BEFORE THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY
INDUSTRIAL SITING DIVISION

000131
3-26-08

STATE OF WYOMING

IN THE MATTER OF THE INDUSTRIAL SITING PERMIT APPLICATION OF PACIFICORP ENERGY SEVEN MILE HILL WIND FARM	))))	DOCKET NO. DEQ/ISC 07-03

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

THIS MATTER came before the Industrial Siting Council (Council) on February 6, 2008, for evidentiary hearing and the record was closed on that date. Council members present at the hearing included Dave Dunham, Chairman, Darrell Offe, Peter Brandjord, Jim Miller, Sandy Shuptrine and Gregg Bierei. Council member Shawn Warner 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, Mary Throne. 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 William MacPherson on behalf of the Town of Medicine Bow, Thomas Thompson on behalf of the High Country Joint Powers Board, Cindy DeLancey on behalf of Carbon County, and Peggy Trent on behalf of the Town of Hanna and Albany County. The Wyoming Building and Construction Trades Council participated at the pre-hearing conference held in this matter on January 25, 2008 but did not attend the evidentiary hearing and therefore lost its status as a party to this proceeding. Pacificorp's Exhibits 1, 2, 3, 4 and 6, the Division's Exhibits 1 and 2, and the Town of Hanna's Exhibit 1 were admitted for

purposes of the evidentiary hearing. The Council also received limited appearance statements from the City of Laramie, Carbon County School District Number 2 and Bruce Morley. 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 2007) 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 sixty three million dollars ($163,000,000.00). Wyo. Stat. Ann. § 35-12-102(a)(vii) (LEXIS 2007).

Wyo. Stat. Ann. § 35-12-110(d) (LEXIS 2007) 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 2007) 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 2007) 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 November 7, 2007, Pacificorp submitted an application with the Division for a permit to allow construction and operation of the Seven Mile Hill Wind Energy Project to be located in Carbon County, Wyoming, between the towns of Medicine Bow and Hanna. The total construction cost is in excess of $163,000,000.00. 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 November 7, 2007 requesting a permit to allow construction and operation of a three phase wind generation project rated at 99 megawatts per phase. The proposed project is to be located between the towns of Medicine Bow and Hanna. The application contained details of a 66 turbine project referred to as the Seven Mile Hill Wind Energy Project. 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 Seven Mile Hill Wind Energy Project. Thereafter, in January 2008, Pacificorp amended its application to include an additional 13 turbines. Due to time constraints, the Division staff was unable to evaluate the socioeconomic impact of the

additional turbines and could not recommend approval of the amended application. Pacificorp requested the Council approve the application as amended. Five separate entities filed notices to become a party to these proceedings and four of those parties appeared at the February 6, 2008 evidentiary hearing. Although all parties expressed various concerns about the impact of the project, all 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 Seven Mile Hill Wind Energy Project, along with its supplement, meets the requirements of the Wyoming Industrial Development Information and Siting Act, Wyo. Stat. Ann. § 35-12-113 (LEXIS 2007) and the Industrial Development Information and Siting Rules and Regulations, Chapter 1, Section 9(a) (Division's Rules) governing the proposed wind 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 Seven Mile Hill Wind Energy Project and will define the two subsequent project phases 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 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. Pacificorp provides electric services to approximately 129,000 retail customers in the State of Wyoming. *Tr.of Proc., p.19.*

2. Prior to Pacificorp filing its application in this matter, Pacificorp and the Division conducted a jurisdictional meeting on May 23, 2007. The Division reviewed the financial budget for the project and determined that the cost exceeded the current statutory dollar threshold of $163,000,000.00. *Pacificorp's Exhibit 1, p. ES-2.*

3. On November 7, 2007, Pacificorp submitted an application with the Division requesting a permit to allow construction and operation of up to three wind generation projects, beginning with phase one referred to as the Seven Mile Hill Wind Energy Project. The proposed project consisted of 66 wind turbines that would be constructed approximately nine miles east of Hanna and three miles northwest of Medicine Bow. The project site is located primarily on private fee-owned land with the inclusion of some State lands.

