

BEFORE THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY
INDUSTRIAL SITING DIVISION

STATE OF WYOMING

IN THE MATTER OF THE INDUSTRIAL)
SITING PERMIT APPLICATION OF) DOCKET NO. DEQ/ISC 09-01
PACIFICORP ENERGY)
DUNLAP WIND ENERGY PROJECT)

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

THIS MATTER came before the Industrial Siting Council (Council) on August 28, 2009, for evidentiary hearing and the record was closed on that date. Council members present at the hearing included Shawn Warner, Chairman, Peter Brandjord, Jim Miller, Sandy Shuptrine, 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, PacifiCorp Energy (PacifiCorp) appeared by and through its counsel, David Evans. The Industrial Siting Division (Division) appeared by and through its counsel, Senior Assistant Attorney General, John S. Burbridge. Nine other parties participated in the evidentiary hearing including Cindy DeLancey on behalf of Carbon County, James P. Schermetzler on behalf of Albany County, Daniel T. Massey on behalf of the City of Rawlins, David C. Clark on behalf of the City of Laramie, William M. MacPherson on behalf of the Town of Medicine Bow and Carbon County School District Number 2, David Throgmorton, PhD. on behalf of Carbon County Higher Education Center, Jason A. Lillegraven, resident of Laramie and Douglas Thomas on behalf of the Wyoming Building and Construction Trades Council. PacifiCorp's Exhibits PE-1 through PE-16, the Division's Exhibits 1 through 3, Carbon County Higher Education Center's Exhibit 1 and

Jason Lillegraven's Exhibits 1 through 5 were admitted for purposes of the evidentiary hearing. The Council received no limited appearance statements in this case, either before or during the evidentiary hearing. Although Peggy A. Trent, on behalf of the Town of Hanna, faxed a limited appearance statement to the Division's office in Cheyenne, Wyoming on August 28, 2009, the fax was received after the conclusion of the August 28, 2009 hearing in Saratoga, Wyoming and was not submitted in accordance with the rules and regulations governing the submittal of a limited appearance statement. Therefore, the Town of Hanna's limited appearance statement was not considered by the Council. The Council has considered the evidence and argument of the parties, and makes the following findings:

I. JURISDICTION

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

"Industrial facility" or "facility" means any industrial facility with an estimated construction cost of at least one hundred seventy three million, two hundred thousand dollars (\$173,200,000.00). Wyo. Stat. Ann. § 35-12-102(a)(vii) (LEXIS 2008).

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

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

(i) Schedule and conduct a public hearing, provided that no hearing shall be held until the state engineer has submitted a preliminary and final opinion as to the quantity of water available for the proposed facility pursuant to W.S. 35-12-108;

(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.

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

On June 15, 2009, PacifiCorp submitted an application to the Division for an industrial siting permit to allow construction and operation of the Dunlap Wind Energy Project to be located in Carbon County, Wyoming, near Medicine Bow, Wyoming. At the jurisdictional meeting on April 29, 2009, PacifiCorp showed cost estimates for the total construction cost is in excess of \$173,200,000.00. Therefore, this Council has jurisdiction to hear and decide this matter.

II. STATEMENT OF THE CASE

PacifiCorp submitted its initial application for an industrial siting permit on June 15, 2009 requesting a permit to allow construction and operation of a two phase wind energy generation project, consisting of 200 wind turbine generators. The proposed project is to be

located eight miles north of Medicine Bow, Carbon County, Wyoming. The proposed Project will be constructed in two phases with 74 and 126 wind turbine generators respectively. The Division's staff subsequently determined that PacifiCorp's application was complete and in full compliance with Wyoming law and is ready to issue a permit for the two phase Project, referred to as the Dunlap Wind Energy Project. PacifiCorp requested the Council approve the application as submitted with exhibits. Nine separate entities filed notices to become a party to these proceedings and appeared at the August 28, 2009 evidentiary hearing. Although all parties expressed various concerns about the impact of the project, eight of the nine parties were in favor of issuing the permit.

III. ISSUES AND CONTENTIONS

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

IV. FINDINGS OF FACT

1. PacifiCorp Energy is a cost-based regulated utility company doing business under the legal entity of PacifiCorp. *Transcript of Proceedings (hereinafter Tr. of Proc.)*, pp. 28; 35.

