

BEFORE THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY  
INDUSTRIAL SITING DIVISION

STATE OF WYOMING

IN THE MATTER OF THE INDUSTRIAL )  
SITING PERMIT APPLICATION OF )  
PACIFICORP ENERGY )  
HIGH PLAINS AND MCFADDEN RIDGE )  
WIND ENERGY PROJECT )

DOCKET NO. DEQ/ISC 08-02

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

THIS MATTER came before the Industrial Siting Council (Council) on September 11, 2008, for evidentiary hearing and the record was closed on that date. Council members present at the hearing included Dave Dunham, Chairman, Peter Brandjord, Jim Miller, Sandy Shuptrine, Shawn Warner and Gregg Bierei. Council member Darrell Offe was unable to attend the evidentiary hearing. Bridget Hill, Senior Assistant Attorney General, was also present on the Council's behalf. Deborah A. Baumer from the Office of Administrative Hearings served as the Hearing Examiner in the proceeding. The Applicant, PacifiCorp Energy (PacifiCorp) appeared by and through its counsel, Paul J. Hickey. The Industrial Siting Division (Division) appeared by and through its counsel, Senior Assistant Attorney General, John S. Burbridge. Five other parties participated in the evidentiary hearing including Cindy DeLancey on behalf of Carbon County, Dave C. Clark on behalf of the City of Laramie, Peggy A. Trent on behalf of the Town of Hanna, John M. Evans, Resident of Laramie and Douglas Thomas on behalf of the Wyoming Building and Construction Trades Council. PacifiCorp's Exhibits PE-1, PE-2, PE-3 and PE-4, the Division's Exhibits 1 and 2, City of Laramie's Exhibit 1 and Town of Hanna's Exhibits 1 and 2 were admitted for purposes of the evidentiary hearing. The Council also received two limited appearance statements in this case, one from Carbon County School District Number Two and

one from Professor Jason A. Lillegraven. 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 million, three hundred thousand dollars (\$170,300,000.00). 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 July 8, 2008, PacifiCorp submitted an application to the Division for an industrial siting permit to allow construction and operation of the High Plains and McFadden Ridge Wind Energy Projects to be located in both Albany and Carbon Counties, Wyoming, approximately two miles east of McFadden, Wyoming. The total construction cost is in excess of \$170,300,000.00. 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 July 8, 2008 requesting a permit to allow construction and operation of a three phase wind energy generation project, the High Plains Phase, the McFadden Ridge Phase and an undefined Phase III to be constructed at a later date. The proposed project is to be located two miles east of McFadden, in both Albany and Carbon Counties, Wyoming. The High Plains Phase will be rated at 99 megawatts and consist of 66 General Electric Company turbine generators. The McFadden Ridge Phase will be rated at 88.5 megawatts and consist of 59 turbine generators. 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 two of the three phases, referred to as the High Plains and McFadden Ridge Wind Energy Project. PacifiCorp requested the Council approve the application as submitted with exhibits. Five separate entities filed notices to become

a party to these proceedings and appeared at the September 11, 2008 evidentiary hearing. Although all parties expressed various concerns about the impact of the project, four of the five 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 High Plains and McFadden Ridge Wind Energy Projects, as well as Phase III, 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. Although PacifiCorp requested a permit that covers the development of all three phases of the project, for purposes of this application, PacifiCorp only defined the details and impacts of the High Plains and McFadden Ridge Phases and will define the final project phase at a later date. 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 is a utility company which owns electrical power generation, transmission and distribution facilities. PacifiCorp has a mixture of generation in its portfolio including geothermal, coal, natural gas, hydroelectric and wind. *Transcript of Proceedings (hereinafter Tr. of Proc.)*, p. 20.

