the installation of the well will be conducted in the Project Area. Public health, safety and welfare will therefore not be affected in any manner not previously analyzed during review of the Project application. Furthermore, the activities will not cause any significant adverse environmental impact.

PSE will continue to abide by all the terms and conditions of the WHWPP SCA. The substance of existing SCA conditions and environmental mitigation requirements is 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 463-66-070 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 SEPA responsible official, EFSEC Manager Allen Fiksdal, has reviewed the proposed changes to the SCA and has determined they do not have any probable significant adverse environmental impact. EFSEC issued a Determination of Non-Significance on January 16, 2007.

### 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 (i) the proposed amendment has no environmental impact and no impact on public health, safety, and welfare; and (ii) does not alter the Certificate Holder'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 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 states interest. In return, the certificate holder commits to comply with the terms of the SCA.

The installation of this well will allow PSE to provide water to meet the needs of the Operations/Visitors Center during operation. The original intent of the Wild Horse SCA was for PSE to operate an Operations/Visitors Center for the benefit of the public. EFSEC approved the

construction of the Operations/Visitors Center but did not specifically approve a type of water system nor require a specifically classified water system. The Operations/Visitors Center is an important element of the Project. Installation of this well does not alter the intent of the SCA in any way. The Certificate Holder will implement the same mitigation measures identified in the SCA for construction and operation of these facilities.

The Council finds that the proposed changes to the SCA are consistent with this intent.

**D. Conclusion**

The Council concludes that the proposed amendment of the WHWPP SCA to allow installation of an exempt well is 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 an amendment to the Wild Horse Wind Power Project SCA, necessary to reflect the proposed changes to the Project; *Provided*, PSE shall continue to implement mitigation measures identified in the SCA.

**RESOLUTION**

For the foregoing reasons, the Council amends the Wild Horse Wind Power Project SCA to reflect the following Project change, to allow PSE to proceed with:

Installation of a permit exempt well pursuant to RCW 90.44.050 (withdrawing less than 5,000 gallons per day) at the Operations/Visitors Center. Water from this well will be used for bathroom and kitchen uses at the Operations/Visitors Center, during operation of the Wild Horse Wind Power Project.

DATED at Olympia, Washington and effective on February 13, 2007.

WASHINGTON ENERGY FACILITY SITE EVALUATION COUNCIL

By: \_\_\_\_\_  
James O. Luce, Chair

Attested: \_\_\_\_\_  
Allen J. Fiksdal, EFSEC Manager

Attachments: Public Comments