

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

-----

WASHINGTON STATE

ENERGY FACILITY SITE EVALUATION COUNCIL

Richard Hemstad Building

1300 South Evergreen Park Drive Southwest, Conference Room 206

Olympia, Washington

Tuesday, November 18, 2014

1:30 P.M.

-----

MONTHLY COUNCIL MEETING

Verbatim Transcript of Proceeding

REPORTED BY: SHELBY KAY K. FUKUSHIMA, CCR #2028

Buell Realtime Reporting, LLC

1411 Fourth Avenue

Suite 820

Seattle, Washington 98101

206.287.9066 | Seattle

360.534.9066 | Olympia

800.846.6989 | National

[www.buellrealtime.com](http://www.buellrealtime.com)

## A P P E A R A N C E S

## Councilmembers Present:

Bill Lynch, Chair

Liz Green-Taylor, Department of Commerce

Cullen Stephenson, Department of Ecology, via telephone

Joe Stohr, Department of Fish and Wildlife, via telephone

Lily Smith, Department of Natural Resources

Dennis Moss, Utilities and Transportation Commission

## Local Government and Optional State Agency:

Christina Martinez, Department of Transportation

Larry Paulson, Port of Vancouver, via telephone

## Assistant Attorney General:

Ann Essko, Assistant Attorney General

## Staff in Attendance:

Stephen Posner

Jim LaSpina

Tammy Mastro

Sonia Bumpus

Kali Wraspir

Joan Aitken

Cassandra Noble

## Guests in Attendance:

Kristen Boyles, Earthjustice

Richard Downen, Grays Harbor Energy Project

Mark A. Miller, PacifiCorp Energy

## Guests in Attendance Via Phone:

Shannon Khounnala, Energy Northwest

Timothy L. McMahan, Stoel Rives

Karen McGaffey, Perkins Coie

Jan Aarts, Cardno ENTRIX

Jay Derr, Van Ness Feldman

OLYMPIA, WASHINGTON, NOVEMBER 18, 2014

1:30 P.M.

-o0o-

P R O C E E D I N G S

CHAIR LYNCH: Good afternoon. Today is Tuesday November 18th. It's a little bit after 1:30, and it's the regularly scheduled November Council hearing for the Energy Facility Site Evaluation Council.

Could we please have Staff call the roll.

MS. MASTRO: Department of Commerce?

MS. GREEN-TAYLOR: Liz Green-Taylor here.

MS. MASTRO: Department of Ecology?

MR. STEPHENSON: Cullen Stephenson here.

MS. MASTRO: Department of Fish and Wildlife?

MR. STOHR: Joe Stohr is here.

MS. MASTRO: Department of Natural Resources?

MS. SMITH: Lily Smith here.

MS. MASTRO: Utilities and Transportation Commission?

MR. MOSS: Dennis Moss here.

MS. MASTRO: Local Governments and Optional State Agencies.

Department of Transportation?

MS. MARTINEZ: Christina Martinez here.

1 MS. MASTRO: City of Vancouver?

2 Clark County?

3 CHAIR LYNCH: Clark County is excused. He's out of  
4 town.

5 MS. MASTRO: Mr. Swanson is excused?

6 CHAIR LYNCH: Yes. Mr. Swanson is out of town.

7 MS. MASTRO: Port of Vancouver?

8 CHAIR LYNCH: I believe Mr. Paulson was going to  
9 listen in by telephone.

10 MS. MASTRO: Chair, there is a quorum.

11 CHAIR LYNCH: Thank you. You have your proposed  
12 agenda in front of you.

13 Are there any suggested changes to the agenda?

14 Hearing none, let's go ahead and proceed.

15 We have in front of us minutes from the October 8,  
16 2014 meeting and from the October 21, 2014 meeting.

17 I'll first have Councilmembers look at the October  
18 8th minutes, and then if there's any suggested corrections, we  
19 can deal with them. Otherwise, I'll entertain a motion for  
20 their adoption.

21 MR. MOSS: Chair Lynch, I would move the adoption of  
22 the minutes from October 8, 2014, as transcribed.

23 MS. NOBLE: Chair Lynch?

24 CHAIR LYNCH: Excuse me?

25 MS. NOBLE: Chair Lynch, I just want to make a

1 correction for the attendees. There's an incorrect title for me  
2 on the minutes. I just didn't want them to be adopted  
3 incorrectly for October 21 -- or October 8, rather. And for  
4 October 21, I did attend that Council meeting, so I'd just like  
5 my name to be added to that.

6 CHAIR LYNCH: And after your name it should have  
7 Administrative Law Judge, as opposed "Administrative Assistant"?

8 MS. NOBLE: Correct, Chair Lynch.

9 CHAIR LYNCH: Thank you.

10 MS. NOBLE: Thank you.

11 MR. MOSS: And, Chair Lynch, with that, I would amend  
12 my motion to include the correction as noted by Ms. Noble.

13 CHAIR LYNCH: Do we have a second?

14 MR. STEPHENSON: I'll second.

15 CHAIR LYNCH: It's moved and seconded that we approve  
16 the minutes from the October 8th Council hearing as corrected.

17 All those in favor say "aye."

18 MULTIPLE SPEAKERS: Aye.

19 Opposed? Motion carries.

20 And we've already heard one suggested change to the  
21 Council meeting minutes from the October 21st hearing, and  
22 that's to add ALJ Cassandra Noble's name to the list of  
23 attendees.

24 Are there any other corrections?

25 MR. MOSS: Chair Lynch, I would move the adoption of

1 the October 21, 2014 minutes subject to the correction that you  
2 have noted for the record.

