BEFORE THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY
INDUSTRIAL SITING DIVISION

STATE OF WYOMING

IN THE MATTER OF THE INDUSTRIAL SITING PERMIT APPLICATION OF NOVELUTION WIND, LLC CHUGWATER FLATS ENERGY PROJECT	)))))	DOCKET NO. DEQ/ISC 09-04

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

THIS MATTER came before the Industrial Siting Council (Council) on March 30, 2010, for evidentiary hearing and the record was closed on that date. Council members present at the hearing included Shawn Warner, Chairman, Sandy Shuptrine, Darrell Offe, Gregg Bierei and Mike Daley. Bridget Hill, Senior Assistant Attorney General, was also present on the Council's behalf. Deborah A. Baumer from the Office of Administrative Hearings served as the Hearing Examiner in the proceeding. The Applicant, Novelution Wind Energy, LLC (Novelution Wind) doing business as Chugwater Flats Energy Project, LLC (Chugwater Flats) appeared by and through its counsel, Rex Johnson. The Industrial Siting Division (Division) appeared by and through its counsel, Senior Assistant Attorney General, John S. Burbridge. Two other parties participated in the evidentiary hearing including Platte County and the Town of Chugwater represented by Eric Jones. Chugwater Flats' Exhibits CFWP-1 (including Addenda 1-3) through CFWP-3, the Division's Exhibits 1 and 2, and the Town of Chugwater's Exhibits 1 through 9 were admitted for purposes of the evidentiary hearing. The Council received three limited appearance statements in this case, before the close of the evidentiary hearing. Two limited appearance statements, one from Pathfinder Renewable Wind Energy, LLC. and one from Hawk

Springs Fire Department and District Board were subsequently withdrawn. A limited appearance statement from Bob Whitten was admitted. The Council has considered the evidence and argument of the parties, and makes the following findings:

I. JURISDICTION

Wyo. Stat. Ann. § 35-12-106(a) (LEXIS 2009) provides that, "No person shall commence to construct a facility, as defined in this chapter, in this state without first obtaining a permit for that facility from the council."

"Industrial facility" or "facility" means any industrial facility with an estimated construction cost of at least one hundred seventy five million dollars ($175,000,000.00). Wyo. Stat. Ann. § 35-12-102(a)(vii) (LEXIS 2009).

Wyo. Stat. Ann. § 35-12-110(d) (LEXIS 2009) provides that upon receipt of an application for a permit, the director shall conduct a review of the application to determine if it contains all the information required by W.S. 35-12-109 and the rules and regulations.

Wyo. Stat. Ann. § 35-12-110(f) (LEXIS 2009) provides that not more than ninety (90) days after receipt of an application for a permit, the director shall:

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

Wyo. Stat. Ann. § 35-12-113(a) (LEXIS 2009) provides that within forty-five (45) days from the date of completion of the hearing the council shall make complete findings, issue an opinion and render a decision upon the record, either granting or denying the application as filed, or granting it upon terms, conditions or modifications of the construction, operation or maintenance of the facility as the council deems appropriate.

On January 4, 2010, Novelution Wind, doing business as Chugwater Flats submitted an application to the Division for an industrial siting permit to allow construction and operation of the Chugwater Flats Energy Project, LLC (Project) to be located in Platte and Goshen Counties, Wyoming, near Chugwater, Wyoming. At the jurisdictional meeting on September 16, 2009, Novelution Wind showed cost estimates for the total construction cost is in excess of $175,000,000.00. Therefore, this Council has jurisdiction to hear and decide this matter.

II. STATEMENT OF THE CASE

Novelution Wind, doing business as Chugwater Flats submitted its initial Application for an industrial siting permit on January 4, 2010, requesting a permit to allow construction and operation of the first phase of a three phase wind energy generation project, the first phase consisting of 143 wind turbine generators. The proposed project is to be located seven miles east of Chugwater and east of Interstate 25 primarily in Platte County, Wyoming. As originally submitted, the Division's staff found that the Application was lacking some information and asked Chugwater Flats to supply additional information. Upon the submittal of the additional information, the Division's staff subsequently determined that Chugwater Flats' Application was complete and in full compliance with Wyoming law and is ready to issue a permit for the first

phase of the Project. Novelution Wind requested the Council approve the Application as submitted with Addenda and exhibits. The Division and two separate entities filed notices to become a party to these proceedings and appeared at the March 30, 2010 evidentiary hearing. All parties were in favor of issuing the permit.

