

OCT 18 2012

Carbon County
Clerks Office

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
CARBON COUNTY, WYOMING**

IN THE MATTER OF THE)
APPLICATION FOR CONDITIONAL USE)
PERMIT BY THE POWER COMPANY OF) C.U.W. Case File #2012-01
WYOMING FOR THE CHOKECHERRY AND)
SIERRA MADRE WIND ENERGY PROJECT)

OPINION OF BOARD OF COUNTY COMMISSIONERS
CARBON COUNTY, WYOMING
REGARDING THE DECISION TO APPROVE
THE CONDITIONAL USE PERMIT – COMMERCIAL WIND ENERGY FACILITY
(C.U.W. Case File # 2012-01)
RENDERED ON OCTOBER 2, 2012

The Carbon County Board of County Commissioners met at a duly noticed and convened regular public meeting held October 2, 2012, for the purpose of taking comment from the public on a proposed wind energy facility proposed by Power Company of Wyoming, LLC (“PCW”) and to take action on PCW’s Application for Conditional Use Permit.

I.
BACKGROUND

1. The Project, as proposed, involves the construction and operation of the Chokecherry and Sierra Madre Wind Energy Project (“CCSM Project”) to be located in Carbon County, Wyoming, on portions of the privately owned and operated Overland Trail Ranch. The CCSM Project consists of 1,000 wind turbines capable of generating approximately 2,000-3,000 MW of clean renewable wind energy along with all associated facilities necessary to generate and deliver electricity to the transmission grid.

2. On July 17, 2012, PCW submitted an Application for Conditional Use Permit (“CUP”) to construct, operate and decommission the CCSM Project. Following review of the Application by the Planning Director for the Carbon County Department of Planning and

Development, additional information was requested from PCW. On August 2, 2012, the additional requested information was provided by PCW and, by letter, was incorporated into the Application as a First Addendum.

3. On September 17, 2012, a public meeting of the Carbon County Planning and Zoning Commission was held, pursuant to *Section 5.11 – Wind Energy Facilities – Overlay District of the Carbon County Zoning Resolution of 2003, as amended*, in order to provide the opportunity for public comment on PCW’s Application for Conditional Use Permit.

4. Following the opportunity for consideration of the Staff recommendation from the Office of Planning Director of the Carbon County Department of Planning and Development, and public comment received both in writing and through statements made by members of the public at the September 17, 2012 meeting, the Planning and Zoning Commission voted to recommend approval of the Conditional Use Permit with conditions consistent with the provisions of *Section 5.11 of the County Zoning Resolution of 2003, as amended*.

5. PCW requested setback waivers from the minimum setbacks adopted in *Section 5.11(6)– Commercial WECS Setbacks and Standards* from State Highway 71, Carbon County Roads 401, 345, 505W, and 505E. Following the Planning Commission meeting and decision to recommend approval of the CUP with conditions, held on September 17, 2012, PCW withdrew its request for setback waivers from State Highway 71 and Carbon County Roads 345 and 401. PCW, however, did continue its request for setback waivers from Carbon County Roads 505W and 505E before the Board of County Commissioners.

6. Carbon County Zoning Resolution Section 5.11(d)(23)(a) requires the commencement of construction within two (2) years of the approval of the Conditional Use Permit and that the Project be operational, or starting to generate electricity, within two (2) years

of the date of commencement of construction. PCW requested a waiver from the Board of County Commissioners from the requirement that the Project must be operational within two (2) years of the date of commencement of construction. The requested waiver, in this regard, was for an additional year so that PCW would have three (3) years, rather than two (2) years, to become operational following the commencement of construction.

7. On September 24, 2012, PCW submitted further supplementation to the Planning Director of the Carbon County Department of Planning and Development. This additional information also supplemented the Application with information required by *Section 5.11 of the Carbon County Zoning Regulations of 2003, as amended*, and provided further information that was discussed or presented at the September 17, 2012 meeting of the Carbon County Planning and Zoning Commission. This information was submitted as the Second Addendum to PCW's Application for Conditional Use Permit.

