BEFORE THE WYOMING INDUSTRIAL SITING COUNCIL

STATE OF WYOMING

IN THE MATTER OF THE INDUSTRIAL SITING PERMIT OF TWO ELK GENERATION PARTNERS, LP AIR-COOLED WASTE COAL-FIRED POWER GENERATION PROJECT	))))	Docket DEQ/ISC 97-02

ORDER

WHEREAS, Two Elk Generation Partners, LP (Two Elk) has a permit for the construction of a coal fired generation plant; and

WHEREAS, Two Elk submitted a written request to the Industrial Siting Division of the Wyoming Department of Environmental Quality (Division) on June 25, 2014, to amend its previously granted permit by extending the deadline for commencement of construction to April 1, 2015 and to permit the splitting of construction of said project into two phases; and

WHEREAS, Wyo. Stat. § 35-12-106(c) authorizes the Council to allow permit amendments for good cause, if the permittee demonstrates at the Council's next meeting that the requested changes are in compliance with local ordinances and applicable land-use plans, and that the changes will not significantly add to the project's adverse environmental, social, and economic impacts in the impacted area; and

WHEREAS, Following Two Elk's request to the Division, the Council's next public meeting was initially on August 6, 2014. At that time Two Elk appeared before the Council and indicated that it could not provide a full and complete argument on its

request because of scheduling difficulties with Mr. Brad Enzi. The Council tabled consideration of the request until its following meeting. The Council next met on November 6, 2014, in Casper, Wyoming. At that meeting the Council considered Two Elk's request for its proposed amendment; and

WHEREAS, Present during the consideration of FMC's request was Council Chairman Shawn Warner along with Council Members John Corra, James Miller, Richard O'Gara, Peter Brandjord and Sandy Shuptrine. Council Member Gregg Bierei recused himself from this matter. Appearing for the permittee was counsel Mary A. Throne along with Brad Enzi from Two Elk. On behalf of the Division was counsel Andrew Kuhlman along with Administrator Luke Esch. No other parties appeared; and

WHEREAS, During the meeting, the Council considered Two Elk's June 25, 2014, written request and verbal comments and arguments from the parties; and

WHEREAS, Two Elk discussed its reasons for seeking additional time to commence construction on its waste coal fired power generation plant. Two Elk explained that due to pending regulations related to the waste disposal boiler and the general financial market conditions its previously approved construction start date of January 2014 could not be met. Two Elk proposed amending its existing construction schedule into a two phased approach. Phase 1 will encompass the installation of a gas-fired turbine (included in air permit 1352-B). Construction of this initial phase will commence on April 1, 2015 and run through March 2016. Two Elk explained that a number of items impacted the gas turbine schedule including: 1) finalization of gas supply agreements; 2) gas interconnection agreements; 3) finalization of power

agreements; 4) finalization of interconnection agreements; and 5) the financial close. Following the completion of phase 1, phase 2 of construction will include the installation of the main waste disposal boiler. Two Elk explained that the start of the second phase of construction will be contingent on a number of factors including: 1) federal regulatory certainty; 2) finalization of power purchase agreements; 3) finalization of interconnection agreements; 4) finalization of EPC contract and 5) the financial close; and

WHEREAS, Two Elk further explained that the construction delay and proposed two phased construction schedule constituted good cause under Wyo. Stat. § 35-12-106(c). In addition, the permittee asserted that the proposed construction change will not significantly impact local ordinances, applicable land use plans and won't significantly increase any adverse environmental, social and economic impacts already contemplated under the existing permit; and

WHEREAS, The Council expressed concerns about how Two Elk's extended and phased construction timeline creates additional uncertainty relating to the permittee's ability to complete the project. Therefore the Council proposed that Two Elk provide the Division with quarterly reports addressing the current status of: 1) all gas supply agreements; 2) all gas interconnections; 3) all power agreements; 4) all interconnection agreements; and 5) the financial close. In addition, the Council expressed its desire to have Two Elk, upon the completion of phase 1, provide the Division with evidence that the premittee holds all valid air quality permits before proceeding to phase 2 of construction; and

WHEREAS, Based on the evidence and discussions presented, the Council found that Two Elk demonstrated the requested amendment to the permit would not significantly add to the adverse environmental, social and economic impact in the impacted area and that the requested amendment, as modified by the Council, is otherwise justified under Wyo. Stat. § 35-12-106(c). The Council voted 4 to 2 to approve Two Elk's requested permit amendment with additional conditions;

ACCORDINGLY, THEREFORE, Two Elk's permit is amended in the following manner: (1) the deadline for commencing construction is extended to April 1, 2015; (2) construction will be separated into two phases, phase 1 will encompass the installation of a gas-fired turbine and will commence on April 1, 2015, running through March of 2016; (3) before proceeding to phase 2, Two Elk will provide the Division with evidence that the premittee holds all valid air quality permits; (4) Two Elk will provide the Division with quarterly reports addressing the present status of: a) all gas supply agreements; b) all gas interconnections; c) all power agreements; d) all interconnection agreements; and e) the financial close.

So ordered this 2 day of December 2014.

Shawn Warner

Shawn Warner, Chairman
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