BEFORE THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY
INDUSTRIAL SITING DIVISION

STATE OF WYOMING

IN THE MATTER OF THE INDUSTRIAL SITING PERMIT APPLICATION OF POWER COMPANY OF WYOMING, LLC	)))	OAH DOCKET NO. 14-097-020 DOCKET NO. DEQ/ISC 12-07

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 August 5 – 6, 2014, for a contested case evidentiary hearing on whether the Council should issue a permit for the construction and operation of the Chokecherry and Sierra Madre Wind Energy Project. Council members present for the proceedings included Chairman Shawn Warner, Sandy Shuptrine, Gregg Bierei, James Miller, Richard O'Gara, Peter Brandjord, and John Corra. Karl D. Anderson, 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 proceedings.

The Applicant, Power Company of Wyoming, LLC (PCW), appeared by and through counsel, Paul J. Hickey, O'Kelley H. Pearson and Roxane J. Perruso. The Industrial Siting Division (Division) appeared by and through counsel, Assistant Attorney General Andrew J. Kuhlmann. Fifteen entities filed notices to become parties and fourteen of those entities participated in the evidentiary hearing, including the Carbon County Commissioners, represented by Chairman Leo J. Chapman; Albany County

Commissioners, represented by Commissioner Tim Chestnut; Sweetwater County Commissioners, represented by Marc Dedenbach; the Voices of the Valley, represented by Vice President Joseph Elder; Saratoga-Encampment-Rawlins Conservation District, represented by Leanne Correll; City of Rawlins, represented by City Attorney Amy L. Bach; the City of Laramie, represented by Assistant City Manager David Derragon; the Town of Saratoga, represented by Mayor John Zeiger; the Town of Encampment, represented by Mayor Greg Salisbury; the Town of Riverside, represented by Mayor Ronald L. Bedwell; the Town of Elk Mountain, represented by Linda Crane; the Town of Hanna, represented by Council member Linda Wagner; the Town of Sinclair, represented by Major Michelle Serres; and the Wyoming Building and Construction Trades Council, represented by Scott Norris. The Town of Medicine Bow timely filed notice to become a party but failed to appear at the hearing. PCW's Exhibits 1 through 16, the Division's Exhibits 1 through 3, and the Carbon County Board of County Commissioners' Exhibit 1 were admitted for purposes of the contested care hearing. The Council received one limited appearance statement in this case prior to the close of the evidentiary hearing. The Council has considered the evidence and arguments of the Applicant and the parties and makes the following findings:

I. JURISDICTION

Wyoming Statutes Annotated § 35-12-106(a) (LexisNexis 2013) provides that "[n]o 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 ninety-three million eight hundred thousand dollars ($193,800,000.00) and any commercial facility generating electricity from wind and associated collector systems that consists of 30 or more wind turbines. *See* Wyo. Stat. Ann. § 35-12-102(a)(vii) (LexisNexis 2013).

Wyoming Statutes Annotated § 35-12-110(d) (LexisNexis 2013) provides that "[o]n 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."

Wyoming Statutes Annotated § 35-12-110(f) (LexisNexis 2013) 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.

The contested case procedures of the Wyoming Administrative Procedure Act apply to the hearing. Wyo. Stat. Ann. § 35-12-112 (LexisNexis 2013).

Wyoming Statutes Annotated § 35-12-113(a) (LexisNexis 2013) provides that "[w]ithin 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 May 12, 2014, PCW submitted an application to the Division for an Industrial Siting permit to allow construction and operation of the Chokecherry and Sierra Madre Wind Energy Project (the CCSM Project) to be located in Carbon County, Wyoming, on portions of the private land mostly owned and operated by Overland Trail Cattle Ranch and federal land managed by the Bureau of Land Management (BLM). At a previously held jurisdictional meeting on April 25, 2012, PCW showed cost estimates for the total construction were in excess of the $193.8 million statutory jurisdictional limit of the Council. The proposed CCSM Project also will consist of more than 30 electricity generating wind turbines. Therefore, this Council has jurisdiction to hear and decide this matter.

II. STATEMENT OF THE CASE

PCW proposes to construct and operate the CCSM Project which consists of 1,000 wind turbines capable of generating up to 3,000 megawatts (MW) of wind energy. PCW seeks a permit from the Council to construct, operate, maintain, and decommission the CCSM Project.

On May 12, 2014, PCW filed its Application for an Industrial Siting permit pursuant to Wyoming Statutes Annotated § 35-12-109 (LexisNexis 2013) to construct the CCSM Project.

As originally submitted, the Division's staff found that the Application was lacking certain information and notified PCW of the deficiencies. Upon submittal of the additional information, the Division's staff determined that PCW's Application was complete and in full compliance with Wyoming law and was ready for the Council's determination as to whether a permit should be issued. PCW requested that the Council approve the Application as submitted, with the additional conditions proposed by the Division, and also requested four variances from Council rules governing decommissioning, reclamation, and financial assurance prior to construction. Fourteen of fifteen parties appeared at the evidentiary hearing and all were in favor of issuing the permit.

III. ISSUES AND CONTENTIONS

The sole issue in this case is whether PCW has proven, by a preponderance of the evidence, that the Application regarding the CCSM Project meets the requirements of the Wyoming Industrial Development Information and Siting Act, Wyo. Stat. Ann. §§ 35-12-101 through −119 (LexisNexis 2013), and the Industrial Development Information and Siting Rules and Regulations, ch. 1, § 8 (2014) (Division's Rules) governing the proposed CCSM Project. If the Council decides to issue the Industrial Siting permit, it must also decide what, if any, conditions to place on the permit, as well as whether to

grant three requested variances from the Division's Rules governing decommissioning and reclamation, and one variance regarding financial assurances.

PCW asserted its Application (in conjunction with the supplemental exhibits) was complete and in compliance with all applicable laws, would not pose a threat of serious injury to the environment, and would not substantially impair the health, safety, or welfare of the inhabitants in the affected area. PCW agreed with the conditions proposed by the Division to be placed upon the CCSM Project. PCW requested three variances from the Division's Rules with regard to the removal of turbine foundations, cabling, and vegetative reclamation, in favor of the Bureau of Reclamation's (BLM) standards. PCW also requested a variance with regard to financial assurance prior to construction of the project in favor of a graduated bonding regime.

The Carbon County Commissioners, Albany County Commissioners, Sweetwater County Commissioners, Cities of Rawlins and Laramie, and the Towns of Saratoga, Encampment, Riverside, Elk Mountain, Hanna, Sinclair, and Medicine Bow, as well as the Voices of the Valley and the Wyoming Building and Construction Trades Council were all in support of the CCSM Project.

The Saratoga-Encampment-Rawlins Conservation District was generally in support of the CCSM Project but was opposed to the request for three variances regarding decommissioning and reclamation.

IV. FINDINGS OF FACT

A. Procedural Background

1. PCW is a limited liability company organized in Delaware and authorized to do business in Wyoming. The company is, indirectly, wholly-owned by The Anschutz Corporation. PCW proposes to construct and operate the CCSM Project located in Carbon County, Wyoming, on checkerboard portions of the private land mostly owned and operated by Overland Trail Cattle Ranch and federal land managed by the BLM. The CCSM Project consists of 1,000 wind turbines capable of generating up to 3,000 MW of wind energy, along with all associated facilities necessary to generate and deliver electricity to the desert Southwest through the transmission grid. *PCW Exs. 1, 2.*

2. This case dates back to a jurisdictional meeting held with the Division on April 25, 2012, in which PCW established that cost estimates for the CCSM Project exceeded the statutory dollar threshold of $193,800,000.00 and consisted of at least 30 wind turbines in all phases of construction. On September 7, 2012, the ISD issued its Notice of Jurisdiction, advising PCW that the project was subject to the jurisdiction of the Wyoming Industrial Development Information and Siting Act, Wyo. Stat. Ann. §§ 35-12-101 through −119, and that a permit was required to construct and operate the CCSM Project. *Division's Ex. 1, p. 4.*

3. On October 2, 2012, the Carbon County Board of County Commissioners, after opportunity for public hearing, voted unanimously to approve PCW's application for a Conditional Use Permit with regard to the CCSM Project. *CCC's Ex. 1.*

4. A pre-application filing meeting was held on October 25, 2012. PCW initially intended to file its Application in January 2013 but ultimately determined it would be more appropriate to file in 2014. Thereafter, on April 22, 2014, PCW met with the Division for its final pre-application filing meeting. PCW filed its Application, with Appendices A through V, with the Division on May 12, 2014. PCW initially filed Appendix G, containing documentation of financial capability, as confidential. On June 27, 2014, PCW resubmitted Appendix G as a public document. *PCW Exs. 1, 2.*