II.
CARBON COUNTY BOARD OF COUNTY COMMISSIONERS'
PRIOR PROCEEDINGS AND DELIBERATIONS

8. On October 2, 2012, the Carbon County Board of County Commissioners, pursuant to *Section 5.11 of the Carbon County Zoning Regulations of 2003, as amended*, and pursuant to W.S. § 18-5-501 *et seq.* held a public meeting and convened a public hearing for purposes of affording an opportunity for members of the public to comment on the CCSM Project.

9. Numerous members of the public attended the public hearing and commented upon the CCSM Project. The public comments both favored and opposed the CCSM Project. All comments were considered by the Board of County Commissioners prior to taking action,

following the conclusion of the public hearing on the recommendation of the Carbon County Planning and Zoning Commission to grant the Conditional Use Permit with conditions.

10. The Board of County Commissioners specifically found that the Application was reviewed and considered pursuant to all relevant provisions of:

- a. W.S. § 18-5-501, Wind Energy Facilities
- b. Carbon County Comprehensive Land Use Plan, as amended
- c. Carbon County Zoning Resolution of 2003, as amended, specifically Section 5.11 – Wind Energy Facilities Overlay District

11. The Board of County Commissioners made specific and detailed findings of fact as reflected in the public deliberations of its October 2, 2012 meeting, which among other things, recognized that the Board of County Commissioners had received certification of the Carbon County Planning and Zoning Commission that the CCSM Project will comply with standards required by W.S. § 18-5-504 and with all applicable zoning and county land use regulations. The Board of County Commissioners also determined that PCW's application for the CCSM Project meets all standards and requirements of W.S. § 18-5-501 *et seq.* and all applicable zoning and county land use regulations.

12. Further, the Board of County Commissioners found that the CCSM Project is in general conformance with the Carbon County Comprehensive Land Use Plan, as amended, and otherwise promotes the health, safety and general welfare of the residents of Carbon County.

13. The Board of County Commissioners, following the entry of the above-referenced specific findings into the record of its October 2, 2012 meeting voted unanimously to approve the Application for Conditional Use Permit with conditions as are more fully set forth in *Resolution No. 2012-43*, a copy of which is attached hereto and made a part hereof by this reference, as Attachment 1.

14. The Board of County Commissioners also acted upon PCW's request for waiver of the setback requirements set forth at *Section 5.11(d)(6) of the Carbon County Zoning Resolution of 2003, as amended*, for Carbon County Road 505E – north of Red Rim Grizzly WHMA. The Board, as more fully set forth in the attached *Resolution No. 2012-43*, approved the setback waiver for a portion of County Road 505E from ¼ mile to 110% of the tower (tip height).

15. The Board of County Commissioners also granted the request for waiver made by PCW from the requirement that the Project must be operational within two (2) years of the commencement of construction. *5.11 (23)(a) of the 2003 Zoning Resolution, as amended*. As more fully set forth within the attached *Resolution No. 2012-43*, the Board of County Commissioners stated that if the CCSM Project is not operational within three (3) years from the date of commencement of construction, the conditional use permit shall expire, rather than the two (2) year requirement set forth in 5.11 (23)(a) of the 2003 Zoning Resolution, as amended.

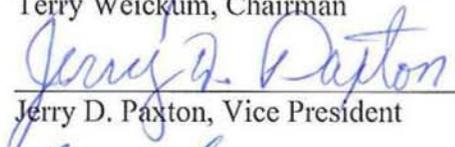
16. Pursuant to *5.11 (2)(b) of the 2003 Zoning Resolution, as amended*, and Resolution No. 2012-43, Paragraph 6, the Board also approved of the color selected by PCW for the CCSM Project.

