BEFORE THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY
INDUSTRIAL SITING DIVISION

STATE OF WYOMING

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| IN THE MATTER OF THE INDUSTRIAL SITING PERMIT APPLICATION OF DUKE ENERGY, d/b/a THREE BUTTES LLC CAMPBELL HILL WINDPOWER PROJECT | ) ) ) ) ) | DOCKET NO. DEQ/ISC 08-04 |

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER GRANTING PERMIT APPLICATION WITH CONDITIONS AND ALLOCATING IMPACT ASSISTANCE FUNDS**

THIS MATTER came before the Industrial Siting Council (Council) on March 5, 2009, for evidentiary hearing and the record was closed on that date. Council members present at the hearing included Shawn Warner, Chairman, Peter Brandjord, Jim Miller, Sandy Shuptrine, and Gregg Bierei. Council member Darrell Offe was unable to attend the evidentiary hearing. Bridget Hill, Senior Assistant Attorney General, was also present on the Council's behalf. Deborah A. Baumer from the Office of Administrative Hearings served as the Hearing Examiner in the proceeding. The Applicant, Duke Energy, d/b/a Three Buttes LLC (Three Buttes) appeared by and through its counsel, Jennifer Scoggin. The Industrial Siting Division (Division) appeared by and through its counsel, Senior Assistant Attorney General, John S. Burbridge. Five other parties participated in the evidentiary hearing including Heather Duncan-Malone on behalf of Natrona County, John Robinson on behalf of Converse County, William C. Luben on behalf of the City of Casper, John Robinson on behalf of the Town of Rolling Hills, and Bobbe Fitzhugh on behalf of the City of Douglas. Three Buttes' Exhibits DE-1, DE-2, DE-3 and DE-4, the Division's Exhibits 1, 2 and 3, and Natrona County's Exhibit 1 were admitted for purposes of the evidentiary hearing. The Council also received one limited appearance statement in this case.

from the Monkey Road Improvement & Service District in Glenrock, Wyoming. The Council has considered the evidence and argument of the parties, and makes the following findings:

## I. JURISDICTION

Wyo. Stat. Ann. § 35-12-106(a) (LEXIS 2008) provides that, "No person shall commence to construct a facility, as defined in this chapter, in this state without first obtaining a permit for that facility from the council."

"Industrial facility" or "facility" means any industrial facility with an estimated construction cost of at least one hundred seventy eight million, nine hundred thousand dollars ($178,900,000.00). Wyo. Stat. Ann. § 35-12-102(a)(vii) (LEXIS 2008).

Wyo. Stat. Ann. § 35-12-110(d) (LEXIS 2008) provides that upon receipt of an application for a permit, the director shall conduct a review of the application to determine if it contains all the information required by W.S. 35-12-109 and the rules and regulations.

Wyo. Stat. Ann. § 35-12-110(f) (LEXIS 2008) provides that not more than ninety (90) days after receipt of an application for a permit, the director shall:

> (i) Schedule and conduct a public hearing, provided that no hearing shall be held until the state engineer has submitted a preliminary and final opinion as to the quantity of water available for the proposed facility pursuant to W.S. 35-12-108;
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> (ii) Notify the applicant and local governments of the hearing;
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> (iii) Cause notice of the hearing to be published in one (1) or more newspapers of general circulation within the area to be primarily affected by the proposed facility; and
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> (iv) Hold the hearing at a community as close as practicable to the proposed facility. The provisions of W.S. 35-12-111, 35-12-112 and 35-12-114 apply to the hearing.

Wyo. Stat. Ann. § 35-12-113(a) (LEXIS 2008) provides that within forty-five (45) days from the date of completion of the hearing the council shall make complete findings, issue an opinion and render a decision upon the record, either granting or denying the application as filed, or granting it upon terms, conditions or modifications of the construction, operation or maintenance of the facility as the council deems appropriate.

On January 5, 2009, Three Buttes submitted an application to the Division for an industrial siting permit to allow construction and operation of the Campbell Hill Windpower Project to be located in Converse County, Wyoming near the Town of Glenrock, Wyoming and the City of Casper, Wyoming. The total construction cost is in excess of $178,900,000.00. Therefore, this Council has jurisdiction to hear and decide this matter.

## II. STATEMENT OF THE CASE

Three Buttes submitted its initial application for an industrial siting permit on January 5, 2009 requesting a permit to allow construction and operation of up to 66 General Electric Company turbine generators constructed in a single 99 megawatt phase during an anticipated 12 month construction period. The proposed project is to be located in Converse County 4 to 12 miles northwest of Glenrock, Wyoming. However, access to the project is from Natrona County, Wyoming with the anticipation by Three Buttes that the majority of the workforce will reside in Casper, Wyoming.

The Division's staff subsequently determined that Three Buttes' application was complete and in full compliance with Wyoming law and is ready to issue a permit for the single phase project. Three Buttes requested the Council approve the application as submitted with exhibits. In addition to the Division, five separate entities filed notices to become a party to

these proceedings and appeared at the March 5, 2009 evidentiary hearing. Although all parties expressed various concerns about the impact of the project, all five parties were in favor of issuing the permit. The parties disagreed, however, over the distribution of the impact assistance funds.

## III. ISSUES AND CONTENTIONS

The first issue in this case is whether Three Buttes has proven, by a preponderance of the evidence, that the industrial siting permit application regarding the Campbell Hill Windpower Project meets the requirements of the Wyoming Industrial Development Information and Siting Act, Wyo. Stat. Ann. § 35-12-113 (LEXIS 2008) and the Industrial Development Information and Siting Rules and Regulations, Chapter 1, Section 9(a) (Division's Rules) governing the proposed wind energy generation project. If the Council decides to issue the industrial siting permit, it must also decide what, if any, conditions to place on the industrial siting permit.