5. All of the materials constituting the filing of the Application were received by the Division on May 12, 2014. The Application consisted of 75 hard copies of the Application document, *Wyoming Industrial Development Information and Siting Act Section 109 Permit Application;* 45 electronic copies of that document and all appendices; the payment of the application fee in the amount of $70,076.00, as required by Wyoming Statutes Annotated § 35-12-109(b); a certification by Roxane J. Perruso, Vice-President and Secretary of PCW, attesting to the truthfulness and accuracy of the Application; and a transmittal letter by Joseph H. Tippetts, Associate General Counsel. *PCW's Ex. 2, §§ 15-1, p. 482.*

6. The Division staff checked the contents of the Application against the applicable statutes and Division Rules and determined that additional information was necessary. On June 11, 2014, the Division sent PCW a Notice of Deficiency requesting information regarding ten separate, enumerated items. On July 10, 2014, PCW provided a response to the Division's Notice of Deficiency, which the Division's staff and PCW incorporated into the Application. On July 18, 2014, PCW was notified by the Division

that the Application was complete. The Division also recommended 19 permit conditions should the Council grant the permit. *Division's Ex. 1, §§ E; H.*

7. Upon review of the Application, the Administrator of the Division determined the study area for potential impacts of the CCSM Project included Carbon County, Sweetwater County, Albany County, and Natrona County. The Administrator determined the areas primarily affected were the facility site, the municipalities of Rawlins, Baggs, Dixon, Elk Mountain, Encampment, Hanna, Medicine Bow, Riverside, Saratoga, Sinclair, Laramie, Rock River, and Wamsutter, and the inclusive areas of Carbon, Albany, and Sweetwater Counties. Examination copies of the Application were then filed on May 13, 2014, with the Carbon, Albany, and Sweetwater County Clerks. *Division's Ex. 1, p. 5.*

8. Also on May 13, 2014, the Division's staff distributed copies of the Application to the various state agencies, local governments, and school districts within the area primarily affected pursuant to Wyo. Stat. Ann. § 35-12-110(b) (LexisNexis 2013) in order to obtain information and recommendations relative to the impact of the proposed CCSM Project as it applied to each agency's area of expertise. Sixteen of the eighteen state agencies provided timely responses. Only the State Engineer's Office initially recommended denial of the Application until PCW estimated water usage by the entire workforce inclusive of the workers located off-site. In a letter dated July 9, 2014, PCW provided the estimated water usage. The State Engineer's Office responded to the Division on July 14, 2014, that PCW's response satisfied the concerns raised and

recommended that the application process proceed. *Division's Ex. 1, pp. 5 – 6; Division's Ex. 2, p. 9.*

9. Pursuant to Wyo. Stat. Ann. § 35-12-110, the Division's staff placed two separate legal advertisements in five newspapers, publishing the location and description of the CCSM Project, the locations where the Application was available for review, and notice of the Council's hearing on the Application. *Division's Ex. 1, p. 7.*

10. Prior to submitting its Application, PCW notified and described the CCSM Project to local governments in the study area and held open houses for the public to gain information regarding the CCSM Project and to provide comments. A list of all meetings and details of the public and government involvement is found in Section 4 and Appendix K of the Application, titled Public Outreach and Involvement. In summary, PCW conducted 49 public meetings and presentations between 2008 and 2013 regarding the proposed project; 12 of those meetings took place in 2013. *PCW's Ex. 2, Application, § 4, Public Outreach and Involvement; App. K; Division's Ex. 1, p. 4.*

B. <u>Project Specific Documentary Evidence</u>

11. The CCSM Project is a single project to be constructed in two phases. PCW plans to construct Phase I, consisting of approximately 500 wind energy turbines and an associated railway distribution facility, access road, and rock quarry, from approximately the fourth quarter of 2014 to 2018. Phase II will consist of 500 wind energy turbines and their associated access roads constructed from approximately 2018 to August 2021. Construction is anticipated to peak at 945 workers during the third quarter of 2017. PCW estimates that the long-term operations workforce will consist of 114 workers, including

supervisors, operators, maintenance staff, electricians, and environmental monitors. *PCW's Ex. 2, § 7.*

12. PCW plans to construct a rail distribution facility and a road network that are internal to the CCSM Project. To reduce the effects on local roadways that transporting equipment, components, and materials necessary to build the CCSM Project might have, PCW will bring as many of those items as practical to the CCSM Project by rail. Since the existing nearby rail facilities cannot support the load requirements of the CCSM Project, PCW plans to build the West Sinclair Rail Facility adjacent to the Union Pacific main line located along the northern boundary of the CCSM Project site. The West Sinclair Rail Facility will transport construction materials, wind turbine components, and other equipment to the CCSM Project site. The primary delivery staging area will be located adjacent to the rail facility. Any materials and equipment for the CCSM Project that arrive outside the rail facility are expected to use I-80 and Exit 221 (East Sinclair) to reach the CCSM Project's northern entrance. The main thoroughfare between the CCSM Project facilities and entrances is the haul road. An internal road network will be established to interconnect the CCSM Project facilities, including wind turbines, operations and maintenance buildings, substations, and access points. *PCW's Ex. 2, Application at pp. 6-8 – 6-12.*

13. PCW plans to construct a rock quarry to provide a portion of the aggregate materials for the construction of the CCSM Project. The rock quarry will be developed on private land at the location of a previous rock quarry. The quarry is internal to the CCSM

Project, so there will be no impact on local roads from quarry operations. *PCW's Ex. 2, Application at p. 6-9.*

14. The water supply needed for dust suppression, road compaction, concrete production, and domestic and sanitary uses was estimated at approximately 635 acre-feet of water over the eight-year construction period. Estimates of long-term water demand for the CCSM Project are for less than 50 acre-feet of water per year during operations and maintenance and less than 100 acre-feet per year during the three-year decommissioning period. Because the CCSM Project proposes to use less than 800 acre-feet of water of the state annually, PCW was not required to submit a water yield or water supply analysis to the State Engineer in accordance with Wyo. Stat. Ann. § 35-12-108 (LexisNexis 2013). *PCW's Ex. 2, Application at pp. 12-14 – 12-28.*

15. PCW developed a Workforce Housing Plan as depicted in Section 11 of its Application. PCW anticipated a split of the workforce requiring a variety of housing options including hotel/motel rooms, RV sites, rental units, and a construction camp housing 250 employees. PCW also provided confirmations and commitments from hotels in the area primarily affected to accommodate the workforce. *PCW's Ex. 2, Application at § 11; App. Q; PCW's Ex. 16.*

C. <u>Financial Assurance</u>

16. PCW originally filed Appendix G, containing documentation of financial capability, as confidential. On June 27, 2014, PCW resubmitted Appendix G as a public document. PCW submitted the following information to establish financial capability to construct, operate, maintain, decommission, and reclaim the CCSM Project:

(1) A commitment letter from PCW's parent company, The Anschutz Corporation, which describes the corporation's reputation for success as a large project developer, commitment to the CCSM Project, its financial capabilities and the resources the corporation has already expended on behalf of the CCSM Project.

(2) The affidavit of Wayne Barnes, Vice-President and Chief Financial Officer of Anschutz Company, which wholly owns The Anschutz Corporation. Mr. Barnes attests to the fact that the Anschutz Company and The Anschutz Corporation are highly-experienced project development companies with substantial resources and relationships and a strong track record with large development projects.

(3) A letter from KPMG LLP, the independent financial auditors of the Anschutz Company, which provided that, according to the consolidated financial statements of the Anschutz Company as of December 31, 2013, the stockholders' equity was in excess of $1.5 billion.

(4) A letter from an investment bank sharing its view that the necessary capital (both debt and equity) can be raised to successfully finance the CCSM Project.

(5) Letters from Travelers Casualty and Surety Company of America and Zurich North America Insurance Company regarding providing surety bonding for the decommissioning and reclamation of the CCSM Project. Those letters attested to the Anschutz Company's ability to provide adequate surety bonds for the estimated costs of decommissioning and reclamation.

PCW's Ex. 2, Application, App. G.