3 CHAIR LYNCH: Do we have a second?

4 MS. GREEN-TAYLOR: I'll second that motion.

5 CHAIR LYNCH: It's been moved and seconded that the  
6 Council approve the minutes from the October 21st meeting as  
7 corrected.

8 All those in favor say "aye."

9 MULTIPLE SPEAKERS: Aye.

10 CHAIR LYNCH: Opposed? Motion carries.

11 At this point in time, I would like to have those  
12 people who are on the telephone who wish to identify themselves  
13 to identify themselves. You certainly don't have to, but we are  
14 providing that opportunity.

15 MR. PAULSON: This is Larry Paulson from the Port of  
16 Vancouver.

17 CHAIR LYNCH: Thank you, Mr. Paulson.

18 MS. KHOUNNALA: Shannon Khounnala from Energy  
19 Northwest.

20 MR. McMAHAN: Tim McMahan with Stoel Rives.

21 MS. McGAFFEY: Karen McGaffey, Perkins Coie.

22 MR. AARTS: Jan Aarts, Cardno ENTRIX.

23 MR. DERR: Jay Derr, Van Ness Feldman.

24 CHAIR LYNCH: Okay. Very good. Let's proceed.

25 At this point in time, let's have an operational

1 update from the Kittitas Valley Wind Project, Mr. Melbardis;  
2 Mr. Melbardis on the phone.

3 Well, let's go ahead and...

4 MR. LaSPINA: Chair Lynch?

5 CHAIR LYNCH: Yes.

6 MR. LaSPINA: Excuse me. I did not get word that  
7 Mr. Melbardis was not going to be available. However, their  
8 monthly report is on this color page here, whatever color it is.

9 CHAIR LYNCH: Kind of a lime green. I'm very bad  
10 at -- once we move off of primary colors -- coming up with a  
11 name.

12 But you can see that there were no incidents and  
13 nothing really to report from the Kittitas Valley Wind Project.

14 MR. LaSPINA: No.

15 CHAIR LYNCH: Thank you, Mr. LaSpina.

16 Can we hear next from Ms. Diaz, the Wild Horse Wind  
17 Power Project?

18 MR. LaSPINA: Chair Lynch, Ms. Diaz did call us and  
19 told us that she was not available; however, the Wild Horse Wind  
20 Farm report is on this pink page here, and, again, they have  
21 nothing out of the ordinary to report.

22 CHAIR LYNCH: Thank you, Mr. LaSpina.

23 So let's move now to the Chehalis Generation  
24 Facility, Mr. Miller.

25 MR. MILLER: Good afternoon, Chair Lynch and

1 Councilmembers. My name is Mark Miller. I'm the plant manager  
2 at PacifiCorp Energy Chehalis Generating Facility.

3 I have no nonroutine comments, but I do have one  
4 addition to the notes that we did have an inspection from the  
5 State Fire Marshal's Office last month. And representing  
6 EFSEC -- and that report, I guess, was shared with Mr. LaSpina  
7 and reinspection will occur in the next month or so.

8 CHAIR LYNCH: Any findings regarding that inspection?

9 MR. MILLER: No significant findings. Some things  
10 that we learned there, the one thing that was notable is our  
11 environmental health and safety analyst who gave -- or  
12 accompanied the gentleman, couldn't locate our records. Our  
13 records are all electronic, and they wanted them in hard copy  
14 form. So that was one notation --

15 CHAIR LYNCH: I see.

16 MR. MILLER: -- as far as our annual tests and  
17 inspections.

18 CHAIR LYNCH: I see. And the Staff did receive the  
19 information that your facility sent regarding the mitigation  
20 project, and we just didn't have time to review it and put it on  
21 the agenda for this month's meeting.

22 MR. MILLER: And that's fine. I still owe Staff  
23 specifics on what we would like to do committing the balance of  
24 funds. And time is running short, so I would like to have that  
25 to Staff by the end of next week so that there may be an



1 opportunity for discussion during the December meeting with the  
2 Council.

3 CHAIR LYNCH: Excellent, because as much as possible,  
4 I would like to wrap this up by the end of the year.

5 MR. MILLER: That is very crystal clear.

6 CHAIR LYNCH: Right. Very good. I appreciate your  
7 cooperation.

8 MR. MILLER: All right.

9 CHAIR LYNCH: Any questions for Mr. Miller?

10 MR. LaSPINA: Chair Lynch?

11 CHAIR LYNCH: Yes, Mr. LaSpina?

12 MR. LaSPINA: I just wanted to share something. We  
13 have a fairly new Council. I just wanted to share that EFSEC  
14 has a number of State agencies under contract to do various  
15 compliance inspections in areas of their expertise.

16 And in the case of the Chehalis Power Plant, the  
17 State Fire Marshal's Office carries out an annual fire and life  
18 safety inspection where they look at such things as sprinkler  
19 systems, fire doors, exit lights, that sort of thing.

20 And, actually, I reviewed the report, and for the  
21 most part, they're minor paperwork issues that are very typical  
22 for a facility going through their first inspection and should  
23 be easily cleared up. There is nothing major there.

24 CHAIR LYNCH: Okay. Well, we look forward to hearing  
25 about the reinspection and clearing up those minor items, then.

1 MR. MILLER: Okay.

2 CHAIR LYNCH: Thank you very much.

3 The Grays Harbor Energy Center, Mr. Downen.

4 MR. DOWNEN: Good afternoon, Chair Lynch, and  
5 Council, my name is Rich Downen. I'm the plant manager at Grays  
6 Harbor Energy Center.