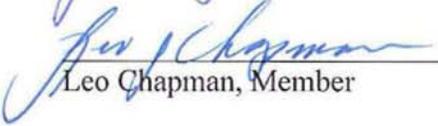
THEREFORE, the Carbon County Board of County Commissioners, in further compliance with W.S. § 18-5-507, hereby issues its opinion regarding the decision and findings made on October 2, 2012, “approving the Conditional use Permit – Commercial Wind Energy Facility (C.U.W. Case #2012-01) as certified to them in writing by the Carbon County Planning and Zoning Commission in ranching, agriculture, mining (RAM) zone for the Chokecherry and Sierra Madre Wind Energy Project.”

Presented, read, and adopted at a regularly scheduled meeting of the Board of County Commissioners of Carbon County, Wyoming, this 18th day of October, 2012.

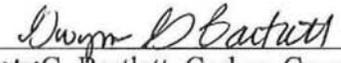
Board of County Commissioners of Carbon County,
Wyoming

BY: 
Terry Weickum, Chairman


Jerry D. Paxton, Vice President


Leo Chapman, Member

ATTEST:


Gwynn G. Bartlett, Carbon County Clerk

Resolution No. 2012 - 43

A Resolution of the Board of County Commissioners of Carbon County, Wyoming adopting the recommendation of the Carbon County Planning and Zoning Commission.

C.U.W. Case File #2012-01

Commercial Wind Energy Facility

"CHOKECHERRY AND SIERRA MADRE WIND ENERGY PROJECT"

WHEREAS, pursuant to Wyo. Stat. Ann. Title 18, Ch. 5, Art. 5 Wind Energy Facilities; and 18-5-502, County Regulation of Wind Energy Project; and

WHEREAS, pursuant to Section 5.11 – Wind Energy Facilities-Overlay District of the Carbon County Zoning Resolution of 2003, as amended, the Carbon County Planning and Zoning Commission held a public meeting on Monday, September 17, 2012, which said meeting was advertised by public notice prior to said meeting; and

WHEREAS, at said public meeting, the Carbon County Planning and Zoning Commission provided the public the opportunity to comment and the Carbon County Planning and Zoning Commission considered any public comments which were made at said meeting; and

WHEREAS, at the conclusion of said meeting, the Carbon County Planning and Zoning Commission voted to certify in writing its recommendation to the Carbon County Board of County Commissioners pursuant to the Carbon County Zoning Resolution of 2003, as amended, specifically, Section 5.11 – Wind Energy Facilities-Overlay District (Item #14 f), for Carbon County, Wyoming; and

WHEREAS, notice of the proposed Wind Energy Facility was published by the Applicant twice in two different weeks in the official newspaper of general circulation in Carbon County at least twenty (20) days prior to the public hearing required by Section 5.11 and W.S. §18-5-506. The notice, published in the Rawlins Daily Times on July 13, 2012 and July 14, 2012 and in the Saratoga Sun on July 18, 2012, included a brief summary of the Wind Energy Facility, invited the public to submit comments and identified the time and date of the hearing. As required by Section 5.11(d)(14)(d), the Applicant did submit affidavits of public notice as part of the second addendum to the application for Conditional Use Permit prior to the Board's hearing. In addition, the County prepared a notice and published said notice in three newspapers of general circulation in the County that included a brief summary of the proposed Wind Energy Facility and invited the public to submit comments and identified the time and date of the hearing.

WHEREAS, the Applicant has provided to Carbon County an affidavit which certified that the Applicant has undertaken reasonable efforts to provide written notice to all owners of land within one (1) mile of the property line of the proposed Wind Energy Facility and to all cities and towns located within twenty (20) miles of the Wind Energy Facility; and

WHEREAS, the Applicant has provided to Carbon County an affidavit which certified that the Applicant has undertaken reasonable efforts to provide written notice to the record owners of mineral rights located on or under the lands where the proposed CCSM Project will be constructed. Said notice included a statement of the applicants intention to construct the Chokecherry and Sierra Madre Wind Energy Project, features of the project, a legal description of the boundaries of the project, and where the application may be examined and persons to contact for additional information.