2. Prior to PacifiCorp filing its application in this matter, PacifiCorp and the Division conducted a jurisdictional meeting on April 29, 2009. The Division reviewed the financial budget for the project and determined that the cost exceeded the statutory dollar threshold of \$173,200,000.00. *PacifiCorp's Exhibit PE-1, p. ES-1; State's Exhibit 1, p. 7.*

3. On June 15, 2009, PacifiCorp filed an application with the Division requesting a permit to allow construction and operation of a wind powered electricity generating facility consisting of 200 wind turbine generators to be constructed in two phases. The facility is referred to as the Dunlap Wind Power Project (Project). The purpose of the proposed Project is to meet the increased consumption of electrical energy through the development of renewable resources, without causing air pollution or depleting nonrenewable resources. *PacifiCorp's Exhibit PE-1, Section 1.*

4. The Project site is located in Carbon County, Wyoming, approximately eight miles north of Medicine Bow, Wyoming. The site encompasses in excess of 16,500 acres of land. The Project is located on a combination of private fee and State of Wyoming owned lands. PacifiCorp has also obtained a Conditional Use Permit from the Carbon County Planning and Zoning Commission and a Special Use Lease from the State of Wyoming Board of Land Commissioners for state owned parcels within the project boundary. *PacifiCorp Exhibit PE-1, p. ES-1 to ES-2.*

5. All of the material constituting the filing of the application was received by the Division on June 15, 2009. The Application consisted of 60 copies of the hardcopy document, *Section 109 Permit Application, Dunlap Wind 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 Mark Tallman, Vice-President Renewable

Resource Acquisition, PacifiCorp Energy, asking for the permit and attesting to the truthfulness and accuracy of the Application. *State's Exhibit 1, p. 3.*

6. Pursuant to the Industrial Siting Statutes, the Division staff subsequently published notice of the contested case hearing on PacifiCorp's application for an industrial siting permit in the Casper Star Tribune on June 21 and 25, 2009, and in the Rawlins Daily Times on June 20 and 23, 2009. It was subsequently determined that the hearing in this matter should begin earlier than previously published and a corrected notice was published referencing the change in start time from 10:00 a.m. to 8:30 a.m. The corrected notice was published in the Casper Star Tribune on Friday, August 21, 2009 and in the Rawlins Daily Times on Wednesday, August 19, 2009. *State's Exhibit 1, p. 5; Tr. of Proc., p. 162.*

7. The Division received nine requests to become parties in this matter. All nine requests were granted and those parties included Carbon County, Albany County, the City of Rawlins, the City of Laramie, the Town of Medicine Bow, Carbon County School District Number 2, Carbon County Higher Education Center, Laramie Resident, Dr. Jason A. Lillegraven (Dr. Lillegraven) and the Wyoming Building and Construction Trades Council. All parties with the exception of Laramie resident, Dr. Lillegraven, expressed support of the Project, as well as concerns about cumulative impacts. Dr. Lillegraven expressed concerns regarding the geologic stability of the Project area, cumulative impacts in light of other projects in the area, negative impacts on wildlife, as well as protection of the natural beauty of the landscape in the Project area. Those concerns will be discussed in greater detail below. *Lillegraven Exhibits 1 through 5.*

8. The Council did not timely receive and therefore did not consider any limited appearance statements in this matter.

9. Mark Tallman (Tallman), is the Vice-President of Renewable Energy Acquisitions for PacifiCorp. According to Tallman, the site chosen for this wind energy Project is expected to be a good site from a wind production capability perspective. Also, a consideration important to PacifiCorp is that there will be a strong environmental stewardship with the Project. According to Tallman, the Project site, transmission line and the Shirley Basin substation and transmission system all reside outside an established core Sage Grouse area. *Tr. of Proc., pp. 36; 38.*

10. Tallman asserted that PacifiCorp has made application to the Wyoming Public Service Commission for the Project. Tallman testified he expects up to 300 temporary construction jobs and 10 full-time jobs will be created as a result of the Project, 20 percent of the temporary jobs will be filled locally. Road construction will begin in the fall of 2009, peak workforce would occur in the summer of 2010 and the Project would be completed in October 2010. A query of hotel/motel accommodations in the Project area reflected room availability of 358 rooms during the Project's peak construction period. Additionally, in order to deal with concerns over socioeconomic impacts due to subcontractors potentially leaving the area without paying service sector providers, PacifiCorp intends to seek credit assurances either through parental guarantees or letters of credit or not make payments to the contractors unless the contractor presents PacifiCorp with either full or partial lien waivers. *Tr. of Proc., pp. 38-41; 59; 82-83; PacifiCorp's Exhibit PE-1, Appendix E.*