III. ISSUES AND CONTENTIONS

The sole issue in this case is whether Novelution Wind has proven, by a preponderance of the evidence, that the industrial siting permit Application regarding the Chugwater Flats Energy Project meets the requirements of the Wyoming Industrial Development Information and Siting Act, Wyo. Stat. Ann. § 35-12-113 (LEXIS 2009) and the Industrial Development Information and Siting Rules and Regulations, Chapter 1, Section 9(a) (Division's Rules) governing the proposed wind energy generation project. If the Council decides to issue the industrial siting permit, it must also decide what, if any, conditions to place on the permit.

IV. FINDINGS OF FACT

1. Chugwater Flats is a Wyoming limited liability company wholly owned by Novelution Wind, a private company wholesaler of electricity. *Transcript of Proceedings (hereinafter Tr. of Proc.), pp. 20-21; 42; 51-52; CFWP-1, p. 5.*

2. Prior to Chugwater Flats filing its Application in this matter, Novelution Wind representatives and the Division's staff conducted a jurisdictional meeting on September 16, 2009. The Division reviewed the financial budget for the Project and determined that the cost exceeded the statutory dollar threshold of $175,000,000.00. *See CFWP's Exhibit 1, p.6; State's Exhibit 1, p. 4.*

3. From January 27, 2009 until the filing of the Application in January 2010, Chugwater Flats representatives visited the governing bodies of the local governments in Platte County, as well as various state agencies and the Platte County Attorney. Open house meetings were held for the public at Chugwater on December 3, 2009 and Wheatland on December 4, 2009. A list of all meetings and details of the public and government involvement is found in Section 4 of the January 4, 2010 Application. Chugwater Flats responded to all agency concerns prior to the hearing in this matter. *See Exhibit CFWP, Appendix C; State's Exhibit 1, p. 6; Tr. of Proc., p. 64.*

4. On January 4, 2010, Chugwater Flats filed its Application with the Division requesting a permit to allow construction and operation of a wind powered electricity generating facility consisting of three phases. Prior to hearing, Chugwater Flats advised the Division that it intends to only seek a permit to allow construction of Phase I of the Project. The Phase I Project is comprised of 143 wind turbine generators, subject to micrositing, involving 3,520 acres under lease. At the time of the March 30, 2010 hearing, no transmission or public power contracts were in place, however, construction on the project will not begin until those items are resolved. *See Exhibit CFWP-1; Tr. of Proc., pp. 30 and 31.*

5. Examination copies of the Application were filed on January 4, 2010 with the Platte County Library and the State Library. On January 11, 2010, examination copies of the Application were filed with the Clerk of Platte County, the Clerk of Goshen County and the Goshen County Library. On January 4, 2010, the Division distributed copies of the Application to the State agencies pursuant to Wyo. Stat. Ann. § 35-12-110(b) (LEXIS 2009) to obtain information and recommendations relative to the impact of the proposed Project as it applies to each agencies area of expertise. *State's Exhibit 1, p. 6.*

6. Phase 1 of the Project site is located primarily in Platte County, Wyoming, approximately seven miles east of Chugwater and east of Interstate 25 on 3,520 acres of leased land, primarily private with three sections of State land. No Federal lands are involved in the Project. The Project will be constructed over a three month period of time. *Tr. of Proc., pp. 13; 28; 51; 58.*