7 In our monthly report there were no off-normal things  
8 to report or comments, so I don't have anything to add.

9 CHAIR LYNCH: Any questions for Mr. Downen?

10 Thanks for coming.

11 MR. DOWNEN: All right. Thank you.

12 CHAIR LYNCH: And the Columbia Generating Station.  
13 First, we'll hear from Ms. Khounnala with an operational update.

14 MS. KHOUNNALA: Yes. Good afternoon, Chair Lynch.  
15 Reporting from Columbia Generating Station, although we have no  
16 nonroutine items to report, as you'll see in your Council  
17 packet, we are happy to call to light a few items that we are  
18 celebrating currently, and one of those items being last week.  
19 We did exceed our longest run record here at Columbia.  
20 Originally, it was 505 days of continuous operation, and we  
21 currently are at 511 days of continuous operation.

22 Additionally, last week, Columbia marked five years  
23 without an unplanned shutdown, so you'll see in your packet that  
24 there's a number of milestones that we have met and we're pretty  
25 proud of those right now. And that's --

1 (Beep on the bridge line.)

2 MS. KHOUNNALA: -- or safety incidents or regulatory  
3 issues to report.

4 (Side conversation on bridge line.)

5 CHAIR LYNCH: Thank you, Ms. Khounnala.

6 Are there any questions for Ms. Khounnala?

7 And congratulations on achieving those milestones for  
8 your facility.

9 MS. KHOUNNALA: Thank you.

10 CHAIR LYNCH: Any questions for Ms. Khounnala  
11 regarding the Columbia Generating Station?

12 (Side conversation on bridge line.)

13 CHAIR LYNCH: And, Mr. LaSpina, do you have -- excuse  
14 me.

15 Are there some people on the phone who would wish to  
16 identify themselves because we're getting a side conversation  
17 during our Council hearing over the phone.

18 (Side conversation on bridge line.)

19 CHAIR LYNCH: Clueless. So...

20 MALE SPEAKER: Muting would help.

21 CHAIR LYNCH: So, Mr. LaSpina, do you want to give us  
22 an update?

23 MR. LaSPINA: Yes, Chair Lynch. This involves the  
24 recently issued NPDES permit to the Columbia Generating Station.

25 EFSEC has received a petition for review of the

1 recently issued NPDES permit. This is essentially an appeal.  
2 The permit is under appeal by the Northwest Environmental  
3 Defense Center, Northwest Environmental Advocates, and the  
4 Columbia Riverkeeper.

5 At this time, EFSEC Staff is assembling the  
6 administrative record for the permit, and this is what the judge  
7 would use to decide the appeal.

8 Also at this time, EFSEC is responding to a request  
9 for public records from the appellants, and that's all we have  
10 at this time.

11 CHAIR LYNCH: And the appeal was filed in Thurston  
12 County Superior Court; is that correct?

13 MR. LaSPINA: Yes, sir.

14 CHAIR LYNCH: Any questions for Mr. LaSpina regarding  
15 the NPDES petition for review?

16 Okay. Ms. Khounnala, let's hear about WNP 1 and 4.

17 MS. KHOUNNALA: Yeah. There's actually no  
18 substantial changes since the update provided in October last  
19 month. We still await the Department of Ecology report of  
20 examination. This is their final report, and we have received  
21 word from them last week that it is in their final review  
22 process. Once that report is issued, it will have a 30-day  
23 public comment period. If there are no public comments, we can  
24 expect to receive our permit shortly after that.

25 So at this time, the Department of Ecology is still

1 confirming that the water rights permit would be issued sometime  
2 in the month of December.

3 CHAIR LYNCH: And I'm very happy that EFSEC does not  
4 issue water right permits. Thank you.

5 Any questions for Ms. Khounnala regarding WNP 1 and  
6 4?

7 Thank you, Ms. Khounnala.

8 MS. KHOUNNALA: Thank you.

9 CHAIR LYNCH: And we have actually been quite busy  
10 this last month with a number of different things. Actually, we  
11 have been very busy, and that's why we actually are having some  
12 things postponed till the December Council meeting.

13 But at this point in time, let's have an update  
14 regarding the Tesoro Savage proposal, Ms. Bumpus.

15 MS. BUMPUS: Good afternoon, Chair Lynch and  
16 Councilmembers. Thank you. I'm going to just sort of go over  
17 how I'm going to structure this review. We have a new  
18 Councilmember, Councilmember Smith. Welcome.

19 I wanted to just go over that I usually will talk  
20 about the application for site certification updates, then the  
21 environmental review, and then the permits that are involved in  
22 this project, if there's new information to provide on those.

23 So I'll start with the Application for Site  
24 Certification, the ASC update. EFSEC's review of that  
25 information and those materials continues. Currently, EFSEC is

1 coordinating the review of those materials with our contractor  
2 at the Department of Ecology in the Air Quality Program to  
3 develop additional comments that we'll provide to this applicant  
4 once that review is completed.

5           Since October's Council meeting project update,  
6 additional comments were provided to the applicant on October  
7 29th. Those were comments related to a review that was done in  
8 coordination with the Department of Fish and Wildlife, and I'll  
9 continue to update you more as the ASC review continues.

10           On the SEPA environmental review, EFSEC has been  
11 working with our independent consultant, Cardno ENTRIX, to  
12 complete the gap analysis. That analysis is not yet fully  
13 complete. However, EFSEC has received some preliminary feedback  
14 from Cardno regarding some of the gaps identified thus far.  
15 Seismic analysis and modeling, alternatives analysis, and fire  
16 safety analysis are the three major gaps identified so far. And  
17 EFSEC has instructed Cardno to begin efforts to address those  
18 gaps, and we are expecting Cardno's findings for the full gap  
19 analysis by the end of this week, possibly early next week.