WHEREAS, the Carbon County Board of County Commissioners, pursuant to Section 5.11 – Wind Energy Facilities-Overlay District of the Carbon County Zoning Resolution of 2003, as amended, and Wyo. Stat. Ann. Title 18, Ch. 5, Art. 5, Wind Energy Facilities and after receipt of said certified recommendation from the Carbon County Planning and Zoning Commission; held a public hearing, which said public hearing occurred on Tuesday, October 2, 2012; and

WHEREAS, at said public hearing, the Carbon County Board of County Commissioners provided the opportunity for the public to comment and for the Carbon County Board of County Commissioners to consider any comments which were made on the proposed Wind Energy Facility; and

WHEREAS, the Carbon County Board of County Commissioners in considering said application have also reviewed and considered Wyo. Stat. Ann. Title 18, Ch. 5, Art. 5 Wind Energy Facilities and the Carbon County Comprehensive Land Use Plan, as amended; and the Carbon County Zoning Resolution of 2003, as amended, specifically, Section 5.11 – Wind Energy Facilities-Overlay District; and

WHEREAS, In accordance with Section 5.11 Wind Energy Facilities-Overlay District (d)(6) Commercial WECS Setbacks and Standards, the Board has the authority to waive minimum setback standards and the applicant has requested setback waivers from the following county roads:

1. Setbacks: The Board hereby approves the setback waiver from 1/4 mile to 110% of the tower (tip) height for the following:
 - a. Carbon County Road #505E-North of Red Rim Grizzly WHMA

WHEREAS, the Carbon County Board of County Commissioners have received certification that the proposed WECS project will comply with all the standards required by W.S. 18-5-504; and received certification that the proposed WECS project will comply with all applicable zoning and county land use regulations; and determined that the proposed Wind Energy Facility is in general conformance with the Carbon County Comprehensive Land Use Plan, as amended, and otherwise promotes the health, safety and general welfare of the residents of Carbon County; and

WHEREAS, at a regularly scheduled meeting of the Carbon County Board of County Commissioners, by majority vote, the Carbon County Board of County Commissioners moved to conditionally approve the following Conditional Use Permit Application for a Commercial Wind Energy Facility.

C.U.W. Case #2012-01 – Power Company of Wyoming, LLC:

Request for a Conditional Use Permit for a Commercial Wind Energy Facility in a Ranching, Agriculture, Mining (RAM) Zone. The request is to allow the applicant (Power Company of Wyoming) to install, construct, operate, and maintain the “Chokecherry and Sierra Madre Wind Energy Project,” as more specifically described in the Conditional Use Permit application dated July 17, 2012 and as amended by Appendix Q, the PCW Addendum Letter-July 2012 and the second addendum to Application for Conditional Use Permit dated September 24, 2012.

CONDITIONS OF APPROVAL:

1. Nothing in this permit's conditions is intended to preempt other applicable State and Federal laws or regulations. All WECS Project facilities shall be constructed to meet and be maintained in compliance with all Federal, State, and County requirements, including all Wyoming Industrial Siting Council requirements. If compliance issues arise at any time during the review, development or operational phases, the Applicant(s) or Owner(s), at the discretion of the County may be requested to provide additional studies or reports prepared by qualified professionals addressing the issues and mitigation measures that may be needed to maintain compliance.
2. Conditional Use Permit is granted for up to 1,000 wind turbines and accessory uses as generally described in the application. The Applicant(s) shall notify the Carbon County Planning & Development Department in writing of any material changes to the Project subsequent to the County issuance of the Conditional Use Permit.