7. All of the material constituting the filing of the Application was received by the Division on January 4, 2010. The Application consisted of 60 copies of the hardcopy document, *Section 109 Permit Application, Chugwater Flats Energy Project,* an *Adobe* .pdf computer file of that document, the payment of the application fee in the amount of $43,084.00 as required by W.S. 35-12-109(b), and a letter of transmittal by Dr. Thomas Laviolette, President of Novelution Wind, asking for the permit and attesting to the truthfulness and accuracy of the Application. *State's Exhibit 1, p. 4.*

8. Pursuant to the Industrial Siting Statutes, the Division staff subsequently published notice of the contested case hearing on Chugwater Flats' Application for an industrial siting permit in the Platte County Record Times on January 13, 2010 and the Casper Star Tribune on January 15 and 22, 2010. *State's Exhibit 1, p. 6; Tr. of Proc., pp. 5-7.*

9. The Division received two requests to become parties in this matter. The two requests were granted and those parties included Platte County and the Town of Chugwater. Both parties expressed their endorsement of the Project and will be discussed in greater detail below.

10. The Council received three limited appearance statements in this matter, from Pathfinder Renewable Wind Energy, LLC (Pathfinder), the Hawk Springs Fire Department and District Board and from Robert Whitten, a local area rancher and Chairman of Renewable

Energy Alliance of Landowners (REAL). Prior to the March 30, 2010 hearing, Pathfinder and Hawk Springs Fire District withdrew their limited appearance statements and those statements not thereafter considered by the Council. The Council did review and consider the limited appearance statement from REAL, which was generally in support of the Project with the request that the Council examine the Project closely and thoroughly prior to its approval.

11. Jessica Laviolette (Jess) is the Managing Director of Nolution Wind and oversaw all aspects of the Project. According to Jess, the site of the Project was chosen after taking into account many variables such as wind regimen, population, proximity to transmission lines and environmental constraints. After discussions with Wyoming Game and Fish, two half sections of land in Phase 2 were added to Phase 1 of the Project and approved by the Division. *Tr. of Proc., pp. 25-26.*

12. Dr. Tom Laviolette (Dr. Laviolette) is the President of Novelution Wind. Chugwater Flats is a company that Novelution Wind specifically incorporated in Wyoming for purposes of the wind energy generation Project. The three sections of State land in the Project area were acquired through a RFP and awarded to Chugwater Flats over other large wind organizations also bidding for those sections of land. Dr. Laviolette credibly testified that Novelution Wind and the Town of Chugwater have a very good working relationship on this Project and will be utilizing industrial lots on the northern end of Chugwater for the batch plant associated with the Project. The concrete will be provided by Croel ReadiMix from Wheatland. *Tr. of Proc., p. 77.*

13. According to Dr. Laviolette, Wyoming Department of Transportation has approved the plan regarding the delivery of components to the job site. Workforce and delivery vehicles are expected to use Interstate 25, Wyo. 313 or Loan Tree Road which turns into

Helbaum's Road, to Slater Road. Additionally, Platte County has zoning regulations specific to wind farms which Dr. Laviolette agreed would be complied with prior to construction. *Tr. of Proc., pp. 49; 53-54; 90.*

14. The anticipated peak workforce for the Project is 194 employees during the months of June, July and August 2010. Permanent workforce for Phase 1 is anticipated to be 17 to 18 people. Dr. Laviolette testified that adequate housing exists for the workforce. Every hotel in Torrington, Hawk Springs, Chugwater and the surrounding area had been contacted and showed accommodation for 400 people. *Tr. of Proc., pp. 63; 83*

15. Approximately seven residences are located inside the wind farm Project boundaries and no opposition exists as to the anticipated location of the towers. Tower placements will be at least 1,000 feet away from any residence. Although transmission contracts have not been finalized, Dr. Laviolette testified that three possible locations exist for substations near the Project site. The life expectancy of a GE Turbine is 20 to 25 years. At the end of the turbine's life, if it is not upgraded, the turbines will be removed, the fiberglass from the blades will be landfilled and everything else on the turbine unit will be recycled. Concrete will be taken down to three feet underground. *Tr. of Proc., pp. 70; 85; 95*