20           Staff will review Cardno's findings, and will provide  
21 more conclusive information to Councilmembers regarding these  
22 other identified gaps and the corrective actions necessary to  
23 address those gaps.

24           You'll notice there's no schedule in your packets.  
25 As was discussed last month, we intend to finish the gap

1 analysis and review the findings of that gap analysis and then  
2 develop a timeline and schedule for Councilmembers. So once  
3 this gap analysis is completed, that is what we intend to do.

4 CHAIR LYNCH: Excuse me. Just for my own  
5 clarification: So do you anticipate at the December Council  
6 hearing actually there being a presentation on the gaps analysis  
7 to the Council?

8 MS. BUMPUS: Yes. I do think the gap analysis will  
9 be completed by then, and we will be able to present the rest of  
10 the identified gaps and the recommended corrective actions to  
11 address those gaps at December's Council meeting.

12 CHAIR LUCE: So at that time the Councilmembers have  
13 a chance to -- so this is prior to the draft EIS being developed  
14 so the Councilmembers will have a chance to weigh in on the  
15 identified gaps and, otherwise, where they potentially see some  
16 gaps?

17 MS. BUMPUS: That is my understanding, yes.

18 CHAIR LYNCH: Okay. Thank you.

19 Do you have anything else?

20 MS. BUMPUS: Well, I do have just a couple of things  
21 related to permits.

22 CHAIR LYNCH: I'm not trying to rush you. I'm just  
23 trying to make sure.

24 MS. BUMPUS: Oh, well, no. That pretty much  
25 concludes the updates for the environmental review that's going

1 on.

2 For permits, the applicant has committed to providing  
3 a response to EFSEC's letter that was related to the NPDES  
4 stormwater construction and industrial permits. That letter  
5 went out on August 1, 2014, and we're working with the applicant  
6 to address the information that was requested. Some of what we  
7 found in talking with the applicant and the permit reviewers at  
8 the Department of Ecology is that the preliminary stormwater  
9 report, engineering reports, are around 30 percent design. And  
10 some of this additional information is a matter of the applicant  
11 getting more information on the application for site  
12 certification, any information that's missing there, and  
13 compiling all of this information and putting it into -- into  
14 account in their engineering and facility designs.

15 So we will be, you know, continuing to work with them  
16 on getting that response to us and letting them know if there's  
17 anything else we need after that.

18 CHAIR LYNCH: So is it fair to characterize what's  
19 going on is that the project proponents are a little reluctant  
20 to do full engineering studies because it costs money to do that  
21 until they know they're going to get approved, but at the same  
22 time, our State regulatory agencies that we work with are saying  
23 it's hard to develop a permit for something if we don't know  
24 what it looks like?

25 MS. BUMPUS: Well, I think I would say that the



1 applicant was not aware that they would need to provide that  
2 level of detail at this time. But once Ecology reviewers came  
3 back to us with their findings after the review, they then  
4 realized that we were going to need a great deal more detail,  
5 and it does sound that they are trying to address those requests  
6 for information.

7 CHAIR LYNCH: Okay. Very good.

8 And did you have more?

9 MS. BUMPUS: Only just that we are continuing to work  
10 with the Department of Fish and Wildlife on the hydraulic  
11 project approval, and I'll have more information for you as that  
12 continues as well.

13 CHAIR LYNCH: Thank you.

14 Is there anything we can do about this feedback?

15 Would folks on the phone please mute your phones  
16 because that might be a contributing factor.

17 Okay. Can we turn the speakers? Where's that at?

18 Good. Hopefully, we have taken care of the problem.

19 And, Mr. Posner, did you have something that you  
20 would like to add regarding the Tesoro project?

21 MR. POSNER: Yes. Thank you, Chair Lynch and  
22 Councilmembers. It sounds worse now. I'll continue, though.

23 I would like to update the Council on one area of the  
24 DEIS analysis that we will be undertaking, and that is fire  
25 protection engineering risk assessment gap analysis. And the

1 purpose of that analysis would be to assess the Vancouver Energy  
2 facility fire safety design relative to appropriate code and  
3 industry practices for such facility. It also will provide  
4 analysis of risk and impacts that Vancouver Energy may represent  
5 to the City residents and the Vancouver Fire Department  
6 operations.

7 So this was one area where we received public comment  
8 on. We did receive public comments from the City of Vancouver  
9 concerning this area. Comments were received during scoping.

10 And the City originally had planned to issue their  
11 own RFP and hire a consultant to do this work, and the purpose  
12 would be for them to gain this -- gather this information for  
13 their own use. But they -- we had talked to them, and they were  
14 going to be able to share this information with us so that we  
15 would be able to use it for our analysis in the DEIS. So the  
16 City initially planned to issue their own RFP and hire the  
17 consultant, and the consultant fees would be paid -- or the  
18 services of the consultant would be paid by Vancouver Energy.

19 The City requested that EFSEC actually take over the  
20 payment part of the contract, whereby we would -- or EFSEC would  
21 bill the applicant, Tesoro Savage, receive money from them, and  
22 pay the consultant.

23 So we discussed this sort of contractual option with  
24 our Financial Services division, and they informed us that that  
25 type of situation would not comply with OFM rules for

1 contracting.

2 So we then decided to issue an RFP through our  
3 independent consultant, Cardno ENTRIX, for the services of the  
4 subcontractor to perform this work. It would be the same work  
5 that the City initially proposed to do. We're using the same  
6 RFP.