3. This permit is subject to final approval and issuance of a permit by the Industrial Siting Council and Right of Way Grants by the Bureau of Land Management. The Applicant(s) shall submit a copy of all subsequent Federal and State approvals, including all required studies, reports and certifications prior to the issuance of any applicable building permits.
4. All structures proposed within the application area require a building permit. Multiple wind energy facilities\turbines may be permitted with a single application as long as the site plan or plan of development includes all relevant details adequate to determine general conformance with the applicable standards and conditional use permit conditions. Structures other than wind energy facilities\turbines require an individual building permit application for each structure.
5. Each building permit application shall include a letter of consent from the surface private property owners upon which the WECS project will be located or other legal documentation which demonstrate consent of the surface property owner.
6. When not conflicting with colors required by the Federal Aviation Administration or other Federal Agencies, towers and blades shall be painted off-white or another non-reflective, unobtrusive color. The color selected is intended to help the Project blend with the natural visual character of the area. The Applicant(s) shall submit a visual rendering of the proposed towers with color scheme for approval by the Board.
7. The Applicant(s) shall submit a Public Road Use Agreement (PRUA) for review by the County Road Superintendent and County Attorney and approval by the Board of County Commissioners prior to use of County roads by the Project's traffic. The PRUA shall ensure adequate public access on public roads during construction on roads impacted by Project's construction. The PRUA shall include a pre-construction baseline survey, paid for by the Applicant(s), to determine existing road conditions for assessing potential damage to roadways due to the Project. The PRUA shall include financial assurance in a reasonable amount at the discretion of the Board of County Commissioners, for the purpose of repairing any damage to public roads caused by constructing, operating, or maintaining the WECS Project. The amount of financial assurance shall be submitted as an estimate signed and sealed by a Wyoming Licensed Engineer. Any degradation to, or damage of public roads or other infrastructure by the Applicant(s) or others involved with the installation, operation, or maintenance of the WECS Project will require the Applicant(s) to bear all costs required to

return the public roads or other infrastructure to their original or better condition prior to their use in the installation, operation, or maintenance of the WECS Project.

8. Site Specific Setback Waiver: The Applicant(s) shall submit site specific tower locations as part of the building permit application. Any tower proposed to be closer to Highway 71, Carbon County Road #401 and Carbon County Road #505W than the minimum setbacks (.25 mile) as listed in the County Commercial WECS Setbacks and Standards shall be forwarded to the Board of County Commissioners to request a setback waiver. The Applicant(s) shall submit an explanation and justification as to why each setback waiver is necessary. The foregoing requirements for setback waivers shall not apply to waivers: (1) approved by the Board in connection with the Board's approval of the Conditional Use Permit; and (2) that can be given by affected property owners under the County Commercial WECS Setbacks and Standards.

9. Operations and Maintenance:
 - a. Routine scheduled maintenance shall include the repainting of equipment and structures, and maintenance of grounds or landscaping as appropriate to the location.
 - b. All solid wastes and hazardous materials related to the construction, operation, maintenance and decommissioning of a Project shall be handled, stored or disposed of in accordance with the approved waste management plan and in accordance with all applicable Federal, State, and County laws and regulations. The permittee shall be responsible for litter control including the regular clean up of litter blown from dumpsters and similar storage areas.
 - c. On April 1st of every even numbered year after the third anniversary of the permit, the Owner(s) or Operator(s) of the WECS shall submit to the Carbon County Planning and Development Department a statement that lists all WECS currently inoperative for longer than six continuous (6) months. All WECS that remain inoperative for eighteen (18) continuous months or longer must be removed unless the Owner(s) provides a written plan and schedule acceptable to the Carbon County Planning and Zoning Commission for refurbishing and/or reactivating the inoperative WECS.
 - d. The Owner(s) or Operator(s) of the WECS shall control and eradicate noxious and invasive weed species within the disturbed areas of the project. Weed control shall be maintained as directed by the Carbon County Weed and Pest District or the appropriate public entity having jurisdiction.

10. The Applicant(s) shall provide the applicable wireless telecommunication service providers and local emergency service provider(s) (911 operators) copies of the Project's summary and site plan. To the extent that the above provider(s) demonstrate a likelihood of interference with their communications resulting from the WECS(s), the Applicant(s) shall take reasonable measures to mitigate such anticipated interference.
 - a. If, after construction of the WECS(s), the Owner(s) or Operator(s) receives a written complaint related to interference with emergency services communications, local broadcast of residential television or other communication venues, the Owner(s) or Operator(s) shall take steps to respond to the complaint and take reasonable measures as necessary to alleviate or mitigate the interference.
 - b. The Owner(s) or Operator(s) shall mitigate light impact on existing residences that are visible within one (1) mile of an existing residence and still meet applicable FAA requirements. Examples of light mitigation include but are not limited to: downward directed lighting, use of shielded light fixtures, eliminating lighting that casts light onto adjacent property.