If the industrial siting permit is granted, the second issue to be resolved in this case is the allocation or distribution of impact assistance funds.

## IV. FINDINGS OF FACT

**ISSUE I** – Issuance of the Permit Application

1. Three Buttes Windpower, LLC is a wholly owned subsidiary of Duke Energy Corporation which is one of the largest power generating companies in the United States, serving four million customers in five states. Duke Energy's corporate headquarters is in Charlotte, North Carolina and their wind energy group is based in Austin, Texas. Duke Energy owns and operates roughly 40,000 megawatts of power in their power generating facilities. *Transcript of Proceedings (hereinafter Tr. of Proc.), p. 12.*

2. Prior to Three Buttes filing its application in this matter, Three Buttes and the Division conducted a jurisdictional meeting on October 15, 2008. The Division reviewed the financial budget for the project and determined that the cost exceeded the statutory dollar threshold of $178,900,000.00. *Three Buttes' Exhibit 1, p. ES-1; State's Exhibit 1, p. 3.*

3. On January 5, 2009, Three Buttes filed an application to the Division requesting a permit to allow the Campbell Hill Windpower Project to be constructed in a single phase approximately 4 to 12 miles northwest of Glenrock, Wyoming. The project site is approximately 5.2 miles from PacifiCorp Energy's Glenrock Wind Energy Project. The project will be located on leased private lands located in Converse County, Wyoming using General Electric 1.5-megawatt (MW) sle model wind turbine generators. *Three Buttes' Exhibit 1, pp. ES-1; ES-2.*

4. All of the material constituting the filing of the application was received by the Division on February 4, 2009, including corrections to the application, as well as an addendum to the application. Pursuant to the Industrial Siting statutes, the Division staff subsequently published notice of the contested case hearing regarding Three Buttes' application for an industrial siting permit on January 14, 2009 and January 21, 2009 in the Douglas Budget newspaper, the county of the project location. *Tr. of Proc. p. 5.*

5. The Division received five requests to become parties in this matter. All five requests were granted and those parties included Natrona County, Converse County, City of Casper, Town of Rolling Hills and City of Douglas. All parties expressed support of the Campbell Hill Windpower Project, as well as concerns about cumulative impacts. The concerns expressed by the parties primarily revolved around the distribution of the impact assistance funds and will be addressed in more detail below.

6. The Council received and considered one limited appearance statement in this matter, from the Monkey Road Improvement & Service District in Glenrock, Wyoming.

7. Richard Nerzig (Nerzig), is the Vice-President of wind development for Duke Energy. According to Nerzig, the site chosen for the Campbell Hill Windpower Project is expected to be a good site from a wind energy production capability perspective. Also, from a transmission interconnection perspective, the project site will run adjacent to the PacifiCorp high voltage transmission line. Duke Energy and PacifiCorp entered into a power purchase agreement which will allow the project to sell all of the electricity it generates over the next 20 years to PacifiCorp. *Tr. of Proc., p. 12.*

8. According to Nerzig, the anticipated useful life of the project is 20 to 25 years. Converse County will be involved in decommissioning the project, and decommissioning would occur in accordance with landowner agreements. Additionally, Three Buttes was in agreement with the 13 proposed conditions set forth by the Division in State's Exhibit 2. Three Buttes also entered into a Memorandum of Understanding with the Wyoming Game and Fish Department regarding the monitoring and protection of sage grouse habitat in the area of site influence. *Tr. of Proc., pp. 11-16; 35.*

9. Michael Braun (Braun) is the Senior Project Manager with Duke Energy responsible for wind resource development and construction of the Campbell Hill Windpower Project. Braun testified that the initial construction stage of the project will employ 20 to 30 full-time employees. At the peak construction stage, anticipated to be July 2009, 130 full-time employees will be working at the site. The employees are highly skilled workers from Colorado, North Dakota and South Dakota, as well as a local workforce. Most employees will reside in the Casper, Wyoming area. The project will result in 11 full-time, permanent employees once the

construction is completed. In terms of its housing plan, Three Buttes has received letters of housing commitments from hotels and apartments in the Casper area for 163 units. *Tr. of Proc., pp. 23-25; 29.*

10. According to Braun, materials for the project will be delivered by truck along I-25, exiting at Glenrock, Wyoming exit 162 onto Highway 256 to Coal Creek Road in Natrona County. The travel route is a mixture of state, county and private roads. Duke Energy negotiated with the Wyoming Department of Transportation and Natrona County to obtain rights of way and easements, as well as dust suppression agreements. The project will not utilize the Monkey Mountain Road. *Tr. of Proc., pp. 25-28.*

11. David Miller (Miller) is the Director of Environment, Health and Safety Field Support for Duke Energy. Miller provided support for the overview and review of the permitting efforts by Duke Energy, and support for policies for avian and wildlife issues during the construction phase of the project. According to Miller, all permits identified in Three Buttes' Exhibit 1, Section 3.7 either have been, or will be, obtained in accordance with federal and state requirements. Miller further testified that the application meets all the requirements of Wyo. Stat. §35-12-113 (Wyo. 2008). *Tr. of Proc., pp. 35-37.*

12. Duke Energy also places great emphasis on the health and safety of its employees. As part of its safety program, Duke Energy has a drug testing policy. *Tr. of Proc., p. 38.*

13. David Phillips (Phillips) is the Project Manager employed by CH2M Hill and managed the preparation of the application on behalf of Duke Energy. According to Miller, a socioeconomic analysis, transportation analysis and an environmental review were conducted as they pertain to the Industrial Siting Act and Division's Rules. Phillips identified the area of influence as a 60 mile area. Phillips analyzed and evaluated public facilities and services, solid

waste collection and disposal, police and fire protection, human services facilities, health care and hospital facilities, educational facilities and housing facilities. Phillips also conducted a cultural resource inventory and wetland and wildlife studies. Duke Energy collaborated with the Wyoming Game and Fish Department to address the impact of sage grouse habitat in the project area. *Tr. of Proc., pp. 46-54.*