4. Thereafter, all of the material constituting the filing of the application was received by the Division on November 16, 2007. The Division staff subsequently published notice of the contested case hearing on Pacificorp's application for an industrial siting permit in the Rawlins Daily Times on November 27, 2007 and December 4, 2007 and in the Casper Star Tribune on December 7, 2007 and December 8, 2007. The first printing of each had typographical errors that were corrected in the second day of printing. *Tr. of Proc., p. 196; State's Exhibit 1, p. 5.*

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, Town of Medicine Bow, High Country Joint Powers Board, Carbon County, Town of Hanna and Albany County. The Wyoming Building and Construction Trades Council

subsequently failed to appear at the February 6, 2008 evidentiary hearing and as a result, lost its status as a party in this matter pursuant to Wyo. Stat. Ann. § 35-12-111(b) (LEXIS 2007).

6. The Council received three written statements in support of the project, all of which qualified as limited appearance statements, from the City of Laramie, Carbon County School District Number 2 and Bruce Morley, the originator of the first wind project in Wyoming and currently a private citizen from Jackson, Wyoming. All were received at the February 6, 2008 hearing and considered by this Council in deciding the request for permit.

7. The initial application sought approval of 66 wind turbines with an anticipated peak workforce in August 2008 of 166 workers. According to Mark Tallman (Tallman), the Vice-President of renewable energy acquisition for Pacificorp, in late January 2008, Pacificorp discovered that adding 13 additional turbines to the project and having those turbines operational by the end of 2008, Pacificorp could take advantage of a significant production tax credit of $780,000.00 per turbine or more than $62,000,000.00. The 13 turbines would be located within the same area as the original 66 turbines. Thereafter, Pacificorp supplemented its application and prepared an addendum to the application that evaluated the socioeconomic impact considering the additional 13 turbines. *Tr. of Proc., p. 23.*

8. Pamela Jackson (Jackson), Project Manager, testified that construction on the project will begin as soon as Pacificorp receives all of the necessary permits. Pacificorp anticipates having all 79 turbines operational no later than December 31, 2008, so it can take advantage of the production tax credit.

9. According to Jackson, the turbine components are transported to the project site in three sections via truck, along Interstate 80 and then up US Highway 30. There were no concerns expressed by the Wyoming Department of Transportation regarding Pacificorp's

transportation plans. The tubular towers are 80 meters in height, with a 77 meter rotor diameter which will pass above the hub height. Each turbine is connected to all of the other turbines through a fiber optic network. Because wind is a renewable resource, there are no emissions from the generation at the site and the economic life of each of the turbines is 25 years. *Tr. of Proc., pp. 56, 57, 58, 62; Pacificopr's Exhibit PE-3.*

10. The original application reflected a peak workforce of 166 employees in the month of August 2008. In the addendum, with the addition of the 13 turbines, the peak workforce will be 230 employees in the same month of August. The construction employees will include heavy equipment operators, skilled electricians and skilled crane tower erection crews. According to Jackson, following construction there will be approximately 10 full-time positions including engineering, operations, technicians, administrative support and safety. *Tr. of Proc., p. 61, 62.*

11. Ryan Henning (Henning), Project Manager of CH2M Hill, was assigned to complete the permit application for Pacificorp. According to Henning, a socioeconomic analysis and environmental review were conducted as they pertain to the Industrial Siting Act and Division's Rules. The analysis included water treatment, sanitary waste disposal, solid waste collection, housing, police and fire protection, medical facilities, schools, recreational facilities, transportation systems, mental health facilities and social service facilities. A second analysis was also conducted to include the impact of 13 additional wind turbines to the project. Based upon his analysis, Henning determined that the facility, as amended, 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. However, Henning admitted that early in the project, a housing impact was identified in the region. *Tr. of Proceedings, pp. 118 through 123.*

12. According to Jackson, in order to deal with the housing issue, Pacificorp executed a contract with Tetra Tech to provide construction of the project and housing services for its employees. David Bublitz (Bublitz) is the senior project manager of the wind division for Tetra Tech. According to Bublitz, there is very little construction waste because the turbine components arrive in containers that have to be returned to the shipper and are reused. Roads to the turbine sites will be completed by July 2008. The turbines are scheduled to arrive the week of June 21, 2008. There are several ramping up and down periods associated with the construction of the project with largest to occur in August 2008. *Tr. of Proc., pp. 144, 147 through 149.*