7 Subsequent to issuing the RPF, we were able to  
8 identify internal resources within Cardno ENTRIX who had the  
9 expertise and could perform this work, so we're moving forward  
10 in that way. We will be doing this work. It's the same work  
11 that the City initially requested be done and that they  
12 initially were going to do themselves. We will be doing that  
13 work under our existing contract with Cardno ENTRIX, and that's  
14 all I have to report on that.

15 CHAIR LYNCH: Thank you. I know that I had a  
16 question about that, and I thought it would be good for the  
17 other Councilmembers to hear just how that situation came to be.  
18 So thank you, Mr. Posner.

19 Any other questions regarding the Tesoro Savage  
20 facility?

21 MS. MARTINEZ: Chair, I have a question.

22 CHAIR LYNCH: Yes, Ms. Martinez.

23 MS. MARTINEZ: Ms. Bumpus, I was wondering: Are you  
24 still planning on issuing the draft EIS at the end of this year,  
25 early next year?

1 MS. BUMPUS: I think now, given that we do know of  
2 some of these areas from these preliminary findings from Cardno,  
3 we are looking at early 2015.

4 MS. MARTINEZ: Okay. And then will we get a chance  
5 to review Cardno's gap analysis prior to the December meeting,  
6 or is the plan to present information at the December meeting?  
7 I'm wondering if we'll get a chance to look at something in  
8 advance.

9 MS. BUMPUS: At this time my plan is to present the  
10 recommended corrective actions to you at the December meeting,  
11 but it could be -- you know, if Council would like, we may be  
12 able to provide something in advance so that you have an idea of  
13 what will be presented and can think about it before the  
14 meeting.

15 CHAIR LYNCH: I think that would be most preferable  
16 if you could provide us in advance of the hearing what you  
17 intend to present to us and then make your presentation.

18 And my understanding is, is that there will be a  
19 number of items that probably -- well, as Ms. Bumpus said,  
20 there's a few obvious items that are apparent that need to be  
21 addressed as part of the gap analysis. There will be some  
22 things that might need to be addressed, but maybe not before the  
23 draft EIS is prepared but could still be part of the development  
24 of the full EIS later. So that's where all this discussion is  
25 going to come later, is about what is -- what really needs to

1 happen for us to have a good sense of things right away and some  
2 of the things that might be able to be deferred a little later.  
3 But we want to make sure everyone -- well, the Councilmembers  
4 have an opportunity to look at this and provide input.

5 MS. MARTINEZ: And then process-wise, will the  
6 Council be making a decision on how to move forward? What  
7 analysis -- what additional analysis might need to be done? Is  
8 that part of the process? I'm just trying to understand the  
9 steps here.

10 CHAIR LYNCH: I don't anticipate -- for example, if a  
11 Councilmember says, Here's something I would like to see us  
12 address, I don't see us taking a vote on that as a Council.

13 MS. MARTINEZ: Okay.

14 CHAIR LYNCH: But just, you know, we can all weigh in  
15 and then -- you know, because some things might take a lot of  
16 time and a lot of money and be just peripherally related, while  
17 other things -- it's like, you know, this is something that's  
18 really important, so it's -- I just think it's all part of the  
19 discussion.

20 MS. MARTINEZ: Okay.

21 CHAIR LYNCH: But without -- that's the best I can  
22 tell you. At this time it's kind of a dynamic process, so we're  
23 kind of developing it as we go.

24 MS. MARTINEZ: Okay. Thank you.

25 CHAIR LYNCH: Yeah, thank you.

1 MS. MARTINEZ: That's all I have.

2 CHAIR LYNCH: Any other questions regarding the  
3 Tesoro project?

4 Thank you, Ms. Bumpus and Mr. Posner.

5 MS. BUMPUS: Thank you.

6 CHAIR LYNCH: And before we get into a discussion of  
7 the petition from the declaratory order, I just wanted to let  
8 you know. I said that there were a lot of things going on  
9 within the Council and Staff right now. One of the things that  
10 we have been able to accomplish is by Mr. LaSpina, in  
11 particular, working with the Department of Ecology, their air  
12 program. We've been able to identify a number of our  
13 significant air rules that need modifying.

14 And we've got suggested language to make those  
15 changes, so I anticipate that we will be circulating those  
16 proposed changes to the Council prior to the December Council  
17 meeting, and then at the December Council meeting, we'll be  
18 authorizing the publication of notice for rulemaking. And I  
19 anticipate -- because what we're doing is just making our air  
20 rules, which are way out of date, conform to what Ecology's  
21 current air rules are, and that we'd be able to do an expedited  
22 rulemaking possibly in January.

23 So it's good to get -- this is one of the things that  
24 we identified as an important thing for us to accomplish as a  
25 Council, and finally having that come to fruition is important.

1 And this will be the first step towards having our -- addressing  
2 our joint delegation of authority with EPA. Because what we  
3 intend to do, Ecology will assist us in sending off to Ecology a  
4 modification of our -- the acronym is "SIP," State  
5 Implementation Program. So together with these rules that we  
6 have adopted and modifications to our SIP, those will be  
7 presented to EPA. And, hopefully, if they buy off, we no longer  
8 have to have this joint delegation authority with EPA, which  
9 is -- I shouldn't be too critical on the record, but let's just  
10 say it's been hard for everybody and takes a lot of time.

11 And it's not the most efficient way of doing  
12 business, so if we have this SIP program approved by EPA, along  
13 with our air rules, we will be able to just work with Ecology in  
14 the future and process air permits much more efficiently and  
15 quickly, which is what we're really looking forward to doing.  
16 So I just wanted to point that out.