14. Phillips also analyzed the socioeconomic impacts. Phillips identified direct economic benefits to the nearby communities as a result of the additional workforce in the area. Phillips also identified the environmental benefit of developing a renewable non-water consuming electrical generation source that does not require the consumption of additional fuel sources. *Tr. of Proc., p. 55.*

15. Based upon his analysis, Phillips determined that the project, would not pose a threat of serious injury to the social or economic condition of the inhabitants, nor would the project impair the health, safety or welfare of the inhabitants. *Tr. of Proc., pp. 52; 54-55.*

16. Dr. Tom Schroeder (Dr. Schroeder), Program Principal for the Industrial Siting Division, Department of Environmental Quality, receives and processes applications for permits by the Industrial Siting Council. Dr. Schroeder reviewed and processed Three Butte's application in this matter. Dr. Schroeder testified he was impressed with the quality and detail of the application, as well as the responses to all concerns expressed by a variety of agencies. *Tr. of Proc., pp. 142-166.*

17. According to Dr. Schroeder, the proposed application exceeded the jurisdictional threshold and complied with the applicable laws for an industrial siting permit. Dr. Schroeder believed the project did not pose a threat of serious injury to the environment or to the social and economic conditions of the area. The proposed project also would not substantially impair the

health, safety or welfare of the local inhabitants. Dr. Schroeder recommended approval of the project with the 12 standard conditions common to all industrial siting permits to ensure the compliance with regulations. Dr. Schroeder also recommended an additional Condition #13 to require Three Buttes to finance any future meetings of the Council for corrective action on Three Buttes' permit. Dr. Schroeder no longer recommended a condition dealing with the protection of the sage grouse habitat as the concern was satisfied through an agreement with the Wyoming Game and Fish Department. *Tr. of Proc., pp. 146; 152.; State's Exhibit 1, p. 10.*

18. All findings of fact set forth in the following conclusions of law section shall be considered a finding of fact and are fully incorporated into this paragraph.

## V. CONCLUSIONS OF LAW

**ISSUE I** - A. Principles of Law Relating to the Issuance of the Permit Application

19. Three Buttes bears the burden of proof in the proceedings herein. "The general rule in administrative law is that, unless a statute otherwise assigns the burden of proof, the proponent of an order has the burden of proof." *JM v. Department of Family Services*, 922 P.2d 219, 221 (Wyo. 1996) (citation omitted); *Penny v. State ex rel. Wyoming Mental Health Prof. Licensing Board*, 120 P.3d 152, (Wyo. 2005).

20. Wyo. Stat. Ann. § 35-12-109(a) (LEXIS 2008) provides that an application for a permit shall be filed with the Division and contain the following information:

> (i) The name and address of the applicant, and, if the applicant is a partnership, association or corporation, the names and addresses of the managers designated by the applicant responsible for permitting, construction or operation of the facility;
>
> (ii) The applicant shall state that to its best knowledge and belief the application is complete when filed and includes all the information

required by W.S. 35-12-109 and the rules and regulations, except for any requirements specifically waived by the council pursuant to W.S. 35-12-107;

(iii) A description of the nature and location of the facility;

(iv) Estimated time of commencement of construction and construction time;

(v) Estimated number and job classifications, by calendar quarter, of employees of the applicant, or contractor or subcontractor of the applicant, during the construction phase and during the operating life of the facility. Estimates shall include the number of employees who will be utilized but who do not currently reside within the area to be affected by the facility;

(vi) Future additions and modifications to the facility which the applicant may wish to be approved in the permit;

(vii) A statement of why the proposed location was selected;

(viii) A copy of any studies which may have been made of the environmental impact of the facility;

(ix) Inventory of estimated discharges including physical, chemical, biological and radiological characteristics;

(x) Inventory of estimated emissions and proposed methods of control;

(xi) Inventory of estimated solid wastes and proposed disposal program;

(xii) The procedures proposed to avoid constituting a public nuisance, endangering the public health and safety, human or animal life, property, wildlife or plant life, or recreational facilities which may be adversely affected by the estimated emissions or discharges;

(xiii) Preliminary evaluations of or plans and proposals for alleviating social, economic or environmental impacts upon local government or any special districts which may result from the proposed facility, which evaluations, plans and proposals shall cover the following:

(A) Scenic resources;

(B) Recreational resources;

(C) Archaeological and historical resources;

(D) Land use patterns;

(E) Economic base;

(F) Housing;

(G) Transportation;

(H) Sewer and water facilities;

(J) Solid waste facilities;

(K) Police and fire facilities;

(M) Educational facilities;

(N) Health and hospital facilities;

(O) Water supply;

(P) Other relevant areas.

(xiv) Estimated construction cost of the facility;

(xv) What other state or federal permits and approvals are required;

(xvi) Compatibility of the facility with state or local land use plans, if any;

(xvii) Any other information the applicant considers relevant or required by council rule or regulation;

(xviii) A brief description of the methods and strategies the applicant will use to maximize employment and utilization of the existing local or in-state contractors and labor force during the construction and operation of the facility.

21. Wyo. Stat. Ann. § 35-12-110(b) (LEXIS 2008) requires that the division shall obtain information and recommendations from the following state agencies relative to the impact of the proposed facility as it applies to each agency's area of expertise:

(i) Wyoming department of transportation;

(ii) Public service commission;

* * *

(iv) Game and fish department;

(v) Department of health;

(vi) Department of education;

(vii) Office of state engineer;

* * *

(ix) Wyoming state geologist;

(x) Wyoming department of agriculture;

(xi) Department of environmental quality;

* * *

(xiv) The University of Wyoming;

(xv) Department of revenue; and

(xvi) The Wyoming business council.