D. <u>PCW's Request for Variances</u>

17. The CCSM Project is located primarily within an ownership region known as the "checkerboard," in which land ownership alternates between private land (mostly owned by the Overland Trail Cattle Ranch) and federal land managed by BLM. The BLM has jurisdiction over the federal lands within the CCSM Project and will require

PCW to provide satisfactory financial assurance for PCW's decommissioning and reclamation obligations before authorizing PCW to conduct material surface disturbance activities on those federal lands. Likewise, the Council has jurisdiction over PCW's decommissioning and reclamation obligations on the private land, as well as financial assurance requirements. *PCW's Ex. 2, Application at p. 8-1.*

18. As a result of BLM and Council overlapping jurisdictions, PCW has requested four variances with regard to decommissioning, reclamation, and financial assurance. *PCW's Ex. 2, Application, pp. 8-2 – 8-9.*

19. With respect to decommissioning, PCW requested variances from certain prescriptive decommissioning requirements listed in the Division's Rules, Chapter 1, Section 9(a)(i) to make state and federal standards for decommissioning consistent with a BLM requirement removing wind turbine foundations to a depth of 42 inches and allowing underground cable to remain undisturbed. *Id. at pp. 8-2 – 8-3.*

20. With respect to reclamation, PCW requested a variance from Council standards in favor of BLM reclamation standards. The Council requires that all surface disturbances be regraded and revegetated with a uniform perennial vegetative cover with a density of 90 percent native or adaptive background vegetative cover. BLM requires reclamation of 80 percent of predisturbance ground cover and 90 percent dominant species. *Id. at pp. 8-4 – 8-5.*

21. Finally, PCW must provide a site reclamation and decommissioning plan and associated financial assurances to ensure proper decommissioning and reclamation of the CCSM Project. As set forth more fully in Section 8.4.4 of the Application, PCW

requested a variance from the Division's Rules, Chapter 1, Section 9(d)(i), which requires that all financial assurances be in place prior to the commencement of construction, in favor of the graduated bonding regime proposed by PCW in Section 8 of the Application. Accordingly, PCW requested that the Council approve a variance that will allow PCW to provide a series of surety bonds that are commensurate with and correspond to each individual BLM right-of-way grant. The variance to allow graduated bonding would insure that adequate financial resources are in place prior to construction but will not require PCW to post bonds potentially years ahead of initiation of surface disturbance activities undertaken pursuant to a particular right-of-way grant. *Id. at pp. 8-6 – 8-9.*

E. <u>Impact Assistance Funds</u>

22. The PCW and the Division developed a forecast of impact assistance payments by quarter that will be distributed throughout the construction period because of the sales and use tax contribution to the state from the CCSM Project. The forecasted average quarterly impact assistance payment is $1.67 million. The forecasted yearly impact assistance payment is $6.05 million. The Division recommended the distribution of the funds, as was agreed to between the counties and their affected municipalities, at 94 percent to Carbon County, 3 percent to Albany County, and 3 percent to Sweetwater County. *PCW's Ex. 2, Application, Table 10-34 at p. 10-67; Division's Ex. 1, p. 15; Attach. 9.*

F. Hearing Testimonial Evidence

i. Applicant's Witnesses

(a) Bill Miller

23. Bill Miller (Miller) is the Senior Vice-President of Energy and Land Resources for the Anschutz Corporation, and the President and CEO of PCW and the Overland Trail Cattle Company. Miller has been employed with the corporation for 34 years. The Anschutz Company is a highly diversified enterprise that has operations across a huge array of industries including oil and gas exploration and production; pipeline development and operations; ranching and farming operations; rural energy and electrical transmission; lodging, recreation, and entertainment businesses; and the newspaper business. The CCSM Project is the first renewable energy project in Anschutz's portfolio. [Transcript of Proceedings (hereinafter Tr.) at pp. 16 – 18; 38]

24. Miller confirmed that PCW has a great deal of experience in developing, constructing, financing, and operating large infrastructure, oil and gas, and ranching projects around the world. Examples include the Pacific Pipeline Group, Staples Center in downtown Los Angeles, the LA Live Entertainment District, Anschutz Exploration Corporation, arenas in England and Germany, and several large ranching and other agricultural assets in Wyoming. [Tr. at pp. 17 – 22]

25. According to Miller, PCW began developing the CCSM Project in 2006. The CCSM Project will consist of 1,000 turbines and will be capable of generating up to 3,000 MW of electricity. The project is sited mostly within the Overland Trail Cattle Ranch. The Ranch is comprised of a combination of private, federal and state lands. The

project will involve establishing an on-site quarry for construction materials for the roads and turbine locations, a rail distribution facility, a haul road, electrical collector lines, substations, and a maintenance and operation facility within the project. [Tr. at pp. 23 – 26]

26. The initial markets for the CCSM Project will be the desert Southwest, which will include the states of California, Nevada, and Arizona. This is due to the population and commercial load growth of that area, and a recognized increase in the percentage of renewable energy due to federal and state policies dealing with emissions and greenhouse gases. The project is dependent upon the development, construction, and completion of the Transwest Express transmission lines which will run from Rawlins to an area south of Las Vegas, Nevada. [Tr. at pp. 26 – 27; 43]

27. To date, PCW has expended in excess of $45 million in the permitting and development process for the CCSM Project. The estimated cost for the wind project to be operating and commissioned is $5 billion. The revenues the project will generate for the local governments, Carbon County, and State of Wyoming are estimated at $800 million from property taxes, sales and use tax, and the wind generation tax. [Tr. at pp. 28 – 29]

(b) Wayne Barnes

28. Wayne Barnes (Barnes) is the Vice-President of Finance and Chief Financial Officer for both Anschutz Company and The Anschutz Corporation. Barnes explained that the Anschutz Company is the parent of The Anschutz Corporation. Wyoming Renewable Resources and the Overland Trail Cattle Company are owned by

the Anschutz Company. Wyoming Renewable Resources owns Power Company of Wyoming. [Tr. at pp. 46 – 47]

29. Barnes testified in conjunction with PCW's Exhibit 4 consisting of documents supporting PCW's financial capability and assurances. Based upon considerations that include discussions with Morgan Stanley, who is acting as financial advisor for the Anschutz Company, Anschutz has concluded that an appropriate capital structure for the CCSM Project would be to fund it with 35 percent equity (approximately $1.68 billion) and 65 percent debt (approximately $3.11 billion). As evidence of its financial strength, the Anschutz Company obtained a letter dated April 7, 2014 from KPMG, Anschutz's independent auditor, stating that Anschutz's stockholder equity as of December 31, 2013 (the date of the most recent KPMG annual audit) was in excess of $1.5 billion. *PCW's Ex. 4;* [Tr. at pp. 48 – 51]

30. Barnes confirmed that decommissioning and reclamation of the project is estimated at a range from $265 million to $345 million. Barnes confirmed that Travelers Insurance Company and Zurich Surety each provided letters of commitment to issue surety bonds in an amount up to $500 million. [Tr. at pp. 52 – 54]

31. Finally, Barnes testified that based upon his financial knowledge and experience, PCW had the financial capability to construct, maintain, operate, decommission, and reclaim the CCSM Project. [Tr. p. 54]

(c) Ryan Jacobson

32. Ryan Jacobson (Jacobson) is a professional engineer licensed in the states of Wyoming, Colorado, and North Dakota and is the Director of Engineering and

Construction for PCW. Jacobson testified that PCW has been monitoring the wind data on 34 separate sites in the project area since 2007. The data confirmed that the project site is very conducive to high power production that matches well with the electrical demand of the West. The wind class is between Class 5, which is considered excellent, and Class 7, which is the top end of the curve. The project capacity factor is at 40 to 45 percent, which is extraordinary considering the size of the project. [Tr. pp. 56 – 62]

33. Jacobson explained that the rotor portion of the turbine will be up to 120 meters, which is just under 400 feet in diameter. The top of the turbine tower will be 100 meters, which is about 328 feet. About one-third of the turbines will have flashing red lights on the top of the cell. The turbines are connected together via a buried cable, and once a series of turbines connect together on that cable and generate enough electricity, the cable fills and goes back to the nearby substation. As the power is collected at the substation, it will travel by an overhead transmission line to an interconnected substation on the north end of the project where it connects to the grid. [Tr. pp. 66 – 67]

34. Jacobson confirmed that PCW intends to bring many of the components of the construction materials to the site by rail, avoiding heavy reliance on I-80 and other local highways, thereby reducing overall traffic impacts. Additionally, an on-site quarry will be used to construct a road network for the project. The north entrance to the project will be I-80 at Exit 221. Additionally, sections of County Roads 441 and 505 will be utilized and are covered through a road use agreement with Carbon County Road and Bridge Department entered into in June 2014. [Tr. pp. 68 – 71; 99]

35. In response to comments expressed by the Wyoming State Geological Survey regarding landslides, expansive soils, and seismic characteristics, Jacobson clarified that PCW's geotechnical engineers agreed that establishing a turbine setback of 500 feet from steep terrain was appropriate. *PCW's Ex. 9;* [Tr. pp. 75 – 77]

36. With respect to monthly workforce during construction of the project, Jacobson testified the project had an overall average of 282 workers. Phase I peaks at 945 workers of which 776 would be nonlocal. In 2017, the workforce was estimated to peak at 925 workers, of which 761 would be nonlocal. Once the project is completed, 114 full-time technicians, operators, and office staff will be employed year-round. [Tr. pp. 79 – 81]

37. PCW puts a high priority on safety by utilizing a health and safety plan, including an emergency response plan in coordination with the project and local emergency services. PCW also has a fire prevention and suppression plan. [Tr. pp. 81 – 82]

38. Jacobson testified that based upon his knowledge and experience, the project will not significantly impair the health, safety, or welfare of the workers or the public. Additionally, the project complied with applicable law and standards of good engineering practice.