11. According to Tallman, the height from the base of the turbine to its tip is 385 feet. Turbine rotors start to turn at 7 miles per hour and power production begins at 9 miles per hour. The blades turn slowly at 14 to 20 revolutions per minute (r.p.m.'s) and high wind shutdown occurs at 60 r.p.m.'s. *Tr. of Proc., pp. 41-42.*

12. Tallman confirmed that decommissioning of the Project would occur in accordance with PacifiCorp's *Exhibit PE-13*. Additionally, Tallman reviewed the Division's 14 proposed conditions to be placed on the permit and agreed the conditions were appropriate. *Tr. of Proc.*, pp. 42-43.

13. Chad Teply (Teply) is the Vice-President of Resource Development and Construction for PacifiCorp. Teply confirmed that access road construction on Phase I of the Project would begin in September 2009. Substation erection and transmission line construction would begin in November 2009 in order to avoid raptor nest habitat periods. The peak construction period occurs in spring/summer 2010 and commercial operation of Phase I of the Project is expected to occur in November 2010. An identical schedule is anticipated for Phase II of the Project beginning September 2010. Cumulative impacts were considered regarding the availability of housing during the peak construction period. Monthly reports are provided by contractors and subcontractors identifying where their employees are living so that PacifiCorp can track the residences to assure that workers are not violating housing ordinances. *Tr. of Proc.*, pp. 62-63; 85; 115.

14. Teply confirmed that PacifiCorp employment contracts require drug and alcohol testing programs on the contractors, including pre-employment screening, reasonable suspicion checks, post-incident screening and random on-site testing. Additionally, the Project's solid waste materials will be shipped 170 miles to Sweetwater County as all local landfills were contacted and not able to handle the Project waste. *Tr. of Proc.*, pp. 77; 79.

15. Ryan Henning (Henning), Project Manager of CH2M Hill, was assigned to complete the permit application for PacifiCorp. Section 3 of PacifiCorp's *Exhibit PE-1* details the listing of all required permits from local, state and Federal governments. According to

Henning, all permits either have been received or those that have not are not anticipated to be problematic. PacifiCorp did not receive any comments regarding the Project from the Wyoming State Geologist. A preliminary evaluation has been conducted of the Project site in order to characterize major geologic hazards to further both the design criteria and engineering design for the turbine foundations. Environmental resource reviews were conducted, as well as impact analyses. Wyoming Game and Fish has a requisite six requirements that they requested and PacifiCorp has agreed to implement on the Project to further minimize any potential impacts as reflected in PacifiCorp's *Exhibits PE-15 and PE-16. Tr. of Proc., pp. 100-104.*

16. Henning also analyzed the socioeconomic impacts. Henning identified direct economic benefits to the nearby communities as a result of the additional workforce in the area. Based upon his analysis, Henning determined that the Project would not pose a threat of serious injury to the social or economic condition of the inhabitants, nor would the Project impair the health, safety or welfare of the inhabitants. *Tr. of Proc., pp. 98-100; 102;108-109.*

17. Tom Priestly (Priestly) is the Senior Environmental Planner for CH2M Hill and helped develop the methods used to study visual assessments for wind projects. Priestly prepared the visual analysis of the Project as reflected in PacifiCorp's *Exhibit PE-1, Section 6.12.* According to Priestly, PacifiCorp followed a procedure protocol similar to that set forth by the National Research Council and also incorporated the Federal Highway Administration procedure in order to analyze the aesthetic issues associated with the wind Project. Priestly considered the physical changes to the landscape and the zone of visual influence extending 20 miles around the Project. Priestly considered views from communities, rural homes, parks and recreation areas, scenic highways and scenic overlooks and identified 23 views. In applying the

criteria established by the national Research Council, Priestly concluded that the Project would not have a substantial impact on visual resources. *Tr. of Proc., pp. 134-139.*

18. Wyoming Game and Fish personnel, Mary Flanderka, Paul Day and John Emmerick testified at the hearing in this matter regarding a number of issues concerning the Project, including monitoring sage grouse, aquatics, pronghorn antelope and Phase II of the Project. Potential effects of sedimentation in basins and the effect on stream environments were also considered. The Wyoming Game and Fish Department is satisfied with the written agreement reached with PacifiCorp regarding their issues of concern and believe that an adequate monitoring program as reflected in PacifiCorp's *Exhibit PE-15 and PE-16* is adequate to protect pronghorn, elk and aquatic concerns. *Tr. of Proc. pp. 151-155.*