17 And Mr. Stephenson here is on my left, and if there's  
18 any questions, we can blame him.

19 And that was -- I invited a response.

20 Mr. Stephenson?

21 MR. STEPHENSON: Thank you, Mr. Chair.

22 I would just like to note that this last month  
23 Ecology submitted the paperwork to EPA to take Tacoma out of  
24 nonattainment status for a <sup>particulate</sup> ~~particular~~ matter. At one time we  
25 had 17 nonattainment areas in the State, and this will be the

1 17th of 17 if it's approved -- and we expect it to be  
2 approved -- that will be taken out of nonattainment status. And  
3 so it will be put into maintenance status, which is still a lot  
4 of work to keep it within the regulations, but it's important  
5 work that's happening there. And EFSEC's a part of that.

6 And then EPA, there's, coming in December, some  
7 changes in the standards that may bring us back into  
8 nonattainment for certain standards around the State. But a lot  
9 of work is going along with that, and so it's important to pay  
10 attention to these State implementation plans and do our part.

11 So I appreciate the cooperation here, and let me know  
12 if there's stuff I can do within the firewall to help.

13 CHAIR LYNCH: And I just have to say how great it is  
14 working with the Ecology staff. They have just been invaluable  
15 to us not only in the air program, but the water quality program  
16 and otherwise. We wouldn't be where we are right now without  
17 their continued assistance.

18 And I also wanted to mention before we get into the  
19 petition for declaratory order, that Councilmembers know that we  
20 were proposing -- that we're planning on having request  
21 legislation regarding our enforcement authority. And I  
22 submitted the third version of the legislation to the code  
23 revisor in the middle of last week, and I anticipate getting  
24 that back anytime. And once I get that back, then I don't  
25 anticipate any other changes.



1           And I'll get that out to everybody and, hopefully, we  
2     can have our enforcement statutes which are, again, way out of  
3     date, modernized, so that they reflect what Ecology and local  
4     air authorities' current enforcement authority is.

5           And having said all of that -- and Mr. Posner's being  
6     patient -- let's hear about the petition for the declaratory  
7     order that we received.

8           MR. POSNER: So in your packets I would just like to  
9     direct your attention to two documents. They are a notice dated  
10    November 14th, and then there's a printout of RCW Section  
11    34.05.240, which deals with declaratory orders. You might want  
12    to refer to them as we have this discussion.

13          And just to update you, on November 3rd, we received  
14    a request -- or a petition for declaratory order. It was  
15    received from Earthjustice, representing the Quinault Indian  
16    Nation.

17          And this is a request for jurisdiction determination  
18    for two projects, both of them located at the Port of Grays  
19    Harbor, Westway and Imperium. And they're both proposed  
20    crude-by-rail projects. Both facilities -- or both projects  
21    are -- there are existing facilities there now, although they're  
22    not conducting crude-by-rail operations.

23          Originally, EFSEC heard about both of these  
24    facilities. We were contacted in 2013; early 2013. There was a  
25    regulatory determination made that they did not fall or did not

1 appear to fall under EFSEC jurisdiction.

2 Ecology and the City of Hoquiam since that time have  
3 been acting as SEPA lead agencies. They are at this time  
4 conducting a full SEPA review, and my understanding is that they  
5 will be issuing an EIS for both projects.

6 There was a redesign of the projects in early 2014.  
7 At that time, EFSEC had an opportunity to look at these  
8 redesigns. It did not appear, again, that these projects fell  
9 under EFSEC jurisdiction, so Ecology has continued to act as the  
10 SEPA lead agency; Ecology and the City of Hoquiam.

11 So the request for the -- the petition for a  
12 declaratory order, which -- is on our website. All the  
13 information that was submitted is on our website and has been  
14 made available to the Councilmembers. I'm not sure if you've  
15 had an opportunity to look at it, but it is there on our  
16 website.

17 There are regulatory guidelines, as far as actions  
18 that the Council needs to take, and that is described in  
19 34.05.240. We have completed the first deadline. We have met  
20 that, which is 3, No. 3, which is within 15 days, we shall give  
21 notice. We have given them notice. That was on November 14.

22 So now the Council needs to take other action within  
23 30 days of the receipt of the request or the petition, so that  
24 will be December 3rd. The Council has to take an action, one or  
25 more actions, as described under No. 5.

1           And you can see them all listed there. I can read  
2   them or you can read them yourselves, but they're all listed  
3   there. So within 30 days, the Council is required to take one  
4   of those actions 5 through (d).

5           CHAIR LYNCH: Mr. Posner, just for the benefit of the  
6   people on the phone.

7           MR. POSNER: Okay.

8           CHAIR LYNCH: If you wouldn't mind just touching on  
9   what those items are.

10          MR. POSNER: So the section says: "Within thirty  
11   days after receipt of a petition for a declaratory order an  
12   agency, in writing, shall do one of the following:

13          "(a) Enter an order declaring the applicability of  
14   statute, rule, or order in question to the specified  
15   circumstances;

16          "(b) Set the matter for specified proceedings to be  
17   held no more than ninety days after receipt of the petition;

18          "(c) Set a specified time no more than ninety days  
19   after receipt of the petition by which it will enter a  
20   declaratory order; or

21          "(d) Decline to enter a declaratory order, stating  
22   the reasons for its actions."