16. In Dr. Laviolette's opinion, the Project will not pose a threat of serious injury to the environment or the social and economic condition of the inhabitants, nor will the Project substantially impair the health, safety or welfare of the inhabitants. Additionally, Dr. Laviolette testified that the Division's proposed conditions to be placed on the permit were appropriate. *Tr. of Proc., pp. 64; 67.*

17. Gregg Johnson (Johnson), is an Environmental Consultant, and is an expert at assessing the impact of construction and other activities on wildlife. Johnson started a baseline

wildlife study on Phase 1 of the Project and determined that the area is primarily winter wheat. Johnson testified the Project area is a low impact site for wildlife. The nearest sage grouse nesting area is 40 miles west of the Project. Johnson also performed a bat acoustic study and found that based on the levels of bat population in the area, the mortality rate would be low on the site. Johnson also testified that in accordance with the Governor's recommendation, the wind farm is located in an area east of Interstate 25 for minimal impacts to environmental resources. In Johnson's professional opinion, the activities described for the proposed Project will not create any serious injury or social threat to the environment. *Tr. of Proc., pp. 117 - 124.*

18. Kim Austin (Austin) testified as an expert in natural resources and is employed by Terracon Consultants, Inc. Austin has been involved with over 75 wind farm projects across the United States. Austin performed an Environmental Site Assessment on Phase 1 of the Project. The Project site is largely agricultural and has very little native habitat. No recognized environmental conditions were discovered on the Project site. In Austin's professional opinion, the Project site will not pose a threat of serious injury or significant impact to the environment. *Tr. of Proc., pp. 128-137.*

19. John Frazelle (Frazelle) is an expert in archeology and formed the North Platte Archeological Services. Frazelle and his staff conduct archeological surveys for energy related projects to determine the potential effects on the archeology. Frazelle studied the entire Project area and discovered it had very little native habitat and was primarily agricultural. Based upon his analysis, Frazelle determined that the Project would not pose a threat of serious injury to the cultural properties within the area. *Tr. of Proc., pp. 140-144*

20. Dr. Edward Waters (Dr. Waters) testified as an expert Economist. Dr. Waters was asked to review socioeconomic baseline information and a conduct a project economic

assessment. Dr. Waters studied the geographic area consisting of Platte and Goshen Counties and all towns within that area. The area is primarily agriculture, retail services and government. Based upon Dr. Waters' study and assessment, no significant negative socioeconomic impacts were related to the Project and the Project would not pose a threat or serious injury to the inhabitants in the area. *Tr. of Proc., pp. 146-151; CFWP-1, Section 5.*

21. Dr. Tom Schroeder (Dr. Schroeder), Program Principal for the Industrial Siting Division, Department of Environmental Quality, testified as an expert witness in this matter. Dr. Schroeder receives and processes applications for permits by the Industrial Siting Council. Dr. Schroeder personally reviewed and processed the Chugwater Flats Application in this matter. Dr. Schroeder and his Staff determined that certain accessory studies of the land, project features and completion of the leases made Phase 3 of the Project premature. Phase 2 was reduced by 640 acres which were transferred to the description of Phase 1. Dr. Schroeder and his Staff determined that the enlarged version of Phase 1 was suitable for action by the Council, but not Phase 2. Dr. Schroeder recommended Permit Condition #16 to provide a method of approval for subsequent phases of the Project. *Tr. of Proc., pp. 158-160;163;173; State's Exhibit 1, p. 5.*

22. According to Dr. Schroeder, the proposed Application complied with the applicable laws for an industrial siting permit. Dr. Schroeder testified that the area primarily affected includes the Project site, the municipalities of Chugwater, Wheatland and Torrington, and the inclusive areas of Platte and Goshen Counties. The Application adequately described the nature and location of the Project, adequately set forth the time, commencement and construction of the Project and adequately addressed the number and estimated job classifications. Permit Condition # 1 in *State's Exhibit 2* adequately covered the requirement that Novelution Wind obtain all required state and local permits prior to construction. Dr. Schroeder believed potential

environmental and reclamation issues were adequately addressed. *Tr. of Proc., pp.166-169; State's Exhibit 1, p. 13.*