19. Dr. Tom Schroeder (Dr. Schroeder), Program Principal for the Industrial Siting Division, Department of Environmental Quality, receives and processes applications for permits by the Industrial Siting Council. Dr. Schroeder reviewed and processed PacifiCorp's application in this matter. Dr. Schroeder identified areas of concern in State's Exhibit 1. Dr. Schroeder initially recommended 16 conditions to be placed on the permit. However, due to PacifiCorp's *Exhibits PE-13 through PE-16* which Dr. Schroeder received and reviewed just prior to hearing, Dr. Schroeder withdrew his recommended Conditions #14 and #16 relating to decommissioning and wildlife habitat protection. *Tr. of Proc., pp. 173-174.*

20. According to Dr. Schroeder, the proposed Application complied with the applicable laws for an industrial siting permit. Dr. Schroeder testified that 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. Dr. Schroeder asserted that a special Condition # 15 in *State's*

Exhibit 1, relating to the second phase of the Project, adequately covered potential issues regarding construction schedules and workforce issues associated with the Project. Additionally, with the material supplied to Dr. Schroeder by PacifiCorp on the date of hearing, Dr. Schroeder believed potential environmental and reclamation issues were adequately addressed. *Tr. of Proc.*, p. 169-170.

21. 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 both phases of the Project with the recommended conditions as set forth in State's *Exhibit's 1 and 2* with the exception of Conditions #14 and #16. Finally, Dr. Schroeder affirmed that all 10 local governments affected by the Project arrived at a mutually agreed upon allocation of impact assistance funds, resulting in 75 percent of the funds to Carbon County and 25 percent of the funds distributed to Albany County. *Tr. of Proc.*, pp. 170-173; 175.

22. Chairman Terry Weickum (Weickum) of the Carbon County Commissioners testified to express his concerns over the cumulative impact of the Project. Weickum agreed with the positive aspects of the Project as identified in the application, however expressed concerns regarding a change in the hunting, viewing and tourism habits of the area. Regardless, Weickum was in support of the Project and believed the Project would actually have minimal affects as far as view shed and tourism because the Project was in an area that was not often a highly traveled tourism route. In terms of cumulative impact, Weickum did not believe this Project was the "backbreaker" but would add to the problems created by the boom/bust cycle associated with the construction of wind farms. *Tr. of Proc.*, pp. 196-199.

23. Testimony from representatives of Albany County, the City of Laramie, the City of Rawlins, and the Town of Medicine Bow reflected all parties in favor of the Project despite concerns over the cumulative impact the Project created in the area regarding housing, law enforcement, emergency services, road maintenance and subcontractors leaving the area without paying service vendors. *Tr. of Proc., pp. 206-246.*

24. Dr. Lillegraven, a board-retired University of Wyoming Professor, formerly employed in the Departments of Geology/Geophysics and Zoology/Physiology testified as a concerned citizen from Laramie. Dr. Lillegraven identified nine issues of concern regarding the Project, including environmental disturbances, cumulative impacts due to other projects in the area, inaccuracies in the geologic sections of the application, stream impact, groundwater impact, hunting impacts, visual impacts, wildlife habitat impacts and the overall unreliability of the information presented in the application.

25. According to Dr. Lillegraven, contrary to the assertions in the geologic section of the Application, the entire Project will be constructed on thin soil and highly mobile rock units which will pose a threat to equipment and people due to the Project being prone to mass movement of rock. Additionally, the Project poses a socioeconomic threat to the area due to other industrial projects in the area which will impact housing. Dr. Lillegraven also testified the Application inaccurately reflected its connection between the Project's drainage of water and the Platte River system.

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. PacifiCorp 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 2008) provides that an application for a permit shall be filed with the Division and contain the following information:

(i) The name and address of the applicant, and, if the applicant is a partnership, association or corporation, the names and addresses of the managers designated by the applicant responsible for permitting, construction or operation of the facility;

(ii) The applicant shall state that to its best knowledge and belief the application is complete when filed and includes all the information required by W.S. 35-12-109 and the rules and regulations, except for any requirements specifically waived by the council pursuant to W.S. 35-12-107;

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

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

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

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

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

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

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

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

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

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

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

(A) Scenic resources;

(B) Recreational resources;

(C) Archaeological and historical resources;

(D) Land use patterns;

(E) Economic base;

(F) Housing;

(G) Transportation;

(H) Sewer and water facilities;

(J) Solid waste facilities;

(K) Police and fire facilities;

(M) Educational facilities;

(N) Health and hospital facilities;

(O) Water supply;

(P) Other relevant areas.