39. With regard to the workforce housing plan, PCW balanced two priorities. The first was to promote economic development by utilizing temporary vendors in the communities. The second was to develop on-site accommodations so PCW would not overload the local accommodations. PCW anticipated that local workforce levels would

exceed the available local accommodations in nearby communities so decided to mobilize an on-site construction camp for 250 workers, as well as 100 RV sites. At the end of construction, PCW will demobilize the construction camp and reclaim both the camp site and the RV sites. [Tr. pp. 83 – 88]

40. According to Jacobson, decommissioning of the project will occur in approximately 30 years and will take three years to complete, at a total cost of $265 million. PCW is requesting two variances of the Council's decommissioning requirements due to two different methods mandated by state and federal rules governing revegetation. The federal requirements for reclamation require that PCW remove the pedestal portion of the turbine 42 inches, while the state requires 48 inches of the foundation to be removed. PCW requested a variance to use the federal standard so that only one standard would apply to the entire project and would avoid unnecessary ground disturbance. The Department of Environmental Quality, Land Quality Division, had no objection to PCW using the federal standard. If the variance is granted, the cost saving to PCW would be approximately $50 million. *PCW's Ex. 6;* [Tr. pp. 88 – 92; 112]

41. The other decommissioning variance requested by PCW concerned buried electrical cables. Federal guidelines require the cables to remain in place and buried at 36 inches or deeper. The Division's Rules require removal of the cables. The variance is requested to leave the cables in place to avoid disturbing ground that would have been reclaimed for 30 years. Again, the Land Quality Division had no objection to the requested variance. If the variance is granted, the resulting cost savings to PCW would be $30 million. *PCW's Ex. 6; Division's Ex. 2, p. 6;* [Tr. pp. 92 – 93; 112]

42. For waste management, PCW plans to use the Sweetwater County and Rock Springs landfill. Additionally, noise levels were analyzed with regard to construction near residences. The nearest turbines are 4,000 feet away from any homes, two and one-half miles from Rawlins, three miles from Sinclair, and over nine miles from Saratoga. Therefore, no potential noise impact will occur with this project. [Tr. pp. 95; 100 – 101]

(d) Nathan Wojcik, PhD

43. Dr. Nathan Wojcik is an ecologist for SWCA, Inc, Environmental Consultants. Dr. Wojcik has a bachelor's of science degree in ecology, evolution and conservation biology, and a PhD in biochemistry. Dr. Wojcik has been working for PCW for five years, with a crew of field biologists conducting baseline surveys to support project planning, including vegetation and soil sampling, vegetation and habitat modeling, and wildlife surveys. Dr. Wojcik testified that he "literally walked nearly every inch of [the] project site, 200,000 acres, and also areas around the project site[.]" [Tr. pp. 123 – 125]

44. Dr. Wojcik addressed three areas – vegetation, soils, and reclamation. With regard to vegetation, Dr. Wojcik determined the project site was predominately sagebrush, and there were approximately 25 unique vegetative communities across the site. Dr. Wojcik and his crew conducted more than 1,500 transects to identify and count the composition, species, diversity, and other indexes of vegetation. [Tr. pp. 125 – 126]

45. Soils on the project were predominately loamy, which is a rich soil mixture that plants like. Dr. Wojcik and his crew dug holes into the ground and have completed

240 soil pits and 80 geotechnical borings across the project site. The data collected provides information to guide the reclamation process and wildlife management. Due to the involvement of federal land, and based upon his analysis of the data collected, Dr. Wojcik recommended utilizing the BLM reclamation standards to include: (1) to reclaim 80 percent of native vegetative ground cover; (2) species diversity has to represent the vegetation cover that was previously there; (3) no noxious weeds on federal lands; and (4) control and minimize erosion. [Tr. pp. 127 – 130]

46. Dr. Wojcik explained that the BLM and state share the same objectives for reclamation – to successfully reconstruct the landscape. However, the federal and state standards for reclamation differ in that the state requires 90 percent native or adaptive background cover, which means not all species have to be native, versus BLM's requirement of 80 percent native species only, thus keeping noxious weeds out. It is not practical to have two different standards on the checkerboard land. One standard also provides more consistent monitoring. PCW's plan applies a more stringent standard than the state requires. [Tr. pp. 133 – 135; 151 – 153]

47. With respect to PCW's request for a variance regarding removal of the turbine foundations, Dr. Wojcik testified that a ten-fold increase in disturbance of the area would occur if the variance is not granted. From a reclamation viewpoint, the BLM standard would reduce additional disturbance to areas that have already been reclaimed from the passage of time. The same holds true for leaving the underground cables in place so that no additional disturbance occurs on ground that has already been reclaimed from the passage of time. Based upon Dr. Wojcik's experience and education, PCW's

reclamation plan effectively prevents injury to the soil and vegetation and leads to successful reclamation. [Tr. pp. 135 – 139]

(e) Joseph Hammond

48. Joseph Hammond (Hammond) is a principal project manager in CH2M HILL's environmental group. Hammond prepared the socioeconomic analysis reflected in Section 10 of the Application. [Tr. pp. 157 – 158]

49. Hammond's group analyzed each of the resource areas affected, population, economic and physical conditions, housing, public education, public safety, healthcare, municipal services, and government and human services facilities. Potential social and economic impacts of the project were evaluated using common methods in the industry. [Tr. pp. 159 – 161]

50. Hammond confirmed the workforce employment numbers, occupations, and average wages as reflected in Section 10 of the Application, as well as the economic benefits of the project to the areas of influence. Those figures will not be repeated in this Order, but can be found in PCW's Exhibit 2, Section 10. Hammond also confirmed that the estimates for sales and use tax, property tax, and excise tax over the construction and operation of the project was $781 million. [Tr. pp. 163 – 172]

51. With regard to estimated impact assistance payments, Hammond testified that there would be peaks and valleys in those numbers because of the fluctuation of construction workforce. Hammond confirmed the figures in Section 10, Table 10-34 in the Application showing a range from $24,612 in the first three quarters to $3.2 million in

later quarters. The annual average of impact assistance is $6.05 million. [Tr. pp. 172 – 173]

52. Hammond discussed the housing plan in great detail and testified in accordance with the housing analysis reflected in Section 10 of the Application. Those figures will not be repeated in this Order. Hammond testified that Appendix Q in the Application contained an outdated version of housing availability data and was substituted with PCW's Exhibit 16 which contained figures from 2014. Hammond concluded that the overall analysis determined that adequate temporary accommodations exist in the area of influence to meet the needs of nonlocal workers during peak and nonpeak periods. [Tr. pp. 173 – 182]

53. Hammond's analysis also concluded that the project would have a negligible impact on the Carbon County school system and that two additional law enforcement officers in the Carbon County Sheriff's Office and two additional officers in the Rawlins Police Department would be needed during peak construction periods between 2017 and 2021. Hammond admitted there is currently a shortage of healthcare providers in the area of influence, but did not believe there would be an overall significant effect upon the system. Additionally, Hammond believed the impact to municipal services was negligible. [Tr. pp. 182 – 185]

54. Cumulative impacts were also analyzed by Hammond's team, and 41 projects in the area were evaluated. The analysis appears in Sections 9 and 10 of the Application. The primary cumulative impacts related to the availability of temporary housing. PCW developed a plan for minimizing those impacts by proposing to mobilize

an on-site construction camp for 250 workers, as well as an on-site RV camp for 100 workers. [Tr. pp. 187 – 193]

55. Finally, in Hammond's professional opinion, the Application complied with the requirements of the Council; the project did not pose a threat of serious injury to the economic condition of the present or expected inhabitants in the areas of influence; and the project would not substantially impair the health, safety, or welfare of the present or expected inhabitants in the areas of influence. [Tr. pp. 195 – 196]

(f) Garry Miller

56. Garry Miller (Miller) is the President of Land and Environmental Affairs for PCW. Miller testified to the land ownership and control regarding the project. According to Miller approximately 49 percent of the 170,000 acre project site is private ownership, a majority of which is owned by the Overland Trail Cattle Company. Approximately 4 percent of the project site is state-owned lands, and PCW has an agreement with the state to install 42 turbines on the state land. Finally, approximately 47 percent of the project site is on BLM land. An Environmental Impact Statement for the project reflected no conflicts with oil and gas development on federal land. [Tr. pp. 241 – 245]