23. Dr. Schroeder testified that all State agencies responded to a request for comments on the Application. After receiving supplemental information, no agencies found issues with the Project but Game and Fish requested a Permit Condition as reflected in the Division's proposed Permit Condition #15. Dr. Schroeder believed the Project did not pose a threat of serious injury to the environment or to the social and economic conditions of the area. The proposed Project also would not substantially impair the health, safety or welfare of the local inhabitants. Dr. Schroeder recommended approval of Phase 1 of the Project with the recommended permit conditions as set forth in State's *Exhibit 2*. Finally, Dr. Schroeder affirmed that both counties affected by the Project arrived at a mutually agreed upon allocation of impact assistance funds, resulting in 90 percent of the impact assistance funds to Platte County and 10 percent of the impact assistance funds distributed to Goshen County. *Tr. of Proc., pp. 169-171; 177.*

24. Chairman Dan Kirkbride (Kirkbride) of the Platte County Commissioners testified that the members of the commission met and discussed the Project. All members were in favor of the Project, as well as the public, especially in light of the location chosen by Novelution for the Project. Chairman Kirkbride testified that Platte County passed regulations concerning wind farms as represented in the Applicant's Exhibit 2. After the proceedings in this matter, the County Commissioners will review the Application and determine for approval. Platte County requested a condition of the permit would be to require approval of the Application by the Platte County Commissioners and the Platte County Zoning and Planning Board. Chairman Kirkbride agreed with the allocation of impact assistance funds between Platte

and Goshen Counties, with Platte receiving 90 percent of the funds and Goshen receiving 10 percent of the funds. *Tr. of Proc., pp.111; 113.*

25. Carol Ash, Mayor of Chugwater, testified that the Town of Chugwater is in favor of the Project and has the means necessary to meet the housing requirements of the workers coming into the area for the Project. The Town of Chugwater has a new well and new water lines and can meet the water needs for the Project. *Tr. of Proc., pp.188-190.*

26. 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

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

28. Wyo. Stat. Ann. § 35-12-109(a) (LEXIS 2009) provides that an application for a permit shall be filed with the Division and contain the following information:

> (i) The name and address of the applicant, and, if the applicant is a partnership, association or corporation, the names and addresses of the managers designated by the applicant responsible for permitting, construction or operation of the facility;
>
> (ii) The applicant shall state that to its best knowledge and belief the application is complete when filed and includes all the information required by W.S. 35-12-109 and the rules and regulations, except for any

requirements specifically waived by the council pursuant to W.S. 35-12-107;

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

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

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

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

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

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

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

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

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

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

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

(A) Scenic resources;

(B) Recreational resources;

(C) Archaeological and historical resources;

(D) Land use patterns;

(E) Economic base;

(F) Housing;

(G) Transportation;

(H) Sewer and water facilities;

(J) Solid waste facilities;

(K) Police and fire facilities;

(M) Educational facilities;

(N) Health and hospital facilities;

(O) Water supply;

(P) Other relevant areas.

(xiv) Estimated construction cost of the facility;

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

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

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

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

29. Wyo. Stat. Ann. § 35-12-110(b) (LEXIS 2009) requires that the division shall obtain information and recommendations from the following state agencies relative to the impact of the proposed facility as it applies to each agency's area of expertise:

(i) Wyoming department of transportation;

(ii) Public service commission;

* * *

(iv) Game and fish department;

(v) Department of health;

(vi) Department of education;

(vii) Office of state engineer;

* * *

(ix) Wyoming state geologist;

(x) Wyoming department of agriculture;

(xi) Department of environmental quality;

* * *

(xiv) The University of Wyoming;

(xv) Department of revenue; and

(xvi) The Wyoming business council.