- (xiv) Estimated construction cost of the facility;
- (xv) What other state or federal permits and approvals are required;
- (xvi) Compatibility of the facility with state or local land use plans, if any;
- (xvii) Any other information the applicant considers relevant or required by council rule or regulation;
- (xviii) A brief description of the methods and strategies the applicant will use to maximize employment and utilization of the existing local or in-state contractors and labor force during the construction and operation of the facility.

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

(i) Wyoming department of transportation;

(ii) Public service commission;

* * *

(iv) Game and fish department;

(v) Department of health;

(vi) Department of education;

(vii) Office of state engineer;

* * *

(ix) Wyoming state geologist;

(x) Wyoming department of agriculture;

(xi) Department of environmental quality;

* * *

(xiv) The University of Wyoming;

(xv) Department of revenue; and

(xvi) The Wyoming business council.

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

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

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

(i) Schedule and conduct a public hearing, provided that no hearing shall be held until the state engineer has submitted a preliminary and final opinion as to the quantity of water available for the proposed facility pursuant to W.S. 35-12-108;

(ii) Notify the applicant and local governments of the hearing;

(iii) Cause notice of the hearing to be published in one (1) or more newspapers of general circulation within the area to be primarily affected by the proposed facility; and

(iv) Hold the hearing at a community as close as practicable to the proposed facility. The provisions of W.S. 35-12-111, 35-12-112 and 35-12-114 apply to the hearing.

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

(i) The applicant;

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

(iii) Any person residing in a local government entitled to receive service of a copy of the application under W.S. 35-12-110(a)(i) and any nonprofit organization with a Wyoming chapter, concerned in whole or in part to promote conservation or natural beauty, to protect the environment, personal health or other biological values, to preserve historical sites, to promote consumer interests, to represent commercial and industrial groups, or to promote the orderly development of the areas in which the facility is to be located. In order to be a party the person or organization must file with the office a notice of intent to be a party not less than twenty (20) days before the date set for the hearing.

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

(c) Any person may make a limited appearance in the proceeding by filing a statement in writing with the council prior to adjournment of the hearing. A statement filed by a person making a limited appearance shall become part of the

record and shall be made available to the public. No person making a limited appearance under this subsection is a party to the proceeding.

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

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

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

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

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

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

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

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

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

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

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

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

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 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.

B. Application of Principles of Law

36. This Council has considered all the evidence and testimony presented at the August 28, 2009 hearing in this matter. The concerns expressed by the Town of Medicine Bow regarding the subcontractors leaving the area without paying service vendors causes a socioeconomic impact. Therefore, this Council finds it appropriate to condition the permit Application upon notification to the residents in the area of impact when the Project is nearing completion in order to protect the service vendors.

37. This Council has also considered the arguments of Dr. Lillegraven and finds the Application, along with PacifiCorp's Exhibits PE-2 through PE-16 adequately address the view shed, wildlife habitat and housing concerns, even considering the cumulative impact in the area. Dr. Lillegraven's concerns related to the stability of the soil in the Project area have been considered on a project wide basis by PacifiCorp's geological review. In addition to the already completed project wide geological analysis, additional geological testing will be conducted on the precise location of each individual tower before it is placed in its final location. PacifiCorp stated that all geological industry standards would be observed in each individual placement. In addition to these verbal assurances, each tower represents a significant financial investment. PacifiCorp, therefore, has an inherent financial incentive to assure that each tower is sited in a geologically sound manner. Furthermore, the Project is over one-half mile from the nearest residence and therefore no safety concern or impact for the habitants of the area exists. It is also noteworthy that the application was submitted to the State Geologist and he expressed no geological concerns.

