

**ATTACHMENT 11**

RESOLUTION NO. 326, JANUARY 22, 2009

**WASHINGTON STATE  
ENERGY FACILITY SITE EVALUATION COUNCIL**

**RESOLUTION NO. 326**

***AMENDMENT NO. 5 TO THE  
WILD HORSE WIND POWER PROJECT SITE CERTIFICATION AGREEMENT  
EXPANSION OF FACILITY***

**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 July 2, 2008 (Attachment 1), PSE requested that the Energy Facility Site Evaluation Council (EFSEC or Council) amend the SCA for the WHWPP to allow the for the expansion of the boundary of the Wild Horse Project site and the installation of additional turbines and turbine strings with the addition of 1,280 acres to the 8,600 acres of the original site of for a total of 9,880 acres. The request was for the addition of 26 new turbines with generating capacity of up to 54 MW located within the expansion area, in addition to the 127 existing turbines and 229 MW located on the original site. Both the number of turbines and the maximum MW of generation were in conformance with, and did not exceed the amounts allowed in the SCA, which allowed a maximum of 158 turbines and 312 MW. Subsequently the request was modified reducing the number of additional turbines and acreage to 22 and 960 acres respectively.

**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 Council approved the transfer of the WHWPP SCA to PSE. PSE began construction of the WHWPP in October 2005. Major construction was completed in December 2006 and commercial operation began in January 2007.

The proposed amendment to the SCA is for the expansion of the project boundaries adding 960 acres and 22 new WTGs, and related associated roads, and an electrical collection system delivering generated electricity to the existing Wild Horse substation, which will be expanded slightly. Three of the WTGs would be installed within the existing Wild Horse site, and 19 are proposed within the new expansion area. The power would be transported off the site on the existing transmission line. The expansion project will result a 9,560 acre project site and a total of 149 WTGs with a generating capacity of 273 MW, both of which are below the respective limits authorized by the SCA.

Construction is expected to commence in April 2009 and be completed in December 2009. The Facility is expected to operate for approximately 20 years. Once operation is complete, the facility will be dismantled and removed from the site for recycling.

## **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 July 2, 2008.
- At its monthly meeting of July 8, 2008 the Council determined a schedule for action on the request as follows: August 6, 2008 to conduct a public informational meeting in Ellensburg, with a deadline for written comments; on August 8, 2008.
- Notice of the informational hearing was mailed to EFSEC's Wild Horse Wind Power Project interested person mail list. The notice advised that PSE had requested an amendment to the SCA, and that an informational hearing to consider the matter would be conducted on August 6, 2008. 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 5:00 p. m. on August 8, 2008.
- An informational hearing in which the public commented on this matter was held in Ellensburg on August 6, 2008.
- At the Council's October 14, 2008 monthly meeting Allen Fiksdal, EFSEC's SEPA Responsible Official proposed, at the Applicant's request that a Supplemental Environmental Impact Statement (SEIS) be prepared for the expansion. He determined that a Draft SEIS be prepared and sent out for a 30 day comment period.
- The Draft SEIS was prepared and issued for comment on November 10, 2008 with a deadline for comments on December 15, 2008.
- Comments were received and the Final SEIS issued on January 14, 2009.
- The Council considered the amendment request at its January 22, 2009 meeting.

## **Public Comment**

On August 6, 2008, during the public comment period on the SEPA Checklist, EFSEC conducted a public hearing in Ellensburg to accept verbal and written comments on the proposal. This comment period served as an opportunity for the public to comment on the environmental checklist and studies prepared for the project, and as a "scoping" opportunity for agencies and the public. Written and oral comments received by EFSEC, and responses by the applicant to concerns that were raised, are in Appendices A and B of the Draft SEIS. Concerns raised during the initial comment period included the following:

- Potential impacts to greater sage grouse habitat and regional populations

- Placement of “V” and “W” strings
- Potential impacts of the overhead collector line
- Status of the mitigation parcel
- Alternative mitigation
- Landscape restoration
- Potential impacts to bats from proximity to forested areas
- Potential impacts to water resources (i.e., springs)
- Temporary versus permanent fencing
- Potential loss of shrub-steppe habitat

Some comments suggested that a SEIS be prepared to analyze the potential impacts related to issues and concerns related primarily to the “V” and “W” strings. As a result of the concerns raised, PSE revised the proposed expansion by dropping from their proposal the four turbines comprising the “V” and “W” strings and the supporting facilities, including the overhead collector line. PSE also offered to prepare a SEIS on the revised expansion project having 22 turbines over an area of 960 acres.

A Draft SEIS was prepared by PSE and reviewed by EFSEC staff and issued on November 12, 2008 for public comment<sup>1</sup>. The comment period for the Draft SEIS closed on December 15, 2008. EFSEC received ten comments from agencies, organizations, and individuals. The nature of the comments was similar to those received during the EFSEC comment period. The Final SEIS contains detailed responses to comments.

## **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:

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<sup>1</sup> WAC 463-47-090 allows an applicant to prepare EISs and addenda with oversight from the EFSEC responsible official.

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. In considering whether a proposed amendment is consistent with the public health, safety and welfare, WAC 463-66-050 requires the Council to consider the long-term environmental impacts of the proposal, and further requires a consideration of “reasonable alternative means by which the purpose of the proposal might be achieved” along with the “availability of funding to implement the proposal.”