2. Prior to PacifiCorp filing its application in this matter, PacifiCorp and the Division conducted a jurisdictional meeting on March 3, 2008. The Division reviewed the

financial budget for the project and determined that the cost exceeded the statutory dollar threshold of \$170,300,000.00. *PacifiCorp's Exhibit PE-1, p. ES-1; State's Exhibit 1, p. 3.*

3. On July 8, 2008, PacifiCorp filed an application to the Division requesting a permit to allow construction and operation of up to three wind energy generation projects, beginning with phases one and two, referred to as the High Plains and McFadden Ridge Wind Energy Projects (Projects). The location of these two phases is approximately two miles east of McFadden, Wyoming, and is located within both Albany and Carbon Counties. The site encompasses in excess of 11,000 acres of land. The High Plains Phase and McFadden Ridge Phase will be located primarily on leased private fee lands owned by the Dunmire Ranch Company and Sims Land and Livestock, Inc. The majority of the property is located in Albany County. PacifiCorp has also obtained 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-2.*

4. All of the material constituting the filing of the application was received by the Division on July 8, 2008. 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 July 14 and 31, 2008, in the Laramie Boomerang on July 15 and 16, 2008 and in the Rawlins Daily Times on July 15 and 16, 2008. *State's Exhibit 1, p. 4.*

5. The Division received five requests to become parties in this matter. All five requests were granted and those parties included the Wyoming Building and Construction Trades Council, Carbon County, the City of Laramie, the Town of Hanna and Laramie resident, John M. Evans (Evans). All parties with the exception of Laramie resident, Evans, expressed support of

the Project, as well as concerns about cumulative impacts. Evans expressed concerns regarding the health and safety of residents of Rock River, Wyoming, as well as a fire danger. *Tr. of Proc.*, pp. 191 - 207; 215 - 238; 240 - 250.

6. The Council received and considered two limited appearance statements in this matter, one from the Carbon County School District Number Two and one from Professor Jason A. Lillegraven.

7. Mark Tallman (Tallman), is the Vice-President of renewable energy acquisition 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, from a transmission interconnection perspective, the site is reasonably close to the wind projects that are located in the Foote Creek Rim area, where PacifiCorp currently operates a wind project. The turbines for Phases I and II are all on fee lands and PacifiCorp currently has no plans to place turbines on BLM lands. *Tr. of Proc.*, pp. 21; 36.

8. Tallman asserted that PacifiCorp has made financial commitments sufficient to fund the investments in the Projects. PacifiCorp has made application to and received approval from the Wyoming Public Service Commission for the High Plains Phase of the Project and a conditional use permit from Albany and Carbon Counties. The Albany County permit was issued with a condition that PacifiCorp enter into an agreement with Carbon County for road maintenance. Tallman agreed that PacifiCorp accepted the 14 proposed conditions to the permit as set forth in the Division's Exhibit 2. *Tr. of Proc.*, pp. 22 - 25; 35.

9. Chris Johnson (Johnson), is the General Project Manager responsible for wind resource development and construction of the High Plains and McFadden Ridge Projects. Johnson testified that the first phase of the project, the High Plains Phase, will consist of a 99

megawatt project to be completed by the end of 2009. Approximately 66 wind turbines will be constructed and operating. Phase II of the Project, the McFadden Ridge Phase, will be developed by the end of 2010. A peak workforce during the construction phase is anticipated to be 261 in the spring of 2009, with approximately 19 full-time positions when construction is completed. *Tr. of Proc.*, pp. 56-57; 64.

10. According to Johnson, materials for the project will be delivered by truck along I-80, exiting at Arlington, Wyoming on State Highway 13. The Laramie landfill agreed to take solid waste materials, although a cumulative impact concern was expressed by the City of Laramie. A contingent plan is in place for the Casper, Wyoming landfill to handle the solid waste if Laramie determines it cannot accept the material. *Tr. of Proc.*, pp. 58; 68.

11. Johnson addressed a concern regarding potential impact to an existing power line that crosses project boundaries, as well as concerns about cultural sites expressed by the State Historical Preservation Office (SHPO). Johnson submitted a summary of the meeting with SHPO as PacifiCorp's Exhibit PE-3. Johnson also agreed that PacifiCorp accepted the 14 proposed conditions to be placed on the permit by the Division, as well as to an amendment of Condition #10 to update the construction schedule. Finally, Johnson confirmed that approximately 216,500 gallons of water per day for two years would be used for Phases I and II of the Project. The water will come primarily from water sources from existing landowners in Albany County. *Tr. of Proc.*, pp. 69-71; 88.