11. If there are any variations in the Project's construction which would materially impact the original Emergency Management Plan, the Emergency Management Plan shall be supplemented and revised following construction of the WECS project and submitted for review and comment by the County Sheriff, Fire Warden, and Emergency Management Coordinator.

12. To the extent not inconsistent with confidentiality and security obligations under State and/or Federal law, the Owner(s) or Operator(s) shall provide the Carbon County Planning and Development Department with a detailed map of the site within ninety (90) days of when operation begins. The Project Map will include the geographic coordinates of each WECS structure, all roads within the WECS Project area, and public roads and turnouts connecting to roads of the WECS Project. The Project Map shall be updated by the Owner(s) or Operator(s) every five (5) years and after the completion of any significant additional construction.

13. The Owner(s) or Operator(s) of the WECS Project shall maintain a current General Liability Policy issued by an insurance company authorized to do business in Wyoming covering bodily injury and property damage with limits of at least \$1 million per occurrence and \$1 million in the aggregate. The Applicant(s) shall provide proof of insurance to the Board of County Commissioners prior to the Board's approval of the submitted application or otherwise demonstrate adequate self-insurance. If the application is approved, the Owner(s) or Operator(s) of the WECS shall provide proof of insurance to the Board annually. Proof of insurance may be made by providing a certificate of insurance.
14. The Applicant(s) committed mitigation as included within the application and as more specifically defined in Volume II, Appendix C, of the Final Environmental Impact Statement shall become conditions by reference.
15. Except with respect to a collateral assignment in connection with project financing, no conditional use permit shall be transferred without the prior approval of the Board of County Commissioners. Board's approval shall not be unreasonably withheld upon good cause shown. Any transferee shall agree in writing to be bound by the terms of the Conditional Use Permit.
16. The permit holder shall provide an annual update of the progress of the WECS Project to the County Planning and Zoning Commission until construction is completed. The annual update shall include a written summary of Project's progress and include an appearance at a regularly scheduled County Planning and Zoning Commission meeting.
17. In the event the actions occurring pursuant to this permit are found to be in material violation of the terms and conditions of this permit, or are found to have been obtained by fraud, this permit shall be subject to all remedies allowed by law. Violation of any of the above restrictions can be grounds for terminating this Conditional Use Permit.

**NOW THEREFORE BE IT RESOLVED BY THE CARBON COUNTY BOARD OF
COUNTY COMMISSIONERS OF CARBON COUNTY, WYOMING:**

1. That the Carbon County Board of County Commissioners, hereby approve the Conditional Use Permit – Commercial Wind Energy Facility (C.U.W. Case #2012-01) as certified to them in writing by the Carbon County Planning and Zoning Commission in the Ranching, Agriculture, Mining (RAM) Zone for the "Chokecherry and Sierra Madre Wind Energy Project".

2. The Project must be commenced within two (2) years from the date of approval. If the Project is not commenced within two (2) years from the date of approval then the conditional use permit shall expire and become null and void and be of no further effect. If the WECS Project is not operational within two (3) years from the date of commencement, then the conditional use permit shall expire and become null and void and be of no further effect. Commencement of construction of Project Structures, buildings and other physical assets, including roadways, of the Project shall be considered commencement of the project. For the purpose of this permit the Project shall be considered to be operational if the project is generating electricity.

PRESENTED, READ, AND ADOPTED at a regularly scheduled meeting of the Board of County Commissioners of Carbon County, Wyoming, this 2nd day of October, 2012.

**BOARD OF COUNTY COMMISSIONERS OF
CARBON COUNTY, WYOMING**

By: _____

Terry Wackum, Chairman

Jerry D. Paxton, Vice Chair

Lco Chapman, Member

Attest:

Gwynn G. Bartlett, Carbon County Clerk

Nathy Turner, Deputy Clerk 8