23          So with that, we have a special Council meeting  
24   scheduled for this Friday starting at ten a.m. The meeting will  
25   go -- we have scheduled an executive session which will start

1     shortly after ten, and then after the executive session, there  
2     will be a meeting which is open to the public where the Council  
3     will discuss this matter further and potentially take some sort  
4     of final action on this matter. That's all I have for my  
5     update.

6             CHAIR LYNCH: And it's my understanding, not to get  
7     into a lot of detail, but that -- well, first of all, that this  
8     is seeking a declaratory order under the State Administrative  
9     Procedure Act, as opposed to the chapter of law regarding  
10    uniform declaratory judgments that can be taken before a Court.

11            So this is seeking a declaratory judgment under the  
12    State Administrative Procedures Act, and one of the provisions  
13    of the Administrative Procedures Act provides that if one of  
14    the -- I'll shorthand this, so it's not going to be a hundred  
15    percent accurate, but if one of the parties essentially believes  
16    that they would be hurt by EFSEC taking declaratory -- issuing a  
17    declaratory order, that they can ask the Council not to issue a  
18    declaratory order. And that essentially takes jurisdiction away  
19    from the Council; that all of the parties have to agree for  
20    EFSEC issue to issue a declaratory order.

21            So what I anticipate, we're going to discuss what the  
22    law says and ramifications at our executive session, and then --  
23    and further discuss it in open meeting; that what I anticipate  
24    one of the things we would do is set an early deadline for  
25    somebody issuing an objection to us issuing a declaratory order

1 because I don't see the sense in a lot of people doing a lot of  
2 work and then just to have someone at the last minute come in  
3 and issue a provision saying -- issue notice to the Council  
4 saying that they don't want us to issue a declaratory order.

5 So I anticipate we would set an early deadline for  
6 that, but when that will be, we'll discuss that at our open  
7 public meeting.

8 MR. POSNER: And what you're referring to about the  
9 possibility of not entering a declaratory order because it might  
10 prejudice the rights of a person is described in No. 7, I  
11 believe, of this section of the RCW.

12 CHAIR LYNCH: Right. Are there any questions  
13 regarding this petition for declaratory order?

14 More details to follow.

15 And very good. Is there anything else that anyone  
16 wants to bring up before the Council today?

17 With that, I thank you all for your participation  
18 this afternoon, and we are adjourned.

19 (Whereupon, the meeting was adjourned at 2:14 p.m.)

20 -o0o-

## C E R T I F I C A T E

STATE OF WASHINGTON     )  
  ) ss  
COUNTY OF KING         )

I, SHELBY KAY K. FUKUSHIMA, a Certified Shorthand Reporter  
and Notary Public in and for the State of Washington, do hereby  
certify that the foregoing transcript is true and accurate to  
the best of my knowledge, skill and ability.

IN WITNESS WHEREOF, I have hereunto set my hand and seal  
this 2nd day of December, 2014.

\_\_\_\_\_  
SHELBY KAY K. FUKUSHIMA, CCR

My commission expires:  
June 29, 2017

# Kittitas Valley Wind Power Project

## Monthly Project Update

November 18, 2014

### Project Status Update

#### **October Production Summary:**

MWh 16,275 MWh  
Wind 5.7 m/s or 13.1 mph  
CF 21.7%

#### **Safety:**

No incidents

#### **Compliance:**

Project is in compliance as of November 11, 2014.

#### **Sound:**

No complaints

#### **Shadow Flicker:**

No complaints

#### **Environmental:**

Ready for winter, project roads are in great shape.



Below is the monthly operational/compliance update for Wild Horse. Please let me know if you have any questions.

**Wind Production:** October generation totaled 47,243 MWh for an average capacity factor of 23.29%.

**Safety:** No lost-time accidents or safety incidents to report in October.

**Compliance/Environmental:** Nothing to report.



**Chehalis Generation Facility----Monthly Plant Report to the Washington Energy  
Facility Site Evaluation Council – October 2014**

1813 Bishop Road Chehalis, WA 98532  
Phone (360) 748-1300, FAX (360) 740-1891

18 October 2014

---

**Safety:**

- There were no recordable incidents this reporting period and the plant staff has achieved 4364 days without a Lost Time Accident.

**Environment:**

- Waste water monitoring results are in compliance with the permit limits for the month of October 2014.

**Personnel:**

- Authorized plant staffing level is currently 19 with 18 positions filled. We have one Control Room Operator position open an offer has been accepted.

**Operations and Maintenance Activities:**

- The Plant generated 254,585 megawatt-hours at a capacity factor of 69.7% for the month of September and the year-to-date capacity factor is 55.4%.

**Regulatory/Compliance:**

- There were no air emissions deviations, waste-water or stormwater deviations or spills during the month of October 2014.
  - Sound monitoring: There were no noise complaints to report.
-



**Carbon Offset:**

- Engineering design review and final quotes have been received a submittal package is being prepared to submit in November 2014 to EFSEC staff for review and recommendation to the Council.

Respectfully,

Mark A. Miller  
Manager, Gas Plant  
PacifiCorp-Chehalis Power  
1813 Bishop Road  
Chehalis, WA 98532  
360-827-6462



October, 2014

EFSEC Monthly Operational Report

1. Safety and Training

- 1.1. There were no accidents or injuries to plant staff during the month of October.
- 1.2. Conducted monthly safety training.
- 1.3. Conducted monthly safety committee meeting.

2. Environmental

- 2.1. Submitted the September 2014 Discharge Monitor Report (DMR) for Outfall 001 and the third quarter DMR for Storm Water to the Energy Facilities Site Evaluation Council (EFSEC).
- 2.2. Submitted third quarter Emissions Data Report (EDR) to EFSEC.
- 2.3. Submitted the 2014 Emissions Compliance and Relative Accuracy and Test Audit (RATA) Report to EFSEC.