12. Ryan Henning (Henning), Project Manager of CH2M Hill, was assigned to complete the permit application for PacifiCorp. According to Henning, a socioeconomic analysis, transportation analysis and an environmental review were conducted as they pertain to the Industrial Siting Act and Division's Rules. Henning identified three primary environmental

impacts that could be mitigated to less than a significant level. The first impact concerned jurisdictional waters and wetlands. The second impact was avian issues and PacifiCorp is working with Wyoming Game and Fish Department to develop a monitoring plan. Lastly, Henning identified a potential impact to two raptor nests. PacifiCorp is currently collaborating with both Game and Fish and U. S. Fish and Wildlife Service to address the impact. *Tr. of Proc.*, pp. 121-123.

13. 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. Henning also identified the environmental benefit of developing a renewable non-water consuming electrical generation source that does not require the consumption of additional fuel sources. *Tr. of Proc.*, pp. 123-126.

14. In terms of a housing plan, Henning testified that PacifiCorp interviewed purveyors of both temporary and permanent lodging, including RV spaces, motels, hotels and apartments in the surrounding area. PacifiCorp identified 448 housing units in the Laramie area. PacifiCorp received a number of letters of commitment from area motels and apartment complexes. Henning also conducted a view shed analysis, as well as a noise model. *Tr. of Proc.*, pp. 127- 129; 134-135; *PacifiCorp Exhibit PE-1, Addenda dated August 7, 2008; Appendix E, Figures 6 and 7.*

15. Based upon his analysis, Henning determined that the facility, 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.*, p. 128.

16. Dr. Tom Schroeder (Dr. Schroeder), Program Principal for the Industrial Siting Division, Department of Environmental Quality, receives and processes applications for permits

by the Industrial Siting Council. Dr. Schroeder reviewed and processed PacifiCorp's application in this matter. Dr. Schroeder identified areas of concern in State's Exhibit 1. PacifiCorp's response to the questions alleviated Dr. Schroeder's concerns. Dr. Schroeder testified he was impressed with the quality and detail of the application, as well as the responses to all concerns expressed by a variety of agencies. Dr. Schroeder recommended 14 conditions to be placed on the permit. Dr. Schroeder also expressed concerns about a change in PacifiCorp's construction schedule and requested an amendment to the State's proposed Condition #10 in State's Exhibit 2 to alleviate that concern. The amendment requires PacifiCorp to file an updated construction schedule in its quarterly reports. *Tr. of Proc., pp. 158 - 167; 169-170.*

17. According to Dr. Schroeder, the proposed application complied with the applicable laws for an industrial siting permit. Dr. Schroeder believed the facility did not pose a threat of serious injury to the environment or to the social and economic conditions of the area. The proposed facility also would not substantially impair the health, safety or welfare of the local inhabitants. Dr. Schroeder recommended approval of all three phases of the Project. The State's proposed Condition #13 permits the Council to request a hearing on permit amendments. *Tr. of Proc., pp. 168 - 186.*

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

## **V. CONCLUSIONS OF LAW**

### **A. Principles of Law**

19. 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).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (A) Scenic resources;
- (B) Recreational resources;
- (C) Archaeological and historical resources;
- (D) Land use patterns;
- (E) Economic base;
- (F) Housing;
- (G) Transportation;
- (H) Sewer and water facilities;
- (J) Solid waste facilities;
- (K) Police and fire facilities;
- (M) Educational facilities;
- (N) Health and hospital facilities;
- (O) Water supply;
- (P) Other relevant areas.

(xiv) Estimated construction cost of the facility;

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

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

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

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

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

(i) Wyoming department of transportation;

(ii) Public service commission;

\* \* \*

(iv) Game and fish department;

(v) Department of health;

(vi) Department of education;

(vii) Office of state engineer;

\* \* \*

(ix) Wyoming state geologist;

(x) Wyoming department of agriculture;

(xi) Department of environmental quality;

\* \* \*

(xiv) The University of Wyoming;

(xv) Department of revenue; and

(xvi) The Wyoming business council.