22. Wyo. Stat. Ann. § 35-12-110(c) (LEXIS 2008) provides the information required by subsection (b) of this section shall be provided by the agency from which it is requested not more than sixty (60) days from the date the request is made and shall include opinions as to the advisability of granting or denying the permit together with reasons therefore, and recommendations regarding appropriate conditions to include in a permit, but only as to the areas within the expertise of the agency. Each agency which has regulatory authority over the proposed facility shall provide to the council a statement defining the extent of that agency's jurisdiction to regulate impacts from the facility, including a statement of the agency's capability to address cumulative impacts of the facility in conjunction with other facilities. The statement of jurisdiction from each agency is binding on the council.

23. Wyo. Stat. Ann. § 35-12-110(d) (LEXIS 2008) provides that upon receipt of an application, the director shall conduct a review of the application to determine if it contains all the information required by W.S. 35-12-109 and the rules and regulations. If the director determines that the application is incomplete, he shall within thirty (30) days of receipt of the application notify the applicant of the specific deficiencies in the application. The applicant shall provide the additional information necessary within thirty (30) days of a receipt of a request for additional information from the director.

24. Wyo. Stat. Ann. § 35-12-110(f) (LEXIS 2008) provides that not more than ninety (90) days after receipt of an application for a permit, the director shall:

> (i) Schedule and conduct a public hearing, provided that no hearing shall be held until the state engineer has submitted a preliminary and final opinion as to the quantity of water available for the proposed facility pursuant to W.S. 35-12-108;
>
> (ii) Notify the applicant and local governments of the hearing;
>
> (iii) Cause notice of the hearing to be published in one (1) or more newspapers of general circulation within the area to be primarily affected by the proposed facility; and
>
> (iv) Hold the hearing at a community as close as practicable to the proposed facility. The provisions of W.S. 35-12-111, 35-12-112 and 35-12-114 apply to the hearing.

25. Pursuant to Wyo. Stat. Ann. § 35-12-111 (a) (LEXIS 2008), the parties to a permit proceeding include:

> (i) The applicant;
>
> (ii) Each local government entitled to receive service of a copy of the application under W.S. 35-12-110(a)(i);
>
> (iii) Any person residing in a local government entitled to receive service of a copy of the application under W.S. 35-12-110(a)(i) and any nonprofit organization with a Wyoming chapter, concerned in whole or in part to promote conservation or natural beauty, to

protect the environment, personal health or other biological values, to preserve historical sites, to promote consumer interests, to represent commercial and industrial groups, or to promote the orderly development of the areas in which the facility is to be located. In order to be a party the person or organization must file with the office a notice of intent to be a party not less than twenty (20) days before the date set for the hearing.

(b) Any party identified in paragraph (a)(iii) of this section waives his right to be a party if he does not participate orally at the hearing. Any party identified in paragraph (a)(ii) of this section waives its right to be a party unless the local government files a notice of intent to be a party with the office not less than twenty (20) days before the date set for the hearing.

(c) Any person may make a limited appearance in the proceeding by filing a statement in writing with the council prior to adjournment of the hearing. A statement filed by a person making a limited appearance shall become part of the record and shall be made available to the public. No person making a limited appearance under this subsection is a party to the proceeding.

(d) No state agency other than the industrial siting division shall act as a party at the hearing. Members and employees of all other state agencies and departments may file written comments prior to adjournment of the hearing but may testify at the hearing only at the request of the council, the industrial siting division or any party.

(e) Any person described in W.S. 35-12-111(a)(ii) or (iii) who participated in the public hearing under W.S. 35-12-107 may obtain judicial review of a council decision waiving all or part of the application requirements of this chapter.

26. Pursuant to Wyo. Stat. Ann. § 35-12-113 (LEXIS 2008), the council shall:

(a) Within forty-five (45) days from the date of completion of the hearing the council shall make complete findings, issue an opinion and render a decision upon the record, either granting or denying the application as filed, or granting it upon terms, conditions or modifications of the construction, operation or maintenance of the facility as the council deems appropriate. The council shall not consider the imposition of conditions which address impacts within the area of jurisdiction of any other regulatory agency in this state as described in the information provided in W.S. 35-12-110(b), unless the other regulatory agency requests that conditions be imposed. The council may consider direct or cumulative impacts not within the area of jurisdiction of another regulatory agency in this state. The council shall grant a permit either as proposed or as modified by the council if it finds and determines that:

(i) The proposed facility complies with all applicable law;

(ii) The facility will not pose a threat of serious injury to the environment nor to the social and economic condition or inhabitants or expected inhabitants in the affected area; and

(iii) The facility will not substantially impair the health, safety or welfare of the inhabitants.

(b) No permit shall be granted if the application is incomplete.

(c) If the council determines that the location of all or part of the proposed facility should be modified, it may condition its permit upon that modification, provided that the local governments, and persons residing therein, affected by the modification, have been given reasonable notice of the modification.

(d) The council shall issue with its decision, an opinion stating in detail its reasons for the decision. If the council decides to grant a permit for the facility, it shall issue the permit embodying the terms and conditions in detail, including the time specified to commence construction, which time shall be determined by the council's decision as to the reasonable capability of the local government, most substantially affected by the proposed facility, to implement the necessary procedures to alleviate the impact. A copy of the decision shall be served upon each party.

(e) A permit may be issued conditioned upon the applicant furnishing a bond to the division in an amount determined by the director from which local governments may recover expenditures in preparation for impact to be caused by a facility if the permit holder does not complete the facility proposed. The permit holder is not liable under the bond if the holder is prevented from completing the facility proposed by circumstances beyond his control.