13. Bublitz further testified that due to the nature of the project, the workers are specialized and highly skilled (less than 10% are unskilled) and travel from wind project to wind project and many live in personal motor homes or RV's. Therefore, RV parks are important for housing purposes and may be located in Hanna and Rawlins. Tetra Tech also contacted a number of hotels, motels and apartments in the Rawlins area and received verbal commitments to house its workers. Although no written contracts for housing were obtained by the date of the hearing in this matter, Bublitz testified that Tetra Tech is committed to obtaining suitable housing for its employees during the construction phase of the project. *Tr. of Proc., pp. 142 through 159; see also pp. 65 through 68.*

14. Cultural resource and environmental surveys were conducted. Wildlife issues were discussed with the Wyoming Game and Fish Department and a Wildlife Monitoring Protocol and Plan was established. Gregory Johnson (Johnson) an Environmental Consultant with Western EcoSystems Technology, Inc, conducted an avian baseline study and assisted in developing a wildlife monitoring program for the project. Johnson determined that overall bird

use in the wind turbine area was very low. *See Pacificorp's Exhibit 1, Appendix G and Appendix H; Pacificorp's Exhibit PE-4 – Part 5; Tr. of Proc., pp. 184through 188.*

15. The unanimous recommendation for the distribution of impact assistance funds is as follows: Carbon County – 25%; Town of Elk Mountain – 5%; Town of Medicine Bow – 20%; Town of Sinclair – 5%; Town of Hanna – 20%; Town of Saratoga – 5%; City of Rawlins – 5%; Albany County – 10%; and Town of Rock River – 5%. *See State's Exhibit 1, pp. 25 - 26.*

16. Tom Schroeder (Schroeder), Program Principal for the Industrial Siting Program, Department of Environmental Quality, receives and processes applications for permits by the Siting Council. Schroeder reviewed and processed Pacificorp's November 16, 2007 application in this matter. On January 18, 2008, Schroeder also received an addendum to the permit requesting the addition of 13 turbines to the original project of 66 turbines. Schroeder testified he was impressed with the quality and detail of the application for the initial wind farm, including an avian monitoring plan and environmental plan. However, Schroeder expressed his concerns regarding a lack of a detailed housing or lodging plan. As a result, Schroeder proposed a condition be added to the permit to address his concerns. The proposed condition appears in *State's Exhibit 2, Condition* #12 and requires Pacificorp to file details about the lodging type and location no later than the start of construction. Schroeder also expressed his recommendation that the Council add a Condition #14 to the permit requiring Pacificorp to follow the wildlife monitoring plan as set forth in *Appendix H* of Pacificorp's application. Finally, Schroeder recommended that the Council require the applicant to go through staff for review and comments concerning Pacificorp's proposed addendum regarding the addition of 13 turbines as reflected in Condition #13 of *State's Exhibit 2. Tr. of Proc., pp. 197 through 204; 210.*

17. According to Schroeder, the proposed application concerning the 66 wind turbines complied with the applicable law for an industrial siting permit. 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. Schroeder also presented a list of recommended permit conditions as reflected in *State's Exhibit 2*. *See Transcript of Proceedings, pp. 209 through 211.*

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 2007) 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 2007) 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 2007) 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 2007) 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 2007) 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 2007), 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 2007), 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 Siting Rules and Regulations, Chapter 1 provide:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) Annual payroll;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Application of Principles of Law

28. Pacificorp has shown, by a preponderance of the evidence, that it filed a completed application with the Division regarding the 66 wind turbines 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 Pamela Jackson, Ryan Henning, and Tom Schroeder; Pacificorp's Exhibits 1 through 4; State's Exhibit's 1 and 2.*

29. Pacificorp has shown, through testimony and exhibits, that the original proposed project of 66 wind turbines 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 project will not substantially impair the health, safety or welfare of the inhabitants. *See above Findings of Fact and Exhibits.*

31. With the proposed conditions set forth in *State's Exhibit 2,* this Council is satisfied that the addendum requesting 13 additional turbines added to the original project will assure compliance with the statutes and rules at issue in this matter.

