# Before the Wyoming
# Industrial Siting Council

000024

In the matter of:

**Two Elk Generation Partners, L.P.**
**Power Project**

the Applicant

Docket No. ISC 97-2

Request for Permit

Campbell County, Wyoming

**Permit No. ISC 97-2**

1. WHEREAS, the Industrial Siting Council having found:

   a. at Two Elk Generation Partners, L.P. (Two Elk) filed an Application for a Permit on February 14, 1997 in accordance with the Industrial Development Information and Siting Act. The purpose of the permit is to authorize construction of the air cooled waste coal fired power generation facility east of Black Thunder Mine.

   b. That notice of the Permit Application was sent to local governments in the area of site influence and was published in the Casper Star-Tribune and Gillette News Record.

   c. The Council conducted a hearing on April 1, 1997 pursuant to W.S. 35-12-107(g).

   d. That the Permit Application filed by Two Elk complies with the requirements of the Wyoming Industrial Development Information and Siting Act and the rules and regulations of the Council; there is reasonable assurance that the activities described in the application can be conducted in compliance with local laws; that activities authorized will not produce an unacceptable environmental, social or economic impact; the applicant has discussed the proposed facilities with all local governments potentially affected by the project; the proposed facilities are in compliance with all local ordinances and land use plans; and local governments which will be affected by the proposed expansion will receive sufficient tax

revenues or mitigation payments to insure that the facility will not pose a threat of serious injury to the social or economic condition of the local inhabitants.

e. That after conducting the hearing and considering all testimony and evidence and imposed conditions of this permit, the Council concluded that the proposed facility will comply with all applicable law; that by issuance of this permit the applicant has made a commitment to obtaining necessary permits and permit revisions from state regulatory agencies and the County; that the facility will not pose a threat of serious injury to the environment nor to the social and economic condition of the residents in the affected area; and that the facility will not impair the health, safety, and welfare of the residents of the affected area.

f. That the proposed location of the facility is acceptable, without modification.

2. NOW, THEREFORE, pursuant to the Wyoming Industrial Development Information and Siting Act and the Industrial Siting Rules and Regulations, the Council hereby issues an Industrial Siting Permit to the Applicant for construction and operation of the Power Project as described in the permit application. This Permit shall be deemed to contain and be subject to conditions specified within W.S. 35-12-116 through 35-12-118, including all commitments made in the application, through testimony, mitigative agreements with local units of government and conditions attached hereto:

a. That the facilities authorized by this permit shall be constructed and located at the site described in the application.

b. That the Permittee shall allow entrance to their facilities by authorized representatives of the Industrial Siting Division with reasonable prior notice, for purposes of inspection and monitoring.

c. That construction shall commence and follow the schedule presented in the application.

d. Unless authorized by Section 13 of the Industrial Siting Rules, the Permit shall remain in force throughout the useful life of the facilities; the conditions and stipulations of this permit shall become effective as of the date of execution hereof.

f. In accordance with the authority granted to the Industrial Siting Council by W.S. 39-6-411(c), after receiving comments from local units of government, the Council by issuance of this permit establishes the following Impact Assistance Payments Ratio. Review of the ratio shall occur after the third monitoring report is received from Two Elk by the Division. The ratio shall be dependant upon construction of the Two Elk Power Project, either as a single project under construction in Campbell County, or in conjunction with construction at the North Rochelle Mine:

| | |
|---|---|
| Wright | 40 % |
| Gillette | 22 % |
| Campbell County | 22 % |
| Upton | 4 % |
| Newcastle | 6 % |
| Moorcroft | 1 % |
| Weston County | 5 % |

DATED this __1__ day of April, 1997.

INDUSTRIAL SITING COUNCIL

Harold Meier, Chairman

ATTACHMENT

Permit Conditions

**RE: Permit No. ISC-97-2 Two Elk Generation Partners, L.P. Power Project**

The following conditions shall apply to the Two Elk Power Project.

1. Granting of the permit does not remove the obligation of the Permittee to obtain all required State and Local permits and approvals in accordance with W.S. 35-12-107(j)(iii), 35-12-113(a)(I) and 35-12-115.

2. Before engaging in any activity over which the Industrial Siting Council (ISC) has jurisdiction which could significantly affect the environment external to the Two Elk 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 shall prepare and file an evaluation of such activity with the Industrial Siting Division (DEQ/ISD). When in the opinion of the 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.