(f) Within ten (10) days from the date of the council's decision, a copy of the findings and the council's decision shall be served upon the applicant, parties to the hearing and local governments to be substantially affected by the proposed facility and filed with the county clerk of the county or counties to be primarily affected by the proposed facility. Notice of the decision shall be published in one (1) or more newspapers of general circulation within the area to be affected by the proposed facility.

27. The Industrial Development Information and Siting Rules and Regulations, Chapter 1 provide:

Section 7. **Application information to be submitted.**
In accordance with W.S. 35-12-109, the application shall contain the information required by the act with respect to both the construction period and online life of

the proposed industrial facility and the following information the council determines necessary:

(a) The application shall state the name, title, telephone number, and post office address of the person to whom communication in regards to the application shall be made.

(b) A description of the specific, geographic location of the proposed industrial facility. The description shall include the following:

(i) Preliminary site plans at an appropriate scale indicating the anticipated location for all major structures, roads, parking areas, on-site temporary housing, staging areas, construction material sources, material storage piles and other dependent components;

(ii) The area of land required by the industrial facility and a land ownership map covering all the components of the proposed industrial facility.

(c) A general description of the major components of the proposed industrial facility such as boilers, steam generators, turbine generators, cooling facilities, production equipment, and dependent components.

(d) A description of the operating nature of the proposed industrial facility, the expected source and quantity of its raw materials, and energy requirements. The description shall include, but is not limited to, the following:

(i) The proposed on-line life of the industrial facility and its projected operating capacity during its on-line life and, for transmission lines exceeding one hundred fifteen thousand (115,000) volts included as part of the proposed industrial facility, a projection indicating when such lines will become insufficient to meet the future demand and at what time a need will exist to construct additional transmission lines to meet such demands;

(ii) Products needed by facility operations and their source.

(e) A statement that shall be a reasonable estimate of the calendar quarter in which construction of the industrial facility will commence, contingent upon the issuance of a permit by the council.

(f) A statement that shall be a reasonable estimate of the maximum time period required for construction of the industrial facility and an estimate of

when the physical components of the industrial facility will be ninety (90) percent complete, and the basis for that estimate.

(g) The applicant shall identify what it deems to be the area of site influence and the local governments primarily affected by the proposed industrial facility as defined in sections 2(b) and (c), respectively, of these regulations. The immediately adjoining area(s) and local governments shall also be identified with a statement of the reasons for their exclusion from the list of area(s) or local governments primarily affected by the proposed industrial facility.

(h) The estimated number of employees needed to complete the construction and operation of the facility by the applicant, its contractors and subcontractors to include job classifications by calendar quarter. The estimate should also include:

(i) Seasonal fluctuations and the peak employment during both construction and operation;

(ii) Annual payroll;

(iii) Expected benefits, if any, to be provided including housing allowances, transportation allowances, and per diem allowances.

(i) An evaluation of the social and economic conditions in the area of site influence. The social and economic conditions shall be inventoried and evaluated as they currently exist, projected as they would exist in the future without the proposed industrial facility and as they will exist with the facility. Prior to submitting its application, each applicant shall confer with the administrator to define the needed projections, the projection period and issues for socioeconomic evaluation. The evaluation may include, but is not limited to:

(i) Land use designation of the site location, including whether or not the use of the land by the industrial facility is consistent with state, intrastate, regional, county and local land use plans, if any. The analysis shall include the area of land required and ultimate use of land by the industrial facility and reclamation plans for all lands affected by the industrial facility or its dependent components;

(ii) A study of the area economy including a description of methodology used. The study may include, but is not limited to, the following factors:

(A) Employment projections by major sector;
(B) Economic bases and economic trends of the local economy;
(C) Estimates of basic versus non-basic employment;
(D) Unemployment rates;

(iii) A study of the area population including a description of methodology used. The study may include, but is not limited to, an evaluation of demographic characteristics for the current population and projections of the area population without the proposed industrial facility;

(iv) An analysis of housing facilities by type, including a quantitative evaluation of the number of units in the area and a discussion of vacancy rates, costs, and rental rates of the units. The analysis should include geographic location, including a quantitative evaluation of the number of units in the area required by the construction and operation of the proposed industrial facility and a discussion of the effects of the proposed industrial facility on vacancy rates, costs, and rental rates of the units. Specific housing programs proposed by the applicant should be described in detail;

(v) An analysis of transportation facilities containing discussion of roads (surface, type), and railroads (if applicable). An analysis of effects on transportation facilities including effects on service levels of roads, haul routes for materials and supplies, increased rail traffic at grade crossings, and intersection of new access roads with existing roads;

(vi) Public facilities and services availability and needs, which may include, but are not limited to:

(A) Facilities required for the administrative functions of government;

(B) Sewer and water distribution and treatment facilities including the capability of these facilities to meet projected service levels required due to the proposed industrial facility. Use of facilities by the proposed industrial facility should be assessed separately from population related increases in service levels;

(C) Solid waste collection and disposal services including the capability of these facilities to meet projected service levels required due to the proposed industrial facility. Use

of facilities by the proposed industrial facility should be assessed separately from population related increases in service levels;

(D) Existing police and fire protection facilities including specific new demands or increases in service levels created by the proposed industrial facility;

(E) An analysis of health and hospital care facilities and services;

(F) Human service facilities, programs and personnel, including an analysis of the capacity to meet current demands and a description of problems, needs, and costs of increasing service levels;

(G) An analysis of user-oriented community recreational facilities and programs and urban outdoor recreational opportunities including descriptions of recreational resources, locations of the recreational resources, and the types of recreational resources and an analysis of outdoor, resource-oriented recreational opportunities including locations and types of the recreational resources;

(H) Educational facilities, including an analysis based upon enrollment per grade, physical facilities and their capacities and other relevant factors with an assessment of the effect that the new population will have on programs and facilities;

(I) Problems due to the transition from temporary, construction employees to operating workforces should be addressed. Changes in levels of services required as a result of the proposed industrial facility should specifically be addressed. Cumulative impacts of the proposed industrial facility and other developments in the area of site influence should be addressed separately. This assessment should examine increased demands associated with the construction and operational phases of the proposed industrial facility, as well as effects on the level of services as the construction or operational workforces decline;

(J) A copy of any studies that may have been made of the social or economic impact of the industrial facility.