DECISION

Pursuant to the authority vested in the Industrial Siting Council by WYO. STAT. ANN. § 35-12-113 (LEXIS 2007), this Council hereby **grants** the Industrial Siting Permit Application filed by Pacificorp Energy to construct and operate the Seven Mile Hill Wind Energy Project and additional phases, a wind generation project consisting of 66 wind turbines with a 99 megawatt net capacity for each phase to be located near the towns of Medicine Bow and Hanna, Wyoming in Carbon County, Wyoming. The addendum requesting an additional 13 turbines to be added to the project is also **approved** by this Council subject to the specific requirements in Condition #13 set forth below.

Further, pursuant to its authority, this Council specifically accepts and adopts the impact assistance funds distribution ratio as set forth in *State's Exhibit 1* and as agreed to by all parties to this proceeding.

Finally, pursuant to its authority, this Council places the following terms and conditions on the facility as modified from *State's Exhibit #2* with the additional condition #14 concerning the wildlife monitoring plan as reflected in *Appendix H* of the Applicant's Exhibit 1 and also reflected in *Exhibit PE – 4 Part 5*:

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 and economic conditions of the area of site influence and which was not evaluated in the permit process, the Permittee or the Industrial Siting Division (ISD)

shall prepare and file an evaluation of such activity with the ISC. 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. Permittee shall develop a compliance 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 Industrial Siting Division (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 or economic impacts either within or outside the area primarily affected 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 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 contribution to the total impacts within the impacted area (as defined by W. S. 35-12-102).

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

Condition #7. The Permittee shall notify 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. 35-12-1O9 (a) (xviii) to provide preference for local and resident hiring, Permittee, contractors and subcontractors shall follow these hiring guidelines:

a. Except as provided by (d) and (e) of this paragraph, the Permittee, contractors and subcontractors shall use the local Workforce Centers to screen all job applicants for skilled and unskilled labor. In addition, Permittee shall make available written descriptions for those skilled and unskilled positions that will be needed at the Project. The Permittee shall not hire by other means unless the Workforce Center is unable to provide qualified workers to fill job orders.

b. Where the Workforce Center is used for hiring the Permittee, contractors, and subcontractors shall be required to include the local and resident hiring procedures in all of their subcontractors. The Permittee shall monitor the hiring practices of contractors and subcontractors to assure compliance with local hiring provisions.

c. To the extent reasonable and allowed by law, qualified Wyoming residents shall receive hiring preference over qualified non-Wyoming workers. A "resident" is defined as a person who has maintained continuous residency in Wyoming for a period of at least one year prior to hiring.

d. In the case of the need for trade labor, a local union hall may be used as the source for hiring skilled and non-skilled labor.

e. The terms, "skilled and unskilled" labor as used in this condition shall not be construed as including administrative, managerial, supervisory or professional personnel. Provided, however, the Permittee, contractors and subcontractors shall maintain an active program for recruiting qualified local and Wyoming residents for these administrative, managerial, supervisory and professional positions.

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. 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; and

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.

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 and the first year of operation. 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.

Condition #11. The Permittee shall notify the ISD 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 3.5 Construction Workforce Housing Plan* 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%). If the Director determines that there is potential for significant adverse impacts, a permit amendment will be required; or

b. When 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 the following:

a. A construction schedule by month showing the estimated work force.

b. Plans for lodging the in-migrating work force.

c. An updated *Appendix F Resource Maps* showing the locations of the towers.

d. Updates to *Appendix H Monitoring Protocol.*

e. When the construction is expected to be 90% complete.

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

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 reflected in *PE Exhibit 1, Appendix H, Wildlife Monitoring Plan* dated November 12, 2007 *and PE Exhibit 4 – Part 5, Pacificorp Wildlife Monitoring Plan* dated January 24, 2008.

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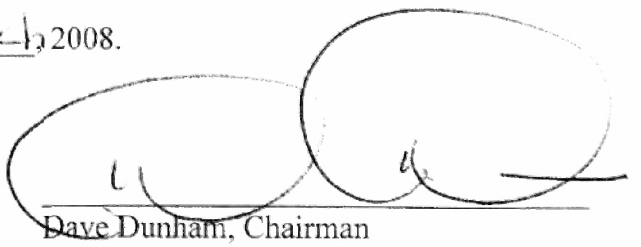
ORDER

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 2 day of March, 2008.



Dave Dunham, 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 7th day of March 2008, addressed to the following:

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Industrial Siting Council