57. The Carbon County Board of County Commissioners found that the project complies with all applicable zoning and county land use regulations and authorized a conditional use permit for the project. In July 2014, the Carbon County Commissioners voted unanimously to grant a request from PCW for a one-year extension on the requirement to begin construction. [Tr. pp. 248; 251]

58. In terms of long-term disturbance to the 320,000 acre ranch, the long-term disturbance is 1,545 acres, which is less than 1 percent. Ranching operations will be allowed to continue as they have in the past. Additionally, the project will have no affect on adjacent property landowners due to property line setbacks, and the road use agreement successfully mitigates the impacts of the project on the use of county roads. [Tr. pp. 249 – 252]

59. Miller confirmed that PCW did not object to the 19 conditions proposed by the Division to be placed on the permit, with a correction of a typographical error to Condition 15. [Tr. p. 252]

60. Miller testified regarding the conservation plan reflected in PCW's Exhibit 8. The conservation plan addresses wildlife, including sage grouse, mule deer, birds and bats, and aquatics. PCW has agreed to submit a report every year to a technical advisory committee (TAC) composed of PCW, Overland Trail Cattle Ranch, Wyoming Game and Fish, and other vital parties. The TAC will review that report, look at monitoring results, assess any trends, and make recommendations for modifications, improvements, or other necessary measures that may be advisable for wildlife protection. Miller detailed the research and monitoring conducted by PCW with regard to the various wildlife located on the project site. The Application at Appendix U contains a full summary of all the environmental commitments and requirements for the project. [Tr. pp. 257 – 265]

61. Based upon Miller's knowledge and experience, the project will not have a significant detriment on economics, recreation, cultural resources, and wildlife areas. [Tr. pp. 265 – 266]

62. Miller also addressed BLM's bonding requirements for federal land. BLM's requirements include posting a bond prior to construction of the project. Bonding would be synchronized with federal permit approval and would occur prior to the initiation of particular activities as the project progresses. The request for a variance with regard to bonding is to prevent double bonding for federal lands and overbonding for construction that has not started, while protecting the State's interests. Miller testified that the CCSM Project is unique in that it is the only wind project in Wyoming that involves the checkerboard and mix of federal and private lands. [Tr. pp. 339 – 343]

(g) Kelly Cummins

63. Kelly Cummins (Cummins) is a senior landman and environmental engineer. Cummins has a bachelor's degree in chemical engineering and is a licensed professional engineer in environmental engineering. Cummins is responsible for supporting the permit of the CCSM project. Cummins testified regarding several areas of the Application, including air quality, water resources, water quality, and scenic resources. [Tr. p. 275]

64. With regard to air quality, Cummins testified there were two primary sources of air pollution for the project – fugitive dust from ground disturbance, vehicles and equipment traveling on roadways, and tailpipe emissions from equipment and vehicles. Cummins testified that, as reflected in Appendix L of the Application, the project will not increase the concentrations of air pollutants over legal limits. Additionally, the BLM's air quality analysis concluded that neither the federal nor the

state ambient air quality standards would be exceeded. *PCW's Ex. 2, Application, App. L;* [Tr. pp. 275 – 276]

65. Cummins further testified that water usage for the project was estimated at 635 acre-feet over the eight-year construction period. The peak usage in any one year would be 110 acre-feet. The vast majority of water would be used for dust suppression, as well as road compaction and concrete production. PCW plans to minimize water usage by using magnesium chloride for dust suppression which would potentially decrease water usage by 30 percent. The water supply would come from a combination of water sources, including surface water, groundwater, as well as municipal supplies. The project's water usage is based upon the use of existing water rights and, therefore, should not impact the North Platte water, Colorado River basin, or other existing water usage. The State Engineer requested additional information regarding the water use of the workers staying in the local communities outside of the project site. PCW provided the State Engineer an estimate of that operation and the State Engineer provided a letter to the Division indicating they were satisfied with the response. [Tr. pp. 277 – 280]

66. Additionally, both PCW and the BLM evaluated potential impacts to the scenic resources. BLM concluded that the project was consistent with the visual resource management plans for the area. [Tr. pp. 281 – 282]

(h) Kara Choquette

67. Kara Choquette (Choquette) is the Director of Communications and Public Outreach for PCW. Choquette has been responsible for producing PCW brochures and handouts, managing PCW's website, attending public meetings, and serving as a

community's liaison for PCW. From 2008 through the end of 2013, Choquette participated in 49 public meetings throughout Wyoming, the majority of which were in Carbon County. Four additional meetings were held in 2014, all in an effort to have the public learn about the project. Some meetings were held in conjunction with BLM open houses. Appendix K in the Application provides a summary of the public meetings and open houses held in conjunction with the project. [Tr. pp. 285 – 290]

68. In addition to the public meetings and open houses, Choquette held events at the Carbon County Higher Education Center for three years at the Celebration of Wind event, participated in the Carbon County Industry Round Table held in Rawlins for four years, spoke at local school groups, hosted science students at the ranch, and spoke at the Rawlins Rotary Clubs and Lions Clubs over the years about the project. Additionally, PCW sponsored community events regarding the project. [Tr. pp. 291 – 292]

69. Finally, PCW has involved environmental groups in its development process, including Audubon Wyoming, Wyoming Outdoor Council, the Wyoming Wildlife Federation, the Nature Conservancy, the Sonoran Institute, Wilderness Society, Defenders of Wildlife, Sierra Club, Natural Resources Defense Council, and Western Resource Advocates. [Tr. pp. 292 – 293]

70. As a result of the extensive outreach efforts conducted by PCW, groups, vendors, and individuals were provided information on the project and how to obtain employment with PCW. Choquette also talked to hundreds of media over the years about covering the project and learning about the project. [Tr. pp. 294 – 297]

71. Due to Choquette's comprehensive outreach program, no environmental groups or other entities objected to the CCSM Project. [Tr. pp. 297 – 299]

ii. Division's Witnesses

(a) Kimber Wichmann

72. Kimber Wichmann (Wichmann) is the Principal Economist with the Department of Environmental Quality, Industrial Siting Division. Wichmann received and processed the Application and the Division's Exhibits 1 through 3 in this case. Wichmann confirmed that as part of the process, a jurisdictional meeting was held with the Applicant on April 25, 2012. A determination was made that the CCSM Project cost was in excess of the statutory threshold for obtaining an Industrial Siting permit, and that more than 30 wind turbines would be constructed. The Application for the Project was subsequently filed on May 12, 2014. [Tr. pp. 302 – 304]

73. According to Wichmann, after review of the Application, the Division issued a June 11, 2014, Notice of Deficiency to PCW identifying ten items requiring further information. The Division requested additional documentation as outlined on pages A-13 – A-14 of the Division's Exhibit 1. PCW's response to the request for additional information was provided as A-078 – A-104 in the Division's Exhibit 1, and as a result, the Application was thereafter deemed complete and contained the statutory requirements and criteria pursuant to Wyo. Stat. Ann. § 35-12-109. [Tr. pp. 307 – 309]

74. Wichmann further testified that all state agencies, with the exception of the University of Wyoming and the Department of Education, responded to a request for comments on the Application. All agencies' comments are reflected in the Division's

Exhibit 2. Several agencies requested additional information, which was provided by PCW. After receipt of additional information requested from PCW, no state agency recommended denial of the Application. [Tr. pp. 310 – 314]

75. Wichmann confirmed that PCW requested five variances which are located on page 8 of the Division's Exhibit 1. Those variances included a request to remove the federal lands from bonding; a request for graduated bonding; a request to use the BLM revegetative requirements during decommissioning and reclamation; a request to use BLM requirements for removing just the pedestal portion of the turbines rather than the state requirement to go to a depth of 48 inches; and a request to use BLM standards to leave cabling in the ground rather than the state requirement to remove cabling. [Tr. pp. 306 – 307]

76. Wichmann recommended permit conditions as set forth in the Division's Exhibit 3, as the Application was complete per the statutory requirements. The permit conditions set forth in paragraphs 1 through 14 are standard permit conditions for a wind project. Wichmann also recommended five additional permit conditions found in Conditions 15 through 19. Wichmann clarified that Condition 15 contained a typographical error, and the figure depicted in that condition should be corrected from $146,918,000 to $20,673,000. [Tr. pp. 303; 315 – 318]

77. Finally, Wichmann testified as to the distribution of impact assistance funds. The split recommended by the areas primarily affected was agreeable to the Division as is reflected in the Division's Exhibit 1, p. 15. [Tr. p. 314 – 315]

