

**BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL**

In re Amendment Request No. 1
To the Chehalis Generation Facility Site
Certification Agreement

Chehalis Power Generation
Limited Partnership

Chehalis Generation Facility

COUNCIL ORDER NO. 738

Order on Granting Intervention, Denying Motion
for Postponement of Prehearing Conference, and
Limiting the Scope of Adjudication

PREHEARING ORDER No. 1

Nature of the Proceeding: This matter involves an application to the Washington State Energy Facility Site Evaluation Council to amend the Chehalis Generation Facility Site Certification Agreement. The Applicant, Chehalis Power Generation Limited Partnership (Chehalis Power) has requested that certain portions of the Site Certification Agreement and attachments be changed from what was approved by the Governor in 1997.

Procedural Setting: The Washington State Energy Facility Site Evaluation Council, (Council or EFSEC), convened a prehearing conference in the adjudication regarding this matter on Monday, March 27, 2000, pursuant to due and proper notice to all interested persons. The Conference was held before Council members Heather Ballash (Community, Trade & Economic Development) C. Robert Wallis (Utilities and Transportation Commission), Charles Carelli (Dept. Of Ecology), Jenene Ratassepp (Dept. Of Fish & Wildlife), Gayle Rothrock (Natural Resources), Diane Offord (Military Department), Gary Ray (Transportation), Daniel Jemelka (Agriculture), and Ken Sabine (Lewis County).

Participants: Representatives of the statutory parties, the Applicant, and Counsel for the Environment appeared for the prehearing conference. Also in attendance were representatives of three state agencies having membership on the Council and one organization asking the Council's permission to intervene and become a party.

Appearances were entered as follows:

Applicant	Chehalis Power , by Elizabeth Thomas and Tom Backer, Attorneys, Preston, Gates and Ellis, Seattle
Counsel for the Environment	Melissa Burke-Cain , Asst. Atty. General, Olympia
State Agencies	Dept. Of Community, Trade & Economic Development , by Marc Defreyn, Asst. Atty. Gen., Olympia Dept. Of Ecology , by Mary Sue Wilson, Asst. Atty. Gen., Olympia Dept. Of Fish & Wildlife , by William C. Frymire, Asst. Atty. Gen., Olympia
Organizations	Critical Issues Council , by John Mudge, President, Chehalis

This order will address procedural matters that were raised at the prehearing conference, rulings on the Critical Issues Council's request for intervention and Critical Issues Council's motion to postpone the prehearing conference, and the scope of the adjudication.

Petitions for intervention:

The Council received four petitions for intervention: three state agencies and one organization. State agencies requesting intervention were the Department of Ecology (Ecology), the Department of Fish & Wildlife (WDFW), and the Department of Community Trade & Economic Development (CTED). The one organization petitioning for intervention was the Critical Issues Council (CIC). All were parties in the original Application No. 94-2.

EFSEC member agencies are permitted to participate upon request, pursuant to WAC 463-30-050. There were no objections to the CIC request for intervention and the Council granted the CIC petition. A revised service list is attached to this order.

Motion to Postpone the Prehearing Conference:

The CIC moved to postpone the prehearing conference stating there was a lack of information that is necessary to begin a review and proceed with the hearing. Chehalis Power objected to the motion, stating that the issues to be discussed at the prehearing conference were preliminary in nature and that Chehalis Power had submitted sufficient detailed information to proceed with the hearing. CFE and Ecology concurred with CIC that more information and time was needed to frame the issues.

After consideration, the Council denied CIC's motion to postpone the prehearing conference. However, the Council noted that the purpose of this prehearing conference was to begin the discussion of the issues relating to the adjudication. The parties were encouraged to work together to develop a list of the issues to be addressed in this proceeding prior to the next schedule prehearing conference.

Hearing guidelines:

The Council distributed draft guidelines for the conduct of complex hearings, indicating that those guidelines set out the Council's expectations for behavior and that the Council intends to reference them as guidelines for the conduct of the proceeding. The parties were requested to submit comments on the draft hearing Guidelines. In response to a question from the applicant, the Council noted that fifteen (15) copies of all motions and related pleadings must be filed with the Council. All other comments regarding the draft Guidelines were to be received at the Council Office by the end of business Friday March 31, 2000. Any proposed changes to the guidelines will be a topic for discussion at the next prehearing conference.

