

BEFORE THE WYOMING INDUSTRIAL SITING COUNCIL

STATE OF WYOMING

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

ORDER

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

WHEREAS, the Industrial Siting Council (Council) in its prior December 2, 2014 Order, had approved a permit amendment requiring Two Elk to start construction of the facility on April 1, 2015. In its first quarterly report, Two Elk notified the Industrial Siting Division (Division) of the Wyoming Department of Environmental Quality (Department) that construction did not commence on April 1, 2015. Two Elk informed the Division that an updated construction schedule would be provided to the Division by May 2015. On June 18, 2015, the Division contacted Two Elk and requested the revised construction schedule; and

WHEREAS, on July 10, 2015, Two Elk sent a letter to the Division stating that construction of phase one of the facility was now scheduled to commence in April of 2016. Two Elk provided an updated construction schedule for the Division's and Council's consideration. The Division treated the letter as a written request by Two Elk to amend its previously granted permit by extending the deadline for commencement of construction to April 1, 2016; and

WHEREAS, on August 26, 2015, the Division received a comment letter from the County and Prosecuting Attorney's Office for Campbell County regarding Two Elk's request to extend its construction schedule under the permit. In that letter the Deputy Campbell County Attorney stated that "on June 4, 2015, Campbell County obtained a judgment against Two Elk Generation Partners, LP for failure to pay its ad valorem tax. The total judgment is the sum of \$207,810.72 plus interest which is accruing at the rate of ten percent per annum. The origins of the tax are the property and its associated activities under the jurisdiction of the Council via the above referenced permit. Under Wyoming law, Campbell County has a judgment lien against the property and is taking the necessary steps to sell the property in order to satisfy its judgment"; and

WHEREAS, Wyoming Statute § 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 Department, the Council's next public meeting was on August 31, 2015, in Douglas, Wyoming. At that meeting the Council considered Two Elk's request for its proposed amendment; and

WHEREAS, present during the consideration of Two Elk's request was Council Chairman John Corra along with Council Members James Miller, Richard O'Gara, Shawn Warner and Susan Cannon. Appearing for the permittee was Mr. Brad Enzi from Two Elk. On behalf of the Department was counsel Andrew Kuhlmann along with Principal Economist, Kimber Wichmann. Appearing on behalf of Campbell County was Carol Seeger, Deputy County Attorney for Campbell County. No other parties appeared; and

WHEREAS, during the meeting, the Council considered Two Elk's July 10, 2015, written request and further verbal comments and arguments from the parties regarding Two Elk's ninth amendment request; and

WHEREAS, Mr. Enzi discussed Two Elk's tax situation with Campbell County. He stated that he was aware of the gravity of the situation and that Two Elk was working to remedy the situation and assure taxes were brought current; and

WHEREAS, Two Elk discussed its reasons for seeking additional time to commence construction on its facility. Mr. Enzi explained that the previously approved permit construction start date of April 1, 2015 could not be met. Mr. Enzi stated that there is uncertainty in both in coal and electric power markets. Issuance of federal regulations regarding carbon emissions from coal-fired power plants hamper development since financial companies are not willing to lend on projects with heightened uncertainty. Two Elk stated that the new schedule would not present any new or additional impacts on the local area; and

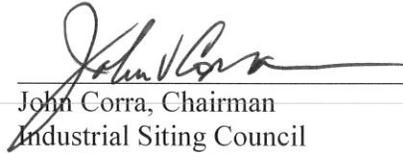
WHEREAS, Carol Seeger, Deputy County Attorney for Campbell County stated that Two Elk's county ad valorem tax had not been paid for fall 2013, spring 2014 and fall 2014. The county had filed a lawsuit for collection of the overdue taxes. Two Elk had failed to respond to the County's suit and that a default judgment was entered against Two Elk on June 4, 2015. A writ of execution on the judicial judgment has been issued and that the County intends to conduct a sheriff's sale on Two Elk's property to satisfy the judgment; and

WHEREAS, the Council expressed concern regarding the large number of extensions previously granted by the Council without progress being made on the facility. The Council expressed further concerns relating to Two Elk's ability to begin and eventually complete the facility in light of the uncertainty of Two Elk's situation with Campbell County and that Two Elk is not in compliance with local ordinances, as required by Wyo. Stat. § 35-12-106(c), due to unpaid county taxes; and

WHEREAS, based on the evidence and discussions presented, the Council found that Two Elk did not demonstrate good cause to support the requested amendment under Wyo. Stat. § 35-12-106(c). Furthermore, the Council determined that Two Elk failed to show it was in compliance with local ordinances. The Council unanimously voted not to approve Two Elk's requested permit amendment; and

ACCORDINGLY, THEREFORE, Two Elk's July 10, 2015 requested permit amendment is denied. Two Elk's permit is in noncompliance with the April 1, 2015, commencement of construction deadline date.

So ordered this 23rd day of September 2015.



John Corra, Chairman
Industrial Siting Council
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