(b) Luke Esch

78. Luke Esch (Esch) is the Administrator of the Industrial Siting Division, and of the Solid and Hazardous Waste Division for the Environmental Quality Division. Esch provided an historical perspective to the CCSM Project. According to Esch, well before the April 2012 jurisdictional meeting, the Division and PCW representatives met on several occasions and discussed the variances regarding bonding and reclamation issues. Esch also had discussions with BLM in an effort to enter into a memorandum of understanding (MOU) regarding the differing state and federal bonding and reclamation standards. Ultimately, the parties were unable to enter into a MOU. [Tr. pp. 323 – 325]

79. Esch explained that the Division's Rules require bonding to be in place prior to the commencement of construction. The BLM also requires bonding, which would result in a dual bonding situation. The Division's Rules also provide for specific reclamation standards. The project is unique from past wind projects in that it lies on a checkerboard of BLM and privately owned land. The BLM reclamation standard requires cabling to remain buried. The Division's Rules requires cabling to be removed, making the reclamation a very difficult, if not impossible process. Additionally, the BLM standards for reclamation include removal of the turbine pedestal to 42 inches, while the state requires removal to 48 inches. Esch testified that the Division's Rules regarding removal of the turbine pedestals to a depth of 48 inches was based upon public comment and not based upon any scientific evidence. Regardless, the Division's Rules also allow the Council to provide a variance for the requirements regarding the bonding and reclamation standards. It remains a Council decision whether to grant PCW's requests for

variances based upon a site-specific inquiry and case-by-case analysis. [Tr. pp. 325 – 329; 334 – 335; 393]

iii. Parties' Witnesses

(a) Carbon County Commissioner's Witnesses

Leo Chapman

80. Leo Chapman (Chapman) is the Chairman of the Carbon County Commission. Chapman testified that the Carbon County Commissioners support the CCSM Project and the opportunity for the impact assistance funds resulting from the project. The funds will be necessary for increased emergency services and law enforcement, and will benefit the schools in the county. Chapman also expressed his appreciation in the avian and wildlife studies conducted by PCW. [Tr. pp. 350 – 352]

81. Chapman complimented PCW for its public outreach and confirmed that the Carbon County Commissioners extended a conditional use permit for beginning construction of the project. [Tr. p. 351]

John Espy

82. John Espy (Espy) is Vice-Chairman of the Carbon County Commission. Espy complimented PCW in putting together a comprehensive housing plan to take care of its workers. [Tr. p. 354]

(b) Voices of the Valley's Witness

Joseph Elder

83. Joseph Elder (Elder) is the Vice-President of the Voices of the Valley, a nonprofit organization in the upper North Platte Valley that tries to foster public

engagement and awareness of various projects that are developing in the area. [Tr. p. 355]

84. Elder expressed the group's initial concern over the possible housing shortage due to the influx of project workers, and the concern over impact on tourism and enough hotel/motel space during the construction months of the project. Elder believed that PCW met those concerns and requested the Council approve Condition #18 regarding the commitment of PCW to mobilize a construction camp and RV site at the facility. [Tr. pp. 355 – 356]

(c) Saratoga-Encampment-Rawlins Conservation District

Leanne Correll

85. Leanne Correll (Correll) was the Saratoga-Encampment-Rawlins Conservation District's representative. Correll explained that the Conservation District's mission statement is to develop and direct programs to promote long-term conservation and enhancement of the District's natural resources, while contributing to the economic stability of the District and its residents. Correll addressed the Conservation District's disapproval of the variances requested by PCW regarding decommissioning and reclamation and requested the Council deny those requested variances. [Tr. pp. 358 – 359]

86. Specifically, Correll testified that in order to revegetate the land, a combination of native and non-native species, as permitted by the Division's Rules, accomplished greater soil stabilization. According to Correll, the soils in the project area have a moderate to high erodibility. Correll testified that the BLM has had mixed success

in previous reclamation efforts and recommended that both native and non-native species be utilized to stabilize the soil during reclamation. Correll testified that there should be two different seed mixtures used for reclamation, one for the BLM portions of the checkerboard and one for the private lands on the checkerboard. [Tr. pp. 360 – 362; 369]

87. Correll also expressed concerns regarding watershed monitoring during the operations phase of the project, as she believed there would be continued impacts not recognized by PCW. According to Correll, the impacts to cattle and wildlife are unknown at this time for changes in the water usage from agricultural use to making concrete. [Tr. pp. 363 – 364]

88. A third concern expressed by Correll related to the possibility that bonding was not sufficient for reclamation in 30 years. Correll requested the Council reconsider the bonding every five years during the life of the project. [Tr. p. 365]

89. With regard to PCW's requested variance on the decommissioning of the foundations of the turbines, Correll testified there would be a significant detriment to the environment for the long-term reclamation success in 50 years if the variance was granted to allow BLM standards to govern. Correll stated there would be a decline in the sagebrush if the reclamation was to a depth of 42 inches versus 48 inches. [Tr. p. 366]

90. Correll concluded by asking the Council to deny the requested variances and hold PCW to the state standards for reclamation, rather than allowing the federal BLM standards to control. [Tr. pp. 365; 368 – 369]

(d) Town of Saratoga's Witness

John Zeiger

91. John Zeiger (Zeiger) is the Mayor of Saratoga. Mayor Zeiger expressed his support of the project on behalf of the Town of Saratoga. Mayor Zeiger testified that PCW addressed his concerns regarding the housing impact on hotels/motels and tourism by agreeing to a construction camp for its workers. [Tr. pp. 373 – 374]

(e) Town of Encampment's Witness

Greg Salisbury

92. Greg Salisbury (Salisbury) is the Mayor of the Town of Encampment. Mayor Salisbury testified in support of the project and stated that the Town of Encampment had expanded its infrastructure and was prepared for the growth in the valley as a result of the project. [Tr. p. 375]

(f) Town of Riverside's Witness

Ronald Bedwell

93. Ronald Bedwell (Bedwell) is the Mayor of the Town of Riverside. Mayor Bedwell expressed his support of the project on behalf of Riverside. [Tr. p. 376]

(g) Town of Sinclair's Witness

Michelle Serres

94. Michelle Serres (Serres) is the Mayor of the Town of Sinclair. Mayor Serres echoed her support of the project but expressed concerns regarding the housing in the area of influence. Mayor Serres' main concern was that the temporary workers at the Sinclair Refinery were not considered as part of the impact with housing in the area for

PCW workers. According to Mayor Serres, 500 to 2,500 temporary workers are occasionally brought in for certain projects and would create a very large housing crunch. Serres did not believe the housing study conducted by PCW was accurate due to this large fluctuation of workers. [Tr. pp. 377 – 379]

(h) Town of Hanna's Witness

Linda Wagner

95. Linda Wagner (Wagner) is a Hanna council member. Wagner testified that despite what she believed to be an inadequate housing study conducted by PCW, she was in favor of the project. Wagner testified that after voicing her concerns regarding the housing study, representatives from PCW came to Hanna and personally spoke to the Town Clerk and investigated housing opportunities in Hanna that were not identified in the housing study. Wagner commended PCW for its outreach and strongly urged the Council to approve the project with its requested variances. [Tr. pp. 379 – 380]

(i) Town of Elk Mountain's Witness

Linda Crane

96. Linda Crane (Crane) is the Treasurer for the Town of Elk Mountain. Crane echoed her support of the project and requested the permit be issued. [Tr. p. 383]

(j) City of Rawlins' Witness

Amy Bach

97. Amy Bach (Bach) is the Rawlins City Attorney. Bach testified that the City of Rawlins was generally in support of the project and was working cooperatively with PCW to address housing concerns which Bach characterized as a "crisis." [Tr. p. 384]

(k) City of Laramie's Witness

David Derragon

98. David Derragon (Derragon) is the Assistant City Manager for Laramie. Derragon expressed his support of the project and gratitude for the information supplied by PCW concerning the cumulative effects of impacts of multiple projects in the area. Derragon also expressed his appreciation for the information received from the Division staff throughout the permitting process. [Tr. p. 385]

(l) Wyoming Building and Construction Trades Council

Scott Norris

99. Scott Norris (Norris) testified on behalf of the Wyoming Building and Construction Trades Council (WBCTC). Norris testified that WBCTC believes the CCSM Project is important to the State of Wyoming in many different aspects, including adding value and a positive outcome for the power industry, and value to state and local economies. [Tr. p. 386]

(m) Albany County Board of County Commissioners' Witness

Tim Chestnut

100. Tim Chestnut (Chestnut) is an Albany County Commissioner. Chestnut expressed his appreciation of the impact assistance funds to Albany County as a result of the project and Albany County's full support of the project. [Tr. pp. 387 – 388]

(n) Sweetwater County Commissioner's Witness

Marc Dedenbach

101. Marc Dedenbach (Dedenbach) appeared on behalf of the Sweetwater County Commissioner's and stated that the Sweetwater County Commission had no objection to the project. Dedenbach expressed concern over the potential for workers to "pour-over" into the Wamsutter area and the effect it would have on housing and law enforcement. Dedenbach requested that if there is a disproportionate amount of burden, the impact assistance funds be re-negotiated between the parties. [Tr. p. 389]

102. 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

A. Principles of Law

103. PCW 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. Dep't of Family Servs.*, 922 P.2d 219, 221 (Wyo. 1996) (citation omitted); *Penny v. State, Wyo. Mental Health Professions Licensing Bd.*, 2005 WY 117, 120 P.3d 152 (Wyo. 2005).