Two comments were received regarding minor drafting errors. The revised Draft Hearing Guidelines is attached to this order.

Issue Identification:

The Council requested that an issues list be developed to clarify what would be adjudicated. Chehalis Power has submitted its list. The intervenors and the CFE stated that they had not yet begun to develop a list. Chehalis Power volunteered to organize an issues list development and offered to hold a workshop for the intervenors to present information and details that would help the parties better understand the amendments Chehalis Power is proposing. Two workshops were planned April 3 and 6, 2000. The parties were encouraged to work together to develop the issues list.

The issues list will be a subject matter at the next prehearing conference.

Scope of Adjudication:

The matter of the scope of the issues to be addressed at the hearings was raised. The Council was asked to rule on whether the hearings were limited to only issues associated with the amendment request or could the hearings have issues not directly related to the amendment but related to the project in general. Upon consideration, the Council ruled that scope of the hearings will be limited to the proposed amendments to the Site Certification Agreement, including direct and indirect impacts of the amendments, and any other matters that the Council may be legally required to consider.

Prefiled Testimony:

The Council asked the parties to comment on whether there was a need to have prefiled testimony in this case or whether the parties could provide oral testimony. Chehalis Power expressed their desire for oral testimony, rather than prefiled testimony. The CFE, WDFW, Ecology, and CTED expressed their desire to have prefiled testimony so they could better understand the applicant's case. CIC reluctantly agreed with Chehalis Power because of the time and effort of preparing prefiled testimony.

The Council decided to delay ruling on this issue and consider it further at the next prehearing conference pending identification of the issues.

Discovery:

The matter of how and when discovery may take place was discussed. The parties agreed to conduct informal discovery in conjunction with the workshops to be presented by Chehalis Power. The parties indicated that the matter of formal discovery would be better discussed after there is more communication with Chehalis Power and further development of an issues list. The Council will hear further discussions related to discovery at the next prehearing conference.

Parties requested that Chehalis Power provide copies of any information it gives to one party to all the parties. Chehalis Power agreed to copy all parties when providing information in response to requests by one party.

Scheduling:

The Council expressed its desire to determine a schedule for this proceeding. It was agreed that a second prehearing conference should be held. A date of April 14, 2000 and a starting time of 9:00 am was agreed upon. The parties will be notified of the location prior to the meeting.

The Council suggested May 24 and 25, 2000 as tentative dates for the adjudicative hearing. Chehalis Power stated a desire to accelerate these proceedings and, if possible, to hold the hearing one to two weeks earlier than suggested by the Council. The state agencies and CIC suggested that the May 24-25 dates might be too early. The Council noted that it has other proceedings in progress and that the May 24-25 dates may be viewed as tentative but should be used for scheduling purposes. The appropriateness of these scheduled dates can be revisited at the next prehearing conference, if necessary.

Other:

The Department of Ecology raised an issue regarding whether EFSEC had authority to issue a Pretreatment Discharge permit. The Pretreatment Discharge Permit is

part of the National Pollution Discharge Elimination System (NPDES) permits that the US Environmental Protection Agency has delegated to the state to issue. The Council is cognizant of this issue and is in the process of researching its authority.

Next Scheduled Prehearing Conference:

The next Prehearing Conference will be held at 9 a.m., April 14, 2000 at the Utilities & Transportation Commission Hearing Room, 1300 S. Evergreen Park Drive SW, Olympia, Washington. Items to be discussed include: suggested changes to the Draft Hearing Guidelines, development of an issue list, discussion of the need for prefiled testimony, the need for discovery, any request for changes to the hearing schedule, and other matters relevant to these proceedings.

Notice to Parties:

Any objection to the provisions of this order must be filed within ten days after the date of service of this order, pursuant to WAC 463-30-270(3). Unless modified, this prehearing conference order shall control further proceedings in this Docket.

DATED at Olympia, Washington and effective this 3rd day of April 2000.

WASHINGTON STATE ENERGY FACILITY SITE EVALUATION COUNCIL

By

/signed/

HEATHER BALLASH
Presiding Officer