30. Wyo. Stat. Ann. § 35-12-110(c) (LEXIS 2009) provides the information required by subsection (b) of this section shall be provided by the agency from which it is requested not more than sixty (60) days from the date the request is made and shall include opinions as to the advisability of granting or denying the permit together with reasons therefore, and recommendations regarding appropriate conditions to include in a permit, but only as to the areas within the expertise of the agency. Each agency which has regulatory authority over the proposed facility shall provide to the council a statement defining the extent of that agency's jurisdiction to regulate impacts from the facility, including a statement of the agency's capability to address cumulative impacts of the facility in conjunction with other facilities. The statement of jurisdiction from each agency is binding on the council.

31. Wyo. Stat. Ann. § 35-12-110(d) (LEXIS 2009) provides that upon receipt of an application, the director shall conduct a review of the application to determine if it contains all the information required by W.S. 35-12-109 and the rules and regulations. If the director determines that the application is incomplete, he shall within thirty (30) days of receipt of the application notify the applicant of the specific deficiencies in the application. The applicant shall provide the additional information necessary within thirty (30) days of a receipt of a request for additional information from the director.

32. Wyo. Stat. Ann. § 35-12-110(f) (LEXIS 2009) 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.

33. Pursuant to Wyo. Stat. Ann. § 35-12-111 (a) (LEXIS 2009), the parties to a permit proceeding include:

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

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

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

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

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

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

34. Pursuant to Wyo. Stat. Ann. § 35-12-113 (LEXIS 2009), the council shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) A statement that shall be a reasonable estimate of the maximum time period required for construction of the industrial facility and an estimate of when the physical components of the industrial facility will be ninety (90) percent complete, and the basis for that estimate.

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

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

> (i) Seasonal fluctuations and the peak employment during both construction and operation;
>
> (ii) Annual payroll;
>
> (iii) Expected benefits, if any, to be provided including housing allowances, transportation allowances, and per diem allowances.

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

> (i) Land use designation of the site location, including whether or not the use of the land by the industrial facility is consistent with state, intrastate, regional, county and local land use plans, if any. The analysis shall include the area of land required and ultimate use of land by the

industrial facility and reclamation plans for all lands affected by the industrial facility or its dependent components;

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

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

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

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

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

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

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

(B) Sewer and water distribution and treatment facilities including the capability of these facilities to meet projected

service levels required due to the proposed industrial facility. Use of facilities by the proposed industrial facility should be assessed separately from population related increases in service levels;

(C) Solid waste collection and disposal services including the capability of these facilities to meet projected service levels required due to the proposed industrial facility. Use of facilities by the proposed industrial facility should be assessed separately from population related increases in service levels;

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

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

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

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

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

(I) Problems due to the transition from temporary, construction employees to operating workforces should be addressed. Changes in levels of services required as a result of the proposed industrial facility should specifically be addressed. Cumulative impacts of the proposed industrial facility and other developments in the area of site influence should be addressed separately. This assessment should

examine increased demands associated with the construction and operational phases of the proposed industrial facility, as well as effects on the level of services as the construction or operational workforces decline;

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

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

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

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

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

(k) The applicant shall describe the procedures proposed to avoid constituting a public nuisance, endangering the public health and safety, human or animal life,

property, wildlife or plant life, or recreational facilities which may be adversely affected by the proposed facility, including:

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

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

B. Application of Principles of Law

36. This Council has considered all the evidence and testimony presented at the March 30, 2010 hearing in this matter, as well as the limited appearance statement from REAL. The concerns expressed by Platte County requiring Novelution Wind to meet all the requirements under the county wind regulations prior to construction on Phase 1 of the project has been considered by the Council. As a result, Permit Condition #1 as recommended by the Division is amended to add the phrase that all required state and local permits, *including a special use wind farm permit issued by Platte County* will be obtained by the Applicant.

37. Novelution Wind has shown, by a preponderance of the evidence, that it filed a completed Application with the Division regarding the 143 wind turbines in Phase 1 of the Chugwater Flats Energy Project, and included the requirements in Wyo. Stat. Ann. § 35-12-109(a) (LEXIS 2009) and Chapter 1, Section 7 of the Rules and Regulations and that the proposed Project complies with all applicable law.