104. Wyoming Statutes Annotated § 35-12-109(a)(i)-(xxi) (LexisNexis 2013) 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) An evaluation of potential impacts together with any plans and proposals for alleviating social and economic impacts upon local governments or special districts and alleviating environmental impacts which may result from the proposed facility. The 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;

(Q) Agriculture;

(R) Terrestrial and aquatic wildlife;

(S) Threatened, endangered and rare species and other species of concern identified in the state wildlife action plan as prepared by the Wyoming game and fish department.

(xiv) Estimated construction cost of the facility;

(xv) What other local, 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 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;

(xix) Certification that the governing bodies of all local governments which will be primarily affected by the proposed facility were provided notification, a description of the proposed project and an opportunity to ask the applicant questions at least thirty (30) days prior to submission of the application;

(xx) For facilities permitted pursuant to W.S. 35-12-102(a)(vii)(E) or (F), a site reclamation and decommissioning plan, which shall be updated every five (5) years, and a description of a financial assurance plan which will assure that all facilities will be properly reclaimed and decommissioned. All such plans, unless otherwise exempt, shall demonstrate compliance with any rules or regulations adopted by the council pursuant to W.S. 35-12-105(d) and (e);

(xxi) Information demonstrating the applicant's financial capability to decommission and reclaim the facility.

105. Wyoming Statutes Annotated § 35-12-110(b)(i)-(xxiii) (LexisNexis 2013) requires that the division 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;

(xvi) The Wyoming business council;

(xvii) Department of workforce services;

(xviii) Office of state lands and investments;

(xix) Department of workforce services;

(xx) Department of state parks and cultural resources;

(xxi) Department of fire prevention and electrical safety;

(xxii) Department of family services;

(xxiii) Oil and gas conservation commission.

106. Wyoming Statutes Annotated § 35-12-110(c) (LexisNexis 2013) 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 therefor, 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.

107. Wyoming Statutes Annotated § 35-12-110(d) (LexisNexis 2013) provides that:

> On 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.

108. Wyoming Statutes Annotated § 35-12-110(f)(i)-(iv) (LexisNexis 2013) 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.

109. Pursuant to Wyo. Stat. Ann. § 35-12-111(a)-(e) (LexisNexis 2013), the parties to a permit proceeding include:

(i) The applicant;

(ii) Each local government entitled to receive a copy of the application under W.S. 35-12-110(a)(i);

(iii) Any person residing in a local government entitled to receive a copy of the application under W.S. 35-12-110(a)(i) including any person holding record title to lands directly affected by construction of the facility 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, agricultural 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.

110. Pursuant to Wyo. Stat. Ann. § 35-12-113(a)-(f) (LexisNexis 2013), 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. In considering the imposition of conditions requested by other agencies upon private lands, the council shall consider in the same manner and to the same extent any comments presented by an affected landowner. 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;

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

(iv) The applicant has financial resources to decommission and reclaim the facility. . . .

(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.

111. The Industrial Development Information and Siting Rules and Regulations (2014), Chapter 1 provide, in part:

Section 8. **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, mailing address, and physical 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; and

(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 and dependent components of the proposed industrial [sic].

(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; and

(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 recommends as the local governments primarily affected by the proposed industrial facility as defined in Sections 2(b), (c) and (d). 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) Using tables, provide a detailed tally of the estimated work force to construct and to operate the facility showing the following information:

(i) All workers providing direct labor and direct support; (safety, supervision, inspection) at the work site;

(ii) Information by calendar quarter and year from the commencement of construction through the first year of operation;

(iii) Identify and provide totals of those which are construction and those which are permanent;

(iv) Identify and provide quarterly totals of the number, job classification and recurrence; of those which are estimated to be in-migrating (from outside the study area at the time of hire for the facility) and of those pre-existing employees of the applicant engaged in construction;

(v) Provide estimates of wages; and

(vi) Provide estimates of paid benefits including per diem and paid fees.

(i) 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) An analysis of 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 effects on transportation facilities containing discussion of roads (surface type), and railroads (if applicable);

(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 impacts shall describe the 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. If required pursuant to W.S. 35-12-108, the application shall contain the Water Supply and Water Yield Analysis and Final Opinion of the State Engineer;

(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 community recreational facilities and programs and urban outdoor recreational opportunities;

(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 facility.

(B) An estimate of the cost of the facility construction subject to sales and use taxes.

(C) An estimate of sales and use taxes by year for each county if the facility is located in more than one county.

(D) Estimates of impact assistance payments which will result from the project.

(E) 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 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 include 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.

112. Wyoming Statutes Annotated § 18-5-502 (LexisNexis 2013) provides further guidance in the regulation of wind energy projects including, in relevant part:

(a) It is unlawful to locate, erect, construct, reconstruct or enlarge a wind energy facility without first obtaining a permit from the board of county commissioners in the county in which the facility is located.

113. With regard to variances, the Rules Indus. Dev. Info. & Siting, ch. 1 (2014) provides, in part:

Section 9. **Additional Application Requirements for Wind Energy Facilities.**

(a) Facility Decommissioning. The applicant shall provide a facility decommissioning plan.

(i) The facility decommissioning plan shall include provisions regarding the removal and proper disposal of all wind turbines, towers, substations, buildings, cabling, electronic components, foundations to a depth of forty-eight (48) inches, and any other associated or ancillary equipment or structures within the facility boundary above and below ground.

. . . .

(f) The Council may give a case-by-case variance to requirements of this Section after considering evidence by the Applicant or landowner.

114. In addition to the requirements of Wyo. Stat. Ann. § 35-12-109(a)(xx) (LexisNexis 2013) reflected in paragraph 104 of this Order, Rules Indus. Dev. Info. & Siting, ch. 1, § 9 (2014) also addresses financial assurances requiring, in part:

(d) Financial Assurance: The applicant shall provide financial assurances for a wind energy facility, sufficient to assure complete decommissioning and site reclamation of the facility in accordance with the provisions of these rules[.]

(i) All financial assurances shall be in place prior to commencement of construction of any wind energy facility, and shall be adjusted up or down every five years from the date of permit issuance by the Council based on the results of paragraph (e) of this section.

(e) Cost Estimation for Decommissioning and Site Reclamation of the facility:

. . . .

(ii) Decommissioning and site reclamation estimates shall be submitted to the Division in the application and every five years after the date of permit issuance until the completion of final reclamation.

B. <u>Application of Principles of Law</u>

115. This Council has considered all the evidence, testimony, and arguments presented at the August 5 and 6, 2014 evidentiary hearing. Through the evidence and testimony, this Council finds that PCW has shown, by a preponderance of the evidence, that it filed a complete Application with the Division regarding the proposed CCSM Project, which included the requirements in Wyo. Stat. Ann. § 35-12-109(a) and Chapter 1, Section 8 of the Industrial Development Information and Siting Rules and Regulations, and that the proposed CCSM Project complies with all applicable law. The completeness of the Application is supported by the testimony of Jacobson, Garry Miller, Choquette, Wichmann, and Chairman Chapman of the Carbon County Board of County Commissioner's.

116. PCW has shown, through the exhibits and testimony of all its witnesses, the proposed CCSM Project will not pose a threat of serious injury to the environment nor to the social and economic conditions of inhabitants in the affected area, and that the project will not substantially impair the health, safety, and welfare of those inhabitants. The testimony of Jacobson, Hammond, and Garry Miller all indicated that to be the case.

117. PCW has also shown, by a preponderance of the evidence, that its request for variances with regard to bonding, decommissioning, and reclamation should be granted. PCW's evidence of the reasonableness of the variances was proven through the testimony of Jacobson and Dr. Wojcik, both of whom had the knowledge, education, and expertise in formulating an effective reclamation plan which prevents injury to the soil and vegetation, leading to successful reclamation. Those variances are incorporated into this Order through Conditions #15 through #19 as set forth below on pages 55 and 56 of this Order. This Council was not persuaded by the Saratoga-Encampment-Rawlins Conservation District's request to apply different standards on the checkerboard portions of the land within the CCSM Project area. Applying two different standards for decommissioning and reclamation will lead to additional, unnecessary disturbance of the lands and additional, unnecessary costs to the applicant.