3. Operations & Maintenance

- 3.1. Grays Harbor Energy operated 27 days and generated 334,875 MWh during the month of October.
- 3.2. The capacity factor (CF) was 72.6% in October, and 33.8% YTD.
- 3.3. The availability factor (AF) was 100% in October, and 94.3% YTD.

4. Noise and/or Odor

- 4.1. There were no complaints received during the month of October.

5. Site Visits

- 5.1. There were no site visitors during the month of October.

6. Other

- 6.1. Grays Harbor is fully staffed with 22 employees.



**Energy Northwest  
EFSEC Council Meeting  
November 18, 2014  
(Shannon Khounnala)**

**I. Columbia Generating Station Operational Status**

Columbia is operating at 100% power, generating 1109 megawatts.

***Columbia and Energy Northwest is currently celebrating a number of milestones:***

*Columbia exceed our longest run record of 505 days of continuous operation– we are currently 511 days and counting.*

*The last fiscal year was a Generation Record – Columbia produced 9,467.8 gigawatt-hours.*

*On November 14, 2014 Columbia marked five years without an unplanned shut down.*

*Energy Northwest currently has over 13 million hours worked without a lost time injury.*

There are no other events, safety incidents, or regulatory issues to report.

**II. WNP 1/4 Water Rights**

No substantial changes since the October 2014 update. The WA Department of Ecology is finalizing their Report of Examination and will post the report for a 30 day public comment once completed. Department of Energy and Energy Northwest expect to receive the water rights permit in December 2014.



STATE OF WASHINGTON  
ENERGY FACILITY SITE EVALUATION COUNCIL

PO Box 43172 • Olympia, Washington 98504-3172

November 14, 2014

Dear Interested Persons:

Subject: Notice of Receipt of a Petition for a Declaratory Order - Westway Terminal Company and Imperium Terminal Services

The Energy Facility Site Evaluation Council (EFSEC) is reviewing a petition for a declaratory order regarding jurisdiction for the Westway Terminal Company and Imperium Terminal Services, two separate proposed crude by rail facilities located in Grays Harbor County.

The petition can be viewed at: <http://www.efsec.wa.gov>. Sections of the Revised Code of Washington (RCW) and the Washington Administrative Code (WAC) pertaining to declaratory orders are: [RCW 34.05.240](#); [WAC 10-08-251](#) and [252](#); [WAC 463-34-070](#), [080](#) and [090](#).

Background: On November 3, 2014 EFSEC received a petition for a declaratory order from Kristen L. Boyles of Earthjustice, representing the Quinault Indian Nation. The Westway Terminal Company and Imperium Terminal Services are currently undergoing State Environmental Policy Act review by co-lead agencies the Department of Ecology and City of Hoquiam.

The petition for a declaratory order requests EFSEC issue a declaratory order that it has jurisdiction over the Westway and Imperium facilities. Discussion of this matter by the EFSEC Council will occur at the monthly EFSEC meeting on November 18, 2014, 1:30 pm at 1300 S. Evergreen Park Drive, SW, Olympia, WA. EFSEC will not be receiving public comment on this matter at this meeting.

Sincerely,

Stephen Posner  
EFSEC Manager



**RCW 34.05.240****Declaratory order by agency — Petition.**

(1) Any person may petition an agency for a declaratory order with respect to the applicability to specified circumstances of a rule, order, or statute enforceable by the agency. The petition shall set forth facts and reasons on which the petitioner relies to show:

(a) That uncertainty necessitating resolution exists;

(b) That there is actual controversy arising from the uncertainty such that a declaratory order will not be merely an advisory opinion;

(c) That the uncertainty adversely affects the petitioner;

(d) That the adverse effect of uncertainty on the petitioner outweighs any adverse effects on others or on the general public that may likely arise from the order requested; and

(e) That the petition complies with any additional requirements established by the agency under subsection (2) of this section.

(2) Each agency may adopt rules that provide for: (a) The form, contents, and filing of petitions for a declaratory order; (b) the procedural rights of persons in relation thereto; and (c) the disposition of those petitions. These rules may include a description of the classes of circumstances in which the agency will not enter a declaratory order and shall be consistent with the public interest and with the general policy of this chapter to facilitate and encourage agencies to provide reliable advice.

(3) Within fifteen days after receipt of a petition for a declaratory order, the agency shall give notice of the petition to all persons to whom notice is required by law, and may give notice to any other person it deems desirable.

(4) RCW 34.05.410 through 34.05.494 apply to agency proceedings for declaratory orders only to the extent an agency so provides by rule or order.

(5) Within thirty days after receipt of a petition for a declaratory order an agency, in writing, shall do one of the following:

(a) Enter an order declaring the applicability of the statute, rule, or order in question to the specified circumstances;

(b) Set the matter for specified proceedings to be held no more than ninety days after receipt of the petition;

(c) Set a specified time no more than ninety days after receipt of the petition by which it will enter a declaratory order; or

(d) Decline to enter a declaratory order, stating the reasons for its action.

(6) The time limits of subsection (5) (b) and (c) of this section may be extended by the agency for good cause.

(7) An agency may not enter a declaratory order that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding.

(8) A declaratory order has the same status as any other order entered in an agency adjudicative proceeding. Each declaratory order shall contain the names of all parties to the proceeding on which it is based, the particular facts on which it is based, and the reasons for its conclusions.

[1988 c 288 § 204; 1959 c 234 § 8. Formerly RCW 34.04.080.]