

**WASHINGTON STATE  
ENERGY FACILITY SITE EVALUATION COUNCIL**

**RESOLUTION NO. 325**

***CHEHALIS GENERATION FACILITY***  
**Transfer to PacifiCorp, Termination of TNA Merchant  
Projects' Guaranty, and Approval of Revised Site Restoration Plan**

**Nature of Action**

Chehalis Power Generation, LLC ("Chehalis Power") is the Certificate Holder of the Site Certification Agreement ("SCA") governing the Chehalis Generation Facility. By letters dated April 30, 2008, PacifiCorp and Chehalis Power requested the Energy Facility Site Evaluation Council ("EFSEC" or the "Council") to:

- Amend the SCA to name PacifiCorp as the Certificate Holder and transfer other related permits to PacifiCorp.
- Terminate the guaranty for site restoration provided by Chehalis Power's parent TNA Merchant Projects, Inc., and approve revisions to the Initial Site Restoration Plan to reflect the change in financial security.

**Background**

On March 4, 1997, the State of Washington and Chehalis Power executed an SCA authorizing construction and operation of the Chehalis Generation Facility. The SCA was amended on March 6, 2001.

By letters dated April 30, 2008, PacifiCorp and Chehalis Power informed the Council that PacifiCorp had entered into a purchase and sale agreement pursuant to which it would acquire Chehalis Power, which would then be merged into PacifiCorp. Closing of the transaction was contingent upon obtaining the Council's approval, among other things. On July 8, 2008, the Council issued Council Order No. 836, approving the transfer of the Chehalis Generation Facility SCA and related permits to PacifiCorp, the termination of the site restoration guaranty provided by TNA Merchant Projects, and PacifiCorp's revised Initial Site Restoration Plan, all contingent upon the successful closing of the transaction.

On September 15, 2008, EFSEC received notice that the transaction described above had closed and Chehalis Power has been merged into PacifiCorp. PacifiCorp is now the sole owner of the Chehalis Generation Facility.

## **Procedural Status**

The Council's procedure for considering the transfer of an SCA is set forth in the Council's regulations at WAC chapter 463-66. Notice of this matter was mailed to approximately 380 people. The notice advised that Chehalis Power and PacifiCorp had requested approval of the proposed transfer of the SCA that a special meeting and informational hearing would be held on June 3, 2008 in Chehalis, Washington, and that comments could be made orally at that time or submitted in writing by 5:00 p.m. on June 6, 2008. No persons provided oral comments and no written comment letters were received. EFSEC then considered the request at its June 24, 2008 special meeting.

The Council reviewed the request under the procedures outline in WAC chapter 463-66, and approved the proposed transfer subject to the conditions set forth in Council Order No. 836.

Council Order No. 836 provided that upon the receipt of notification that the transaction has closed and Chehalis Power has been merged into PacifiCorp, the Council would issue a resolution that:

- (a) Amends the Chehalis Generation Facility SCA to make PacifiCorp the Certificate Holder and to incorporate the additional greenhouse gas mitigation requirements outlined in Council Order No. 836.
- (b) Transfers other related permits to PacifiCorp.
- (c) Terminates the TNA Merchant Projects, Inc. guaranty and releases TNA Merchant Projects, Inc., its affiliates and subsidiaries and their respective directors, officers and employees from all obligations under the SCA and Site Restoration Plan.
- (d) Approves the revised Initial Site Restoration Plan submitted by PacifiCorp.

## **Discussion**

The transfer of the SCA does not affect the substantive requirements that govern the operation of the Chehalis Generation Facility. PacifiCorp is legally responsible for fulfilling the terms and conditions of the SCA to the same extent as the prior owner. PacifiCorp retains all obligations under the SCA (or plans approved in connection therewith) that arose during the Company's previous ownership, and PacifiCorp retains credit for actions taken in compliance with such obligations during prior ownership.

Chapter 463-66 WAC governs the Council's procedure for amending an SCA. 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 concern, 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 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.