22. Wyo. Stat. Ann. § 35-12-110(c) (LEXIS 2008) provides the information required by subsection (b) of this section shall be provided by the agency from which it is requested not

more than sixty (60) days from the date the request is made and shall include opinions as to the advisability of granting or denying the permit together with reasons therefore, and recommendations regarding appropriate conditions to include in a permit, but only as to the areas within the expertise of the agency. Each agency which has regulatory authority over the proposed facility shall provide to the council a statement defining the extent of that agency's jurisdiction to regulate impacts from the facility, including a statement of the agency's capability to address cumulative impacts of the facility in conjunction with other facilities. The statement of jurisdiction from each agency is binding on the council.

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

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

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

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

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

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

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

(i) The applicant;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

holder is not liable under the bond if the holder is prevented from completing the facility proposed by circumstances beyond his control.

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

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

**Section 7. Application information to be submitted.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) Annual payroll;

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

(i) An evaluation of the social and economic conditions in the area of site influence. The social and economic conditions shall be inventoried and evaluated as they currently exist, projected as they would exist in the

future without the proposed industrial facility and as they will exist with the facility. Prior to submitting its application, each applicant shall confer with the administrator to define the needed projections, the projection period and issues for socioeconomic evaluation. The evaluation may include, but is not limited to:

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

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

(A) Employment projections by major sector;

(B) Economic bases and economic trends of the local economy;

(C) Estimates of basic versus non-basic employment;

(D) Unemployment rates;

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

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

(v) An analysis of transportation facilities containing discussion of roads (surface, type), and railroads (if applicable). An analysis of effects on transportation facilities including effects on service levels of roads, haul

routes for materials and supplies, increased rail traffic at grade crossings, and intersection of new access roads with existing roads;

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

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

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

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

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

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

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

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

(H) Educational facilities, including an analysis based upon enrollment per grade, physical facilities and their capacities and other relevant factors with an assessment of the effect

that the new population will have on programs and facilities;

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

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

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

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

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

(j) An evaluation of the environmental impacts. The items shall be noted and evaluated as they would exist if the proposed industrial facility were built. Each evaluation should be followed by a brief explanation of each impact and the

permit issued that regulates the impact. If the impact is not regulated by a state regulatory agency or federal land management agency, the application must 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

28. PacifiCorp has shown, by a preponderance of the evidence, that it filed a completed application with the Division regarding the 66 wind turbines in the High Plains Phase of the Project and the proposed 59 turbines in the McFadden Ridge Phase of the Project, and included the requirements in Wyo. Stat. Ann. § 35-12-109(a) (LEXIS 2007) and Chapter 1, Section 7 of the Rules and Regulations and that the proposed facility complies with all applicable law. *See for example testimony of Mark Tallman, Ryan Henning, Chris Johnson and Dr. Tom Schroeder; PacifiCorp's Exhibits PE-1 through PE-4; State's Exhibit's 1 and 2.*

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

30. Finally, through the testimony of all its witnesses, as well as the exhibits submitted, PacifiCorp has demonstrated the proposed projects regarding Phase I, High Plains, and Phase II, McFadden Ridge will not substantially impair the health, safety or welfare of the inhabitants. *See above Findings of Fact, Exhibits and Tr. of Proc.*

31. With the proposed conditions set forth in *State's Exhibits 1 and 2*, this Council is satisfied that the additional Condition #13, as modified, will assure compliance with the statutes and rules at issue in this matter regarding the undefined Phase III portion 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 High Plains and McFadden Ridge Wind Energy Project Phases, a wind energy generation project consisting of 66 wind turbines with a 99 megawatt net capacity for the High Plains Phase and a probable 59 turbine project for the McFadden Ridge Phase to be located near the town of McFadden, Wyoming in both Albany and Carbon Counties, Wyoming. The request to add Phase III to the project is also **approved** by this Council subject to the specific requirements in Condition #13 set forth below.

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 two years following the date of the award of this permit.