**1. Public health, safety and welfare:** All activities associated with the installation of the expanded Facility will be the same as those conducted in the Project Area, as approved in the WHWPP SCA. Public health, safety and welfare will therefore not be affected in any manner not previously analyzed during review of the Project application. The change does not substantially alter the substance of the SCA or result in any detrimental effects on the public health, safety or welfare. The proposal continues to implement the purpose of the Project to address the pressing need for energy facilities, and will provide additional abundant affordable renewable power. This amendment will have no negative effect on the health and safety of the public. Consequently, as documented in the WHWPP FEIS and SCA, as supplemented and amended, the proposed amendment is consistent with the public health, safety and welfare.

**2. Environmental impacts:** Environmental impacts related to the public health, safety and welfare have been addressed in the Final SEIS, and are further addressed below. For the reasons set forth below related to SEPA compliance, the amendment will not cause any significant adverse environmental impacts. 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. Further, the Council imposes additional mitigation measures to address environmental impacts identified during the SEPA process.

**3. Reasonable alternatives means to achieve the purpose of the proposal; Funding to implement the proposal:** Alternatives to the WHWPP were considered in the WHWPP FEIS and SCA. The proposed amendment does not change those considerations and related findings and conclusions. PSE owns and controls the Project site, including the area proposed for the expansion. Due to the unique ability of PSE to develop property it owns and controls, there is no reasonable alternative means to efficiently achieve the objectives of this proposal—the production of renewable energy available to PSE on the Project site. PSE has the proven capability to fund and complete the construction of the expansion.

## **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).** With its request for amendment, PSE submitted a SEPA Checklist. The Council invited comments regarding the proposed amendment, including the SEPA Checklist. Members of the public and agencies provided written and verbal comments related to the SEPA Checklist. As a response to the comments received, PSE voluntarily reduced the proposed expansion, eliminating four of the proposed 26 wind turbine generators and related and supporting facilities, including roads and overhead and underground electrical collector lines and cables, removing facilities from an area of the proposed expansion area that was perceived by commenting parties to have significant environmental impacts. PSE further clarified the proposal in written materials subsequently submitted to EFSEC. Further, based on public comment, PSE volunteered to prepare a Supplemental EIS, providing more detailed analysis of environmental impacts, as well as an additional opportunity for public comment concerning the proposal.

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, Allen Fiksdal, has reviewed the proposed changes to the SCA and, at the request of the Applicant, issued a Draft SEIS on November 10, 2008 with comments due on December 15, 2008. The Responsible Official considered and responded to the comments and issued a Final SEIS on January 14, 2009. Based upon the Final SEIS, the Responsible Official has determined that the Amendment and related expansion would not have a significant adverse effect on the environment. The Council hereby accepts that determination, and acknowledges the measures taken by PSE to modify the project proposal to further avoid, minimize and mitigate environmental impacts.

### **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 adverse environmental impacts and no adverse impacts 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 interest of the State of Washington. In return, the certificate holder commits to comply with the terms of the SCA.

As detailed in the FSEIS the proposed Facility will have minimal impact on native habitat.

The Certificate Holder will implement the same mitigation measures identified in the SCA for construction and operation of these expansion facilities, along with additional mitigation measure as developed through the SEPA process. The Certificate Holder will also provide a Post-Construction Restoration Plan that will include provisions for restoration relative to the expansion.

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

### **D. Conclusion**

The Council concludes as follows: (1) the proposed amendment of the WHWPP SCA to allow expansion of the project as proposed is consistent with the public health, safety, and welfare; (2) the proposed amendment is consistent with all applicable laws (including SEPA), and (3) the proposed amendment is consistent with the intent of the original SCA. The Council hereby determines that it is appropriate to approve an amendment to the WHWPP SCA, necessary to reflect the proposed changes to the Project; *Provided*, PSE shall continue to implement mitigation measures identified in the SCA, as amended by this decision.

## **RESOLUTION**

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

- The proposed amendment to the SCA for the expansion project and its boundaries expanding the project area by 960 acres for a total of 9,560 acres for the project site, and for the installation of an additional 22 new Wind Turbine Generators, associated roads, and an electrical collection system delivering generated electricity to the existing Wild Horse substation, which will be expanded slightly. Three of the WTGs would be installed within the Wild Horse site, and 19 are proposed within the new expansion area (See Figures 2 and 3 of the Final SEIS). The power would be transported off the site on the existing transmission line. The expansion project will result in a total of 149 WTGs at Wild Horse with a generating capacity of 273 MW, both of which are below the respective limits authorized by the SCA.

- All applicable SCA conditions and mitigation measures apply to the construction and operation of the Facility. PSE shall comply with all additional mitigation measures as set forth in the Final SEIS and the SCA, as amended.
- This resolution is incorporated into the WHWPP SCA as Attachment 11.
- The SCA changes and the additional mitigation measures are set out in Attachment 2 to this resolution.

DATED at Olympia, Washington and effective on January 22, 2009.

WASHINGTON ENERGY FACILITY SITE EVALUATION COUNCIL

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

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

- Attachments: 1. SCA Amendment Request
2. Specific SCA Changes, including additional mitigation measures