118. With respect to the concerns expressed by the Saratoga-Encampment-Rawlins Conservation District that the reclamation bonding was potentially inadequate, this Council is satisfied that those concerns are sufficiently addressed in the statutes and rules governing financial assurance for decommissioning and site reclamation. Specifically, Wyo. Stat. Ann. § 35-12-109(a)(xx) (LexisNexis 2013) and the Rules Indus.

Dev. Info. & Siting, ch. 1, § 9 (d) and (e)(2014) require a review of PCW's financial assurance plan every five years to assure complete decommissioning and site reclamation of the facility.

119. The Division proposed 19 enumerated conditions should the permit be issued. PCW had no objections to the conditions, with a minor correction to a typographical error in Condition #15.

120. Finally, with regard to the allocation of the impact assistance funds, this Council finds the Division's recommendation to allocate 94 percent of the impact funds to Carbon County, 3 percent of the impact funds to Albany County, and 3 percent of the impact funds to Sweetwater County is reasonable. The parties agreed to the recommended allocation of funds.

VI. DECISION

Pursuant to the authority vested in the Industrial Siting Council by Wyo. Stat. Ann. § 35-12-113 (LexisNexis 2013), this Council hereby **GRANTS** the Industrial Siting Permit Application filed by Power Company of Wyoming to construct and operate the Chokecherry and Sierra Madre Wind Energy Project to be located at the Overland Trail Cattle Company Ranch in Carbon County, Wyoming.

The Council specifically finds, with the imposition of the following conditions, that:

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

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

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

(4) The Applicant has the financial resources to decommission and reclaim the facility;

(5) The variance requested by the Applicant to leave in place the underground cables buried to a depth of 36 inches is reasonable and granted;

(6) The variance requested by the Applicant to reclaim the turbine pads at the pedestal level is reasonable and granted;

(7) The variance requested by the Applicant to reclaim the vegetation at BLM standards is reasonable and granted; and

(8) The variance requested by the Applicant for graduated bonding for the project is reasonable and granted.

(9) Pursuant to its authority, this Council allocates the impact assistance funds as follows:

Carbon County, Wyoming: 94%
Albany County, Wyoming: 3%
Sweetwater County, Wyoming: 3%

(10) Finally, pursuant to its authority, this Council places the following terms and conditions on the facility, as modified, from the *Division's Ex. 3*:

STANDARD WIND PERMIT CONDITIONS

Condition #1. Power Company of Wyoming, LLC (Permittee) shall 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. Permittee shall commence to construct within three 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 enable the Permittee to 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 Chokecherry and Sierra Madre Wind Energy Project (Facility), 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 ISD when construction commences.

Condition #7. The Permittee shall give written notice to the ISD when the physical components of the Facility are 90 percent complete.

Condition #8. As a means of adhering to W. S. 35-12-109(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. 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 workforce.

e. An updated construction schedule in the form of Figure 7-1 and Figure 7-2 as shown on pages 7-2 and 7-3 of the *Section 109 Power Company of Wyoming, LLC, Chokecherry and Sierra Madre Wind Energy Project application* (Application).

Condition #11. The Permittee shall notify the ISD in advance of proposed changes to the scope, purpose, size or schedule of the Facility. 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 shall notify the ISD in advance and provide updates to the On-Site Construction Workforce Schedule, Table 7-3 and Figure 7-4 on pages 7-7 and 7-8 of the Application, 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. As may be subsequently required by the Director, the Permittee shall pay a fee 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.

Condition #14. When the Project is nearing completion, Permittee shall place notice to that effect in the newspapers in the general area of the Facility.

ADDITIONAL PERMIT CONDITIONS

Condition #15. The Permittee shall provide bonding on the permit for only the non-federal lands in the amount of $146,918,000 for decommissioning and reclamation which is a waiver to W.S. 35-12-109(a)(xx) and Rules of the Council. The Permittee shall provide the surety bond in steps outlined below:

a) Step 1: Before the start of any construction, Permittee shall provide a surety bond or similar security acceptable to the Administrator for $20,673,000 payable to the Department of Environmental Quality.

b) Step 2: At least 30 days prior to construction on SPOD 4, Phase I Wind Turbine Development, the Permittee shall provide:

   i. the Division a copy of the ROW grant as described in Section 5.2.2 of the Application for SPOD 4,

   ii. and an additional surety for $65,352,000 payable to the Department of Environmental Quality so that the total surety prior to construction on SPOD 4 would be $86,025,000.

c) Step 3: At least 30 days prior to construction on SPOD 5, Phase II Wind Turbine Development, the Permittee shall provide:

   i. the Division a copy of the ROW grant as described in Section 5.2.2 of the Application for SPOD 5,

   ii. and an additional surety for $60,893,000 payable to the Department of Environmental Quality so that the total surety prior to construction on SPOD 5 would be $146,918,000.

The Permittee shall update the decommissioning and reclamation plan and bond every five years and submit both to the Director for review and approval.

Condition #16. The Decommissioning and Reclamation for this project shall be conducted in accordance with the reclamation plan. The Permittee has approval to use:

- BLM's standard for re-vegetative requirements on all non-federal land rather than the requirements defined in the Rules and Regulations of the Industrial Siting Council Rules and Regulations (ISC),

- BLM's requirement to remove the pedestal portion of the foundation on all non-Federal Land rather than ISC's requirement of removing turbine foundations to a depth of 48 inches,

- and BLM's acceptance of leaving the underground cable in place on all non-federal land rather than ISC requirement of removing all cable to a depth of 48 inches.

Condition #17. During the construction of the facility, the Council shall consider requests by local government parties to change the distribution of impact assistance funds upon a showing of good cause as provided in the Regulations.

Condition #18. The Permittee commits to its housing plan as stated in the application and will construct the specified construction camp and RV site at the facility. Updates, changes and/or improvement to the housing plan shall be reported annually to the Director and the Director may authorize changes and/or improvements to the housing plan.

Condition #19. At least 30 days prior to the start of construction, Permittee shall provide a copy of the signed road use agreement between the Permittee and Wyoming Department of Transportation to the Industrial Siting Administrator.

VII. ORDER

IT IS THEREFORE ORDERED that the Industrial Siting Permit Application known as the Chokecherry and Sierra Madre Wind Energy Project, as submitted by the Applicant, as modified by this Council, and as set forth above in Permit Conditions #1 through #19, is **GRANTED**.

DONE this 12th day of September, 2014.

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 foregoing document was served by mailing a true and correct copy, postage prepaid, on the 16 day of September, 2014, addressed to the following:

Wyoming Department of Environmental Quality – (ORIGINAL)
Industrial Siting Division
Attn: Kimber Wichmann, Principal Economist
Herschler Building, Fourth Floor West
122 West 25th Street
Cheyenne, Wyoming 82002

Andrew J. Kuhlmann – Attorney for Industrial Siting Division
Wyoming Attorney General's Office
123 State Capitol
Cheyenne, Wyoming 82002

Paul J. Hickey – Attorney for Applicant
Hickey & Evans, LLP
P.O. Box 467
Cheyenne, Wyoming 82003-0467

Karl D. Anderson – Attorney for Council
Wyoming Attorney General's Office
123 State Capitol
Cheyenne, Wyoming 82002

Mayor Greg Salisbury – Town of Encampment
P.O. Box 5
Encampment, Wyoming 82325

Chairman Leo J. Chapman – Board of Carbon County Commissioners
P.O. Box 6
Rawlins, Wyoming 82301

Daniel T. Massey, City Manager – City of Rawlins
P.O. Box 953
Rawlins, Wyoming 82301

Mayor Ronald L. Bedwell – Town of Riverside
P.O. Box 657
Riverside, Wyoming 82323
Mayor Morgan Irene – Town of Elk Mountain
P.O. Box 17
Elk Mountain, Wyoming 82324

Mayor John Zeiger – Town of Saratoga
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Mayor Tony D. Poulos – Town of Hanna
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Janine Jordan, City Manager – City of Laramie
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Joseph Elder, Vice President – Voices of the Valley
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Saratoga, Wyoming 82331

Mayor Kevin Coleman – Town of Medicine Bow
P.O. Box 156
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Mayor Michelle Serres – Town of Sinclair
P.O. Box 247
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Leanne Correll – Saratoga-Encampment-Rawlins Conservation District
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Jennifer K. Stone, Deputy County & Prosecuting Attorney – County of Albany
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Douglas C. Thomas, Pres. – Wyo. Building & Construction Trades Council
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Wally J. Johnson, Chairman – Sweetwater County Bd. of County Comm'ers
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Industrial Siting Division