38. PacifiCorp has shown, by a preponderance of the evidence, that it filed a completed application with the Division regarding the 200 wind turbines in the Dunlap Wind

Power Project, and included the requirements in Wyo. Stat. Ann. § 35-12-109(a) (LEXIS 2008) and Chapter 1, Section 7 of the Rules and Regulations and that the proposed Project complies with all applicable law. *See for example testimony of Mark Tallman, Chad Teply, Ryan Henning, Tom Priestly and Dr. Tom Schroeder; PacifiCorp's Exhibits PE-1 through PE-16; State's Exhibit's 1, 2, and 3.*

39. PacifiCorp has shown, through testimony and exhibits, that the proposed Projects regarding Phases I and II, will not pose a threat of serious injury to the environment nor to the social and economic condition or inhabitants in the affected area. *See above Findings of Fact and Exhibits.*

40. Finally, through the testimony of all its witnesses, as well as the exhibits submitted, PacifiCorp has demonstrated the proposed Projects regarding Phases I and II will not substantially impair the health, safety or welfare of the inhabitants. *See above Findings of Fact, Exhibits and Tr. of Proc.*

41. With the proposed conditions set forth in *State's Exhibits 1 and 2*, this Council is satisfied that the additional Conditions #14 and #15, as modified, will assure compliance with the statutes and rules at issue in this matter regarding all phases of this Project.

DECISION

Pursuant to the authority vested in the Industrial Siting Council by WYO. STAT. ANN. § 35-12-113 (LEXIS 2008), this Council hereby **grants** the Industrial Siting Permit Application filed by PacifiCorp Energy to construct and operate the Dunlap Wind Energy Project Phases I and II, a wind energy generation project consisting of 200 wind turbines to be located near the town of Medicine Bow, Wyoming in Carbon County, Wyoming.

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

Carbon County, Wyoming: 75%

Albany County, Wyoming: 25%

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. PacifiCorp Energy (Permittee) will obtain and maintain all required State and local permits and approvals in accordance with W.S. 35-12-109(a)(xv), 35-12-113(a) (i) and 35-12-115 during the term of this permit.

Condition #2. Construction must commence within 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 Dunlap Wind Energy 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. 35-12-109 (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 mix of workforce.

e. An updated construction schedule for the phases in the form of Figure 3-1 as shown on page 3-2 of the *Dunlap 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) and (d).

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

Condition #12. The Permittee will notify the ISD in advance and provide updates to the construction schedule, figures 3-1 and 3-2, the work force table, Table 3-4, and *Section 5.4.3 Housing Impact Analysis* and all other pages of the Application where changes are expected to occur if:

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

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

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

Condition #13. 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. Prior to the start of construction of a subsequent phase, the Permittee shall give notice to the Director of plans to construct. The notice shall include all material facts about the phase including but not limited to the following:

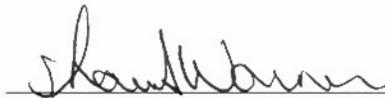
- a. An updated Section 3.0 Construction and Operation Descriptions.
- b. Plans for lodging the total in-migrating work force.
- c. An updated Appendix A Preliminary Site Layout showing the locations of the towers which map is at 1 inch = 1 mile or greater detail.
- d. Updates to Section 7.3 Monitoring Programs.
- e. An estimate for a construction start date and when construction of the phase would be 90% complete.

Condition #15. When the Project is nearing completion, Permittee shall place notice to that effect in the newspapers in the general area of the Project.

ORDER

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

DONE this 30 day of SEPTEMBER, 2009.



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

CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing document was served upon the Department of Environmental Quality, Industrial Siting Division and a true and correct copy was served upon the parties by mailing same, postage prepaid, on the 2nd day of October, 2009, addressed to the following:

Office of Administrative Hearings
State of Wyoming
Cheyenne, Wyoming 82002

Wyoming Department of Environmental Quality - (ORIGINAL)
Industrial Siting Division
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122 West 25th Street
Cheyenne, Wyoming 82002

John Burbridge - Attorney for Industrial Siting Division
Assistant Attorney General
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Cheyenne, Wyoming 82002

David Evans - Attorney for Applicant
1800 Carey Avenue, Suite 700
Cheyenne, Wyoming 82001

Wyoming Building and Construction Trades Council
Attn: Doug Thomas, President
P.O. Box 1807
Rock Springs, Wyoming 82902

Carbon County
Attn: Cindy DeLancey, Carbon County Attorney
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Rawlins, Wyoming 82301

City of Laramie
Attn: Janine Jordan, City Manager
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Attn: Daniel T. Massey, City Attorney
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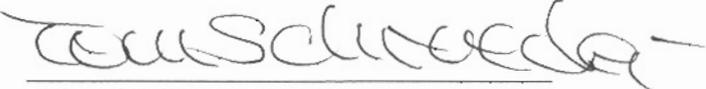
Town of Medicine Bow
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Rawlins, Wyoming 82301

Carbon County School District, Number Two
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P.O. Box 999
Rawlins, Wyoming 82301

Carbon County Higher Education Center
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Jason A. Lillegraven
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Industrial Siting Council