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

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

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

- a. Which adversely affect the current level of facilities or services provided by the local community;
- b. Which cannot be alleviated by financing through ordinary sources of revenue, given due consideration to bonding history and capacity of the jurisdiction involved;
- c. Which were not evaluated or foreseen at the time the permit was granted and can be attributed in whole or in part to the permitted facility; and
- d. Which are not or cannot be resolved by voluntary measures by industrial representatives in the community,

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

- a. A local government has requested mitigation assistance; and
- b. Such adverse impacts were determined to be a result of the activities of the Permittee.

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

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

**Condition #6.** The Permittee shall notify the Industrial Siting Division when construction commences on each phase of the project.

**Condition #7.** The Permittee shall notify the Industrial Siting Division when the physical components of the identified project are 90 percent complete for each phase of the project.

**Condition #8.** As a means of adhering to W. S. 35-12-109 (a) (xviii) to provide preference for local and resident hiring, 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 application 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 on-year period; and
- d. Demonstration of compliance with permit conditions.

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

- a. The average and peak number of employees for the Permittee, contractors and subcontractors.
- b. Employee city and state of residency at the time of hire and the employee city and state while employed and type of residence while employed.

- c. The number of new students enrolled by grade level and school district who are related to Permittee employees, identified as either local (no change of residence) and in-migrants.
- d. Wyoming resident versus non-resident mix of workforce.
- e. An updated Figure 3-1 as found on page 3-2 of the High Plains and McFadden Ridge 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. The Director has provided public notice of the proposed change and his intent to approve the request; and
- c. 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).

**Condition #12.** The Permittee will notify the ISD and provide updates to *Section 4.4.3 Housing Impact Plan and Analysis* and all other pages of the Application where changes have or are expected to occur if:

- a. Actual on-site workforce during construction exceeds the peak number estimated in the Application by more than fifteen percent (15%);
- b. The Permittee obtains details from the plant general contractor about lodging type and location, but not later than the start of construction; or when the plant general contractor makes changes in his lodging plan;

If the Director determines that there is potential for significant adverse impacts, a permit amendment will be required.

**Condition #13.** The Permittee shall give reasonable notice to the Director of plans to construct a new phase. That notice shall include all material facts about the phase including but not limited to the following:

- a. An updated Section 3.0 Construction and Operations Descriptions.
- b. Plans for lodging the total in-migrating work force.
- c. An updated *Appendix A Site Layout* showing the locations of the towers which map is at 1 inch = 1 mile or less.

- d. Updates to Appendix I Wildlife Monitoring Plan.
- e. Statements when construction would start on Phase #3 and when Phase #3 is expected to be 90% complete.

The Director will notify the parties and members of the Council; and make a determination within 45 days as to whether a permit amendment is necessary, or allow the start of the construction.

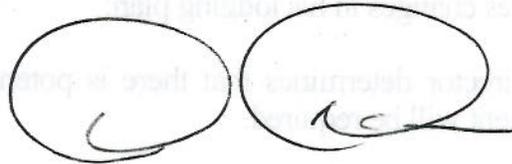
If the new phase is authorized, the Permittee will notify the Director when construction of the phase begins and when the phase reaches 90% completion.

**Condition #14.** The Permittee shall abide by the wildlife incident reporting and handling system as described by *Application Appendix I, Wildlife Monitoring Plan* dated June 5, 2008.

### ORDER

IT IS THEREFORE ORDERED that the Industrial Siting Permit Application as submitted by PacifiCorp Energy, and modified by this Council as set forth above in Conditions 1 through 14 be and is hereby granted.

DONE this 1 day of Oct, 2008.



Dave Dunham, Chairman  
Industrial Siting Council  
Herschler Building, Fourth Floor West  
122 West 25<sup>th</sup> Street  
Cheyenne, Wyoming 82002  
(307) 777-7170

CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing document was served upon the Department of Environmental Quality, Industrial Siting Division and a true and correct copy was served upon the parties by mailing same, postage prepaid, on the 6 day of October, 2008, addressed to the following:

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Cheyenne, Wyoming 82002

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Industrial Siting Council

LETTER 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 2 day of October, 2008, addressed to the following:

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