(vii) A fiscal analysis over the projection period for all local governments and special districts identified by the applicant as primarily affected by the proposed industrial facility, including revenue structure, expenditure levels, mill levies, services provided through public financing, and the problems in providing public services. The analysis may include, but is not limited to:

(A) An estimate of the cost of the industrial facility subject to sales and use taxes and expected payments by quarter for the construction period. This estimate should include a breakdown by county if the components of the industrial facility will be located in more than one county. The estimate will also include projections of the impact assistance payments available under W.S. 39-6-411(c) and W.S. 39-6-512(d) generated by the proposed industrial facility through the sales and use tax payments;

(B) An estimate of the cost of components of the industrial facility which will be included in the assessed value of the industrial facility for purposes of ad valorem taxes for both the construction and operations periods. This estimate should include a breakdown by county if the components of the industrial facility will be located in more than one county.

(j) An evaluation of the environmental impacts. The items shall be noted and evaluated as they would exist if the proposed industrial facility were built. Each evaluation should be followed by a brief explanation of each impact and the permit issued that regulates the impact. If the impact is not regulated by a state regulatory agency or federal land management agency, the application must including plans and proposals for alleviating adverse impacts. Cumulative impacts of the proposed industrial facility and other projects in the area of site influence should be addressed separately.

(k) The applicant shall describe the procedures proposed to avoid constituting a public nuisance, endangering the public health and safety, human or animal life, property, wildlife or plant life, or recreational facilities which may be adversely affected by the proposed facility, including:

(i) Impact controls and mitigating measures proposed by the applicant to alleviate adverse environmental, social and economic impacts associated with construction and operation of the proposed industrial facility;

(ii) Monitoring programs to assess effects of the proposed industrial facility and the overall effectiveness of impact controls and mitigating actions.

B. Application of Principles of Law

28. Three Buttes has shown, by a preponderance of the evidence, that it filed a completed permit application with the Division regarding the 66 wind turbines in the Campbell Hill Windpower Project, and included the requirements in Wyo. Stat. Ann. § 35-12-109(a) (LEXIS 2008) and Chapter 1, Section 7 of the Rules and Regulations and that the proposed facility complies with all applicable law. *See for example testimony of Richard Nerzig, Michael Braun, David Miller, David Phillips and Dr. Tom Schroeder; Duke Energy's Exhibits DE-1 through DE-4; State's Exhibit's 1, 2 and 3.*

29. Three Buttes has shown, through testimony and exhibits, that the proposed Campbell Hill Windpower Project will not pose a threat of serious injury to the environment nor to the social and economic condition or inhabitants in the affected area. *See above Findings of Fact and Exhibits.*

30. Finally, through the testimony of all its witnesses, as well as the exhibits submitted, Three Buttes has demonstrated the proposed Campbell Hill Windpower project will not substantially impair the health, safety or welfare of the inhabitants. *See above Findings of Fact, Exhibits and Tr. of Proc.*

31. With the proposed conditions set forth in *State's Exhibits 1 and 2,* this Council is satisfied that the Division will assure compliance with the statutes and rules at issue in this matter regarding the Campbell Hill Windpower Project.

## FINDINGS OF FACT

**ISSUE II** – Allocation of Impact Assistance Funds

32. The Council is charged with establishing a ratio for the distribution of impact assistance funds. Local governments in the areas primarily affected by the project can meet and arrive at a consensus for distribution of any and all monies that are available. When local governments do not agree, the Administrator of the Division may provide a recommendation to the Council of a distribution plan. *Tr. of Proc. p. 155.*

33. In this case, the areas primarily affected included Converse County and Natrona County. The area primarily affected is a polygon that included the project site, and the municipalities of Douglas, Glenrock, Rolling Hills, Evansville, Casper, Mills and Bar Nunn. A meeting of the two county governments was not held and therefore a ratio for the distribution of impact assistance funds, supported by all governments within the area of site influence, was not provided to the Division. *Tr. of Proc. pp. 156-157.*

34. According to Dr. Schroeder, in the 1970's a computer based model was approved by the Council to assist in determining the ratio for distribution of the impact assistance funds. The computer based model is loaded with local data, mainly focusing on socioeconomic concerns, and produces a distribution recommendation. The model analyzes shortfalls in local government's infrastructures and services including but not limited to water, sewer, law enforcement and demographics of potential employees. *Tr. of Proc. pp. 157-158.*

35. The governments in the areas primarily affected did not provide the Division an agreement on the distribution of impact assistance funds in this case. Therefore, the computer model generated a distribution of 33.9% to Converse County and 66.1% to Natrona County. *State's Exhibit 1, p. 12.*

36. Through its attorney and Robert L. Hendry (Hendry), Chairman of the Natrona County Commissioners, Natrona County argued it should receive 90% of the impact assistance funds. Hendry testified that most, if not all, of the employees associated with the Campbill Hill Windpower Project will reside in Natrona County because it provides the closest access to the project site. According to Hendry, Natrona County will be providing the medical support and traffic control due to the traffic route used by employees and for deliveries of products to the project site. Hendry argued that since the impact assistance funds for the prior wind energy project in Glenrock was split with Converse County receiving 90% and Natrona County receiving 10%, Natrona County should receive 90% of the impact assistance funds in this case. *Tr. of Proc., pp. 168-181.*