3. Permittee shall develop a compliance program to insure compliance with voluntary commitments of the permit, testimony, agreements with local governments, and these permit conditions. A compliance coordinator shall be designated and identified to the DEQ/ISD prior to the onset of construction. This individual shall meet with the DEQ/ISD before construction commences and review the permit requirements with ISD staff. This coordinator shall assume the responsibility for assuring that contractors and subcontractors are aware of and meet all permit requirements.

4. In the event that there occurs any adverse social or economic impacts either within or outside Campbell County:

   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 amended 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 the matter may be referred to the Council for resolution.

Then by order issued in accordance with the Wyoming Administrative Procedures Act, the Council may require additional mitigative actions by Permittee in cooperation with other basic industries (existing and future) provided that: 1) a local governmental entity has requested mitigative assistance, and 2) such adverse impacts were determined to have occurred as a result of the activities of 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 mitigative 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 Permittee's activities are contributing to the total impacts within the "impacted area" as defined in W.S. 35-12-102.

5. a. Permittee shall identify each contractor or subcontractor, defined in W.S. 39-6-601, who is awarded a contract and also provide such information to the Department of Revenue (DOR). To the extent reasonably possible, all purchases shall be made or constructed so that applicable sales or use taxes shall be due the State of Wyoming. Such purchases shall be construed so that the sale as defined in W.S. 39-4-402(a)(iii) occurs in Campbell County, Wyoming. Permittee understands that the State of Wyoming will not grant credits for use tax payments made to other jurisdictions, and permittee will advise its contractors and subcontractors that potential multiple taxation may result if transactions are not fully considered for all tax consequences. Firms which contract for less than $50,000 are not subject to this permit requirement. However, such firms shall be subject to applicable sales and use tax laws of the State of Wyoming, Title 39, Articles 4 and 5 of the Wyoming Statutes, as amended, including corresponding rules and regulations of the DOR.

b. All contractors and subcontractors who perform non-taxable services or who provide no tangible personal property in the performance of their contracts shall not be subject to this permit condition.

c. Permittee, contractors, and subcontractors shall provide written permission to the Department of Revenue authorizing the Department of Revenue to release tax payment and production value information on the Project to DEQ/ISD for the construction period of the Project.

d. The Company shall notify the DEQ/ISD, the Wyoming State Treasurer, and the Department of Revenue when construction commences on the project and when the physical components of the identified project are 90 percent complete.

6. As a means of adhering to W.S. 35-12-107(b)(viii) to provide preference for local and resident hiring, Permittee, contractors and subcontractors shall follow these hiring guidelines:

   a. Except as provided by (d) of this paragraph, the permittee, contractors and subcontractors shall use the local Employment Resources Center (Job Service Office) 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 Employment Resources Center is unable to provide qualified workers to fill job orders.

   b. Where the Employment Resources 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 subcontracts. 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, that 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.

7. The Permittee shall submit an annual report to DEQ/ISD through the construction period and the first year of operations on the anniversary date of the permit . 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 one-year period.

8. In order that the Office may monitor Permittee's performance, the Permittee shall institute the following monitoring program which shall be recorded on a monthly basis and reported to DEQ/ISD on a quarterly basis through the construction period and the first year of operations. Monthly data shall include:

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

   b. Place of residency at the time of hire and the employee's current location of residence and type of residence.

   c. The number of new students enrolled by grade level and school district who are related to Two Elk employees, separated as to local hires and in-migrants.

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

9. The permittee shall notify the DEQ/ISD of proposed changes to the scope, purpose, size, or schedule of the project. The Director may authorize such changes if he finds that:

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

   b. He has provided public notice of the proposed change and his intent to approve the request; and

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

10. The permittee shall notify the DEQ/ISD and provide an additional socio-economic analysis if actual hiring practices during construction exceed the peak number estimated in the application by more than fifteen (15) percent. If the Director determines that there is potential for significant adverse impacts, a permit amendment will be required.

11. The Permittee shall notify the DEQ/ISD when contractors are authorized to begin construction. Such notice shall include the approximate date for initiation of construction.

12. Permittee agrees to build and operate a 200 person construction camp if the facility begins construction during the same quarter as the ENCOAL project or such that construction

schedules for Permittee and ENCOAL cause peak employment for the two projects to occur within the same quarter.

13. Permitted shall pay $35,560 to Campbell County School District #1 during the quarter in which construction commences. The Council will review the school district impact after submission of the third quarterly monitoring report.

14. Permittee has reached agreement with the Wyoming Game and Fish Department to pay up to $12,000 for Game and Fish law enforcement activities. Such payment may be reduced or refunded by agreement of the Permittee and the Game and Fish Department.

So Ordered this __1__ day of April, 1997.

Industrial Siting Council

Harold Meier, Chairman