In connection with this requirement, the Council considered whether additional greenhouse mitigation should be required as a condition for approval. The Council asked PacifiCorp to outline a CO<sub>2</sub> mitigation package for the Council to consider as a condition for approval of the transfer of the SCA. By letter dated June 20, 2008, PacifiCorp outlined the following mitigation package:

- (1) PacifiCorp will comply with the approved *Greenhouse Gas Offset Strategy and Plan*, which the Council approved in September 2001.
- (2) PacifiCorp will provide \$1.5 million in funding for greenhouse gas mitigation projects. EFSEC staff and PacifiCorp representatives will work together to identify potential mitigation projects and consult with Washington agencies including the Department of Ecology, the Department of Fish and Wildlife, the Department of Natural Resources and the Department of Community Trade and Economic Development. EFSEC staff and PacifiCorp representatives will evaluate potential projects, considering among other things, the extent to which the projects would offset CO<sub>2</sub> emissions, the location of the projects (favoring projects that would be implemented in Washington, and if possible near Chehalis) and the availability of matching funds (favoring projects that would combine PacifiCorp's funding with other funding). Based on the recommendations of EFSEC staff and PacifiCorp, the Council will make final decisions selecting projects to be funded out of the \$1.5 million of funding provided by PacifiCorp.

The Council may also use a portion of the \$1.5 million provided to fund its direct and indirect administrative costs incurred in connection with identifying, evaluating and selecting mitigation projects. In no event, however, shall the total amount of project funding and Council charges exceed \$1.5 million.

- (3) Within 180 days after the SCA is transferred to PacifiCorp, PacifiCorp will submit an application to amend relevant permits to allow the installation and operation of a natural gas-fired auxiliary boiler to produce steam for the heat recovery steam generators and steam turbine. PacifiCorp will install the auxiliary boiler within eighteen months of obtaining necessary permits and approvals. However, if the proposed addition of an auxiliary boiler would result in any changes to the existing air permit for the Facility other than those specifically related to the addition of an auxiliary boiler, PacifiCorp would have no obligation to go forward with the proposed auxiliary boiler.

The Council acknowledges that this CO<sub>2</sub> mitigation will constitute the entire mitigation obligation for the Chehalis Generation Facility. In the event that PacifiCorp requests additional amendments to the SCA in the future, the Council will not require any additional mitigation for the maximum potential CO<sub>2</sub> emissions associated with the existing Facility as a condition of approving any such amendment. However, under WAC 463-66-100(1) the Council may place conditions on a subsequent transfer of the Site Certification Agreement from PacifiCorp and its Affiliates<sup>1</sup> to a non-Affiliate.

Any offsets or credits obtained through PacifiCorp's funding will remain the property of PacifiCorp. The Council will support all reasonable efforts by PacifiCorp to use these same offsets or credits to obtain credit for these early actions under future regulatory programs, and all CO<sub>2</sub> mitigation obligations in the SCA will sunset upon adoption of a future state or federal mitigation requirement applicable to the Facility.

With the proposed CO<sub>2</sub> mitigation, the Council finds that this amendment will not adversely affect the health and safety of the public or the environment. As noted above, PacifiCorp remains responsible for fulfilling the requirements of the SCA to the same extent as the Certificate Holder was prior to the 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**

In general, SEPA requires an agency to make a threshold determination 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 that they do not have any probable adverse significant environmental impact. EFSEC issued a Determination of Non-Significance on May 21, 2008.

## **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 resolution.

Based on its previous findings that the proposed amendment has no environmental impact and no impact on public health, safety, and welfare; and 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 Original SCA Intent**

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.

### **D. Conclusion**

The Council concludes that the proposed changes in the Certificate Holder are consistent with public health, safety and welfare, the applicable law, and the intent of the original SCA. Pursuant to WAC 463-66-100, the Council has approved the proposed transfer of the SCA. The Council hereby determines that it is appropriate to approve the amendment to the Chehalis Generation Facility SCA necessary to reflect the proposed change in the certificate holder.

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<sup>1</sup> "Affiliates" means any legal entity controlling, controlled by, or under common control with the Certificate Holder.