37. Through its attorney and Thomas O. Forslund (Forslund), City Manager, the City of Casper echoed the position of Natrona County. According to Forslund, the City of Casper has added 700 motel rooms which can accommodate the influx of the workforce for the Campbell Hill Windpower Project. Workers will likely stay in Casper due to the location of the project. The project will also have a significant impact on the fire department, police department, emergency medical services and the landfill. *Tr. of Proc., pp. 202-220.*

38. Through its attorney and Ed Werner (Werner), Chairman of the Converse County Commissioners, Converse County agreed with the recommendation of the distribution of the impact assistance funds as set forth in State's Exhibit 1. *Tr. of Proc., pp. 183-197.*

39. The City of Douglas and Town of Rolling Hills also agreed with the recommendation of the distribution of impact assistance funds as set forth in State's Exhibit 1. *Tr. of Proc., pp. 199-201; 228.*

## CONCLUSIONS OF LAW

**ISSUE II - A.** Principles of Law Relating to the Allocation of Impact Assistance Funds

40. The Council is charged with establishing a ratio for the distribution of impact assistance funds. The impact assistance payments shall be distributed to the county and to the cities and towns therein based on ratio established by the industrial siting council during a public hearing held in accordance with Wyo. Stat. Ann. § 35-12-110 (Wyo. 2008). Wyo. Stat. Ann. § 39-15-111(c) (LEXIS 2008).

41. The Industrial Development Information and Siting Rules and Regulations, Chapter 1, Section 10 provides:

> Section 10. **Impact Assistance Funds.**
> (a) If a ratio supported by all governments within the area of site influence has not been provided to the division prior to the meeting with local governments required by W.S. 35-12-107(f) or within 30 days of filing of a non-waiver application, the division will provide to city, town and county governments within the area of site influence a draft of the administrator's recommendation to the council for distribution of the impact assistance funds. Governments in disagreement with the draft recommendation shall provide to the council supporting information as outlined in Section 10(b).
>
> (b) Pursuant to W.S. 39-6-411(c) and W.S. 39-6-512(d), the Council shall, after consideration of all evidence and recommendations presented at the hearing held pursuant to W.S. 35-12-107(g) and W.S. 35-12-110(f), establish a ratio for distribution of impact assistance funds.
>
> (i) The ratio of impacts shall be established in consideration of, but not limited to, the following factors:
>
> (A) The residency pattern of the facility's direct and induced employment;
> (B) The existing service levels, capital facility needs, social service needs, health care needs, transportation needs, recreation needs, and police and fire protection needs of the affected local governments;

(C) The revenue structure, expenditure level, mill levies and financial capabilities of the affected local governments; and

(D) The incremental cost of providing services to the project related new population for affected local governments.

(ii) If impact assistance payments are already being distributed to an affected area of site influence, and another facility commences construction, the Council shall consider the effect of the following factors in establishing, modifying, adjusting or revising the ratio:

(A) The amount of impact assistance funds generated by each facility and the degree of impact in the county attributable to each facility; and

(B) The timeframe in which different amounts of impact assistance funds are generated by each facility in relation to the timeframe in which impacts attributable to each facility occur.

(c) The Council may adjust, revise or modify a certified ratio during the construction of a facility. A local government which is primarily affected by the facility and which has filed a notice of intent to be a party pursuant to W.S. 35-12-111(b), or any person issued a permit pursuant to W.S. 35-12-106, may petition the Council for review and adjustment of the distribution ratio upon a showing of good cause. The request shall be submitted to the division.

B. Application of Principles of Law

42. This Council has considered of all the evidence and recommendations presented by the parties at the hearing, as well as the factors in the Division's Rules pertaining to the distribution of impact assistance funds. The Council is not persuaded by the arguments of Natrona County and the City of Casper that those governments should be awarded more impact

assistance funds than the recommendation set forth by the Division's staff in State's Exhibit 1, as determined by the computer model.

43. The Council finds the Division has shown, by a preponderance of the evidence, that with respect to the impact assistance fund distribution, the Division's staff recommendation utilizing the model approved by the Council is appropriate. This Council finds that an impact distribution of 33.9% to Converse County and the municipalities of Rolling Hills, Glenrock and Douglas, and an estimated amount of $105,248.00 and 66.1% to Natrona County and the municipalities of Bar Nunn, Mills, Casper and Evansville, an estimated amount of $205,556.00 is reasonable and supported by the evidence and the Division's Rules in this case.

## DECISION

Pursuant to the authority vested in the Industrial Siting Council by WYO. STAT. ANN. § 35-12-113 (LEXIS 2008), this Council hereby **grants** the Industrial Siting Permit Application filed by Duke Energy, d/b/a Three Buttes LLC to construct and operate the Campbell Hill Windpower Project, a wind energy generation project consisting of 66 wind turbines with a 99 megawatt net capacity to be located in Converse County, Wyoming near the town of Glenrock, Wyoming and the City of Casper, Wyoming.

Additionally, pursuant to its authority and agreed to by all parties, this Council places the following terms and conditions on the facility as modified from *State's Exhibits 1 and 2*:

**Condition #1.** Three Buttes Windpower LLC (Permittee) will obtain and maintain all required State and local permits and approvals in accordance with W.S. 35-12-109(a)(xv), 35-12-113(a) (i) and 35-12-115 during the term of this permit.

**Condition #2.** Construction must commence within two years following the date of the award of this permit.

**Condition #3.** Before engaging in any activity over which the Industrial Siting Council (ISC) has jurisdiction which could significantly affect the environment external to Permittee's permit area, or the social, or economic, or environmental conditions of the area of site influence and which was not evaluated in the permit process, the Permittee shall prepare and file an evaluation of such activity with the Industrial Siting Division ISD. When in the opinion of the Director of the Department of Environmental Quality (Director), the evaluation indicates that such activity may result in significant adverse impacts that were not considered in the permit the Permittee shall file a permit amendment in accordance with W. S. 35-12-106.