38. Novelution Wind has shown, through testimony and exhibits, that the proposed Project will not pose a threat of serious injury to the environment nor to the social and economic condition or inhabitants in the affected area.

39. Finally, through the testimony of all its witnesses, as well as the exhibits submitted, Novelution Wind has demonstrated the proposed Project will not substantially impair the health, safety or welfare of the inhabitants.

40. With the proposed conditions set forth in *State's Exhibits 1 and 2,* this Council is satisfied that Permit Condition #1, as modified, will assure compliance with the statutes and rules at issue in this matter regarding this Project and proposed Permit Condition #15 will satisfy Game and Fish concerns. As a result of the modification of Permit Condition #1, the Division's proposed Permit Condition #16 was withdrawn.

DECISION

Pursuant to the authority vested in the Industrial Siting Council by WYO. STAT. ANN. § 35-12-113 (LEXIS 2009), this Council hereby **grants** the Industrial Siting Permit Application filed by Novelution Wind, LLC, doing business as Chugwater Flats Energy Project, LLC to construct and operate Phase 1 of the Chugwater Flats Energy Project, a wind energy generation project consisting of 143 wind turbines to be located near the Town of Chugwater, Wyoming in Platte and Goshen Counties, Wyoming.

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

Platte County, Wyoming: 90%

Goshen County, Wyoming: 10%

Finally, pursuant to its authority, this Council places the following terms and conditions on the facility as modified from *State's Exhibit #2*:

Condition #1. Novelution Wind, LLC, doing business as Chugwater Flats Energy Project, LLC (Permittee) will obtain and maintain all required State and local permits, including a

special use wind farm permit issued by Platte County, and approvals in accordance with W.S. 35-12-109(a)(xv), 35-12-113(a) (i) and 35-12-115 during the term of this permit.

Condition #2. Construction must commence within 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 Top of the World Windpower Project (Project), including those resulting from direct and indirect employment. For purposes of determining additional mitigation measures by the Permittee, consideration shall be given to previous mitigation efforts. However, in any event, Permittee shall not be required to provide mitigation in excess of the proportion that the Permittee's activities are contributing to the total impacts within the impacted area (as defined by W. S. 35-12-102).

Condition #6. The Permittee shall give written notice to the ISD when construction commences on each phase of the Project.

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

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

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

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

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

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

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

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

d. Demonstration of compliance with permit conditions.

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

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

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

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

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

e. An updated construction schedule for the phases in the form of Figure 3-1 as shown on page 35 of the *Section 109 Permit Application Chugwater Flats Energy Project* (Application).

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

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

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

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

Condition #12. The Permittee will notify the ISD in advance and provide updates to the construction schedule, Figure 3-1, the work force table, Table 3-1, and pages 129 through 133 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 Project.

Condition #15. Approval to construct Phase 1 of the Project requires an acceptable plan to mitigate impact from construction and operation on nesting raptors and sharp tail grouse. A plan will include surveys, mitigation actions, actions on future discovery, and a statement that the Permittee commits to the plan. Any plan shall be filed with the ISD who will distribute it to, and invite comments from the Parties, the ISC, and appropriate State agencies. The Director may require improvements to the plan prior to acceptance. The Director may accept the plan and allow construction or refer the plan to the ISC for consideration by the ISC.

ORDER

IT IS THEREFORE ORDERED that the Industrial Siting Permit Application known as Chugwater Flats Energy Project, as submitted by Novelution Wind, LLC, and modified by this Council as set forth above in Permit Conditions #1 through #15 be and is hereby granted.

DONE this 22 day of APRIL, 2010.

Shawn A. Warner

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

CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing document was served upon the Department of Environmental Quality, Industrial Siting Division and a true and correct copy was served upon the parties by mailing same, postage prepaid, on the 23 day of August, 2010, addressed to the following:

Office of Administrative Hearings
State of Wyoming
Cheyenne, Wyoming 82002

Wyoming Department of Environmental Quality - (ORIGINAL)
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