**Condition #4.** The Permittee shall develop a written compliance plan and program to ensure compliance with voluntary commitments of this Permit, testimony, agreements with local governments, and these permit conditions. A compliance coordinator shall be designated and identified to the ISD prior to the onset of construction. This individual shall present himself/herself and meet with the ISD staff before construction commences and review the permit requirements with the ISD staff. This coordinator shall assume the responsibility for assuring that contractors and subcontractors are aware of and meet all permit requirements.

**Condition #5.** The ISC may review any adverse social, economic, or environmental impacts either within or outside the area primarily affected that are attributed to the Permittee:

a. Which adversely affect the current level of facilities or services provided by the local community;

b. Which cannot be alleviated by financing through ordinary sources of revenue, given due consideration to bonding history and capacity of the jurisdiction involved;

c. Which were not evaluated or foreseen at the time the permit was granted and can be attributed in whole or in part to the permitted facility; and

d. Which are not or cannot be resolved by voluntary measures by industrial representatives in the community,

Then by order issued in accordance with the Wyoming Administrative Procedures Act, the ISC may require additional mitigation by the Permittee in cooperation with other basic industries (existing and future) provided that:

a. A local government has requested mitigation assistance; and

b. Such adverse impacts were determined to be a result of the activities of the Permittee.

Permittee shall be required to assist in mitigating any impacts that result from construction or operation of the proposed Project, including those resulting from direct and indirect employment. For purposes of determining additional mitigation measures by the Permittee, consideration shall be given to previous mitigation efforts. However, in any event, Permittee

shall not be required to provide mitigation in excess of the proportion that the Permittee's activities are contributing to the total impacts within the impacted area (as defined by W. S. 35-12-102).

**Condition #6.** The Permittee shall give written notice to the Industrial Siting Division when construction commences on the project.

**Condition #7.** The Permittee shall give written notice to the Industrial Siting Division when the physical components of the project are 90 percent complete.

**Condition #8.** As a means of adhering to W. S. 35-12-1O9 (a) (xviii) to provide preference for local and resident hiring, the Permittee, contractors and subcontractors shall follow these hiring guidelines:

a. Procedures to foster local hiring shall be incorporated into the compliance plan.

b. Job postings shall be filed with the local Workforce Center.

**Condition #9.** The Permittee shall submit an annual report to ISC for the years or portion of a year that includes construction and again for the first year of operation of the facility for each phase. The annual report shall include:

a. Efforts to assure compliance with voluntary commitments, mitigation agreements with local governments, and conditions contained in this permit;

b. The extent to which construction has been completed in accordance with the approved schedule;

c. Any revised time schedules or time tables for construction, operations, and reclamation, and a brief summary of the construction, reclamation, and other activities that will occur in the next one-year period; and

d. Demonstration of compliance with permit conditions.

**Condition #10.** In order that the ISD may monitor Permittee's performance, the Permittee shall institute the following monitoring program that shall be recorded on a monthly basis and reported to the ISD on a quarterly basis through the construction period of each phase and for the first year of operation following a phase. Monthly data will be in a form prescribed by ISD and shall include:

a. The average and peak number of employees for the Permittee, contractors and subcontractors.

b. Employee city and state of residency at the time of hire and the employee city and state while employed and type of residence while employed.

c. The number of new students enrolled by grade level and school district who are related to Permittee employees, identified as either local (no change of residence) and in-migrants.

d. Wyoming resident versus non-resident mix of workforce.

e. An updated Figure 3-1 as found on page 3-3 of the Campbell Hill Windpower Project Application.

**Condition #11.** The Permittee shall notify the ISD in advance of proposed changes to the scope, purpose, size or schedule of the project. The Director may authorize such changes if he or she finds that:

a. The change should not result in any significant adverse environmental, social, and economic impacts in the area of site influence; and

b. No party nor Council Member has requested that the matter be heard before the Council in accordance with the permit procedures of W. S. 35-12-106 (c) and (d).

The Director will provide public notice of the proposed change and his intent to approve the request.

**Condition #12.** The Permittee will notify the ISD and provide updates to *Section 5.4.3 Housing Impact Plan and Analysis* and all other pages of the Application where changes are expected to occur if:

a. Actual on-site workforce during construction is expected to exceed the peak number estimated in the Application by more than fifteen percent (15%);

b. The Permittee wishes to make changes to the lodging plan as described in the Application.

The Director may authorize such changes or refer the matter to the Siting Council.

**Condition #13.** Cost of Meetings. As may be subsequently required by the Director of Environmental Quality, the Permittee shall pay a fee to be determined by the Director based on the estimated costs to prepare, schedule, and conduct a special hearing or meeting of the Council to remedy any action or inaction by the Permittee. Unused fees shall be refunded to the Permittee.

Finally, pursuant to its authority, this Council allocates the impact assistance funds as follows: Converse County, Wyoming: 33.9%

Natrona County, Wyoming: 66.1%

## ORDER

IT IS THEREFORE ORDERED that the Industrial Siting Permit Application as submitted by Duke Energy, d/b/a Three Buttes LLC, and modified by this Council as set forth above in Conditions 1 through 13 be and is hereby granted.

DONE this 3 day of APRIL, 2009.

Shawn Warner, Chairman
Industrial Siting Council
Herschler Building, Fourth Floor West
122 West 25th Street
Cheyenne, Wyoming 82002
(307) 777-7170

## CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing document was served upon the Department of Environmental Quality, Industrial Siting Division and a true and correct copy was served upon the parties by mailing same, postage prepaid, on the 6 day of August, 2009, addressed to the following:

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Industrial Siting Council