

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

3
4
5 In re: Amendment Request No. 1

COUNCIL ORDER NO. 742

6 To the Chehalis Generation Facility Site
7 Certification Agreement

Order on Motion to Exclude Issues, Schedule for Exhibit and Testimony Lists; Notice of Prehearing Conference (May 22, 2000); Notice of Commencement of Hearings (May 24, 2000); and Notice of Hearing to Receive Evidence from Members of the Public (May 24, 2000)

8 Chehalis Power Generation
9 Limited Partnership
10 Chehalis Generation Facility

PREHEARING ORDER No. 3

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12 **Nature of the Proceeding:** This matter involves an application to the
13 Washington State Energy Facility Site Evaluation Council to amend the Chehalis Generation
14 Facility Site Certification Agreement. The Applicant, Chehalis Power Generation Limited
15 Partnership (Chehalis Power or CP) has requested that certain portions of the Site Certification
16 Agreement (SCA) and attachments be changed from what was approved by the Governor in
17 1997.

18 **Procedural Setting:** The Washington State Energy Facility Site Evaluation
19 Council, (Council or EFSEC), convened a prehearing conference in the adjudication regarding
20 this matter on Monday, March 27, 2000, pursuant to due and proper notice to all interested
21 persons. The Conference was reconvened on Friday, April 21, 2000, and again on May 2, 2000.
22 At the May 2, 2000 prehearing conference, Council members present were C. Robert Wallis
23 (Utilities and Transportation Commission), Charles Carelli (Department of Ecology), Jenene
24 Ratassepp (Department of Fish & Wildlife), Gary Ray (Department of Transportation), Daniel
25

1 Jemelka (Department of Agriculture), Ellen Haars (Department of Health), and Ken Sabin
2 (Lewis County). Appearances were entered as follows:

3 Applicant **Chehalis Power**, by Elizabeth Thomas Attorney, Preston, Gates
4 and Ellis, Seattle

5 Counsel for the Environment **Melissa Burke-Cain**, Assistant Attorney General, Olympia

6 State Agencies **Dept. Of Community, Trade & Economic Development**, by
7 Marc Defreyn, Assistant Attorney General, Olympia; **Dept. Of Ecology**, by Mary Sue Wilson, Assistant Attorney General,
8 Olympia; **Dept. Of Fish & Wildlife**, by William C. Frymire,
9 Assistant Attorney General, Olympia

10 Organizations **Critical Issues Council**, by John Mudge, President, Chehalis

11 This order addresses and rules on the Motion by Chehalis Power to exclude
12 certain issues from adjudicative hearing and adjusts the schedule for submitting exhibit lists and
13 witness lists for those issues ruled upon. This Order also provides Notice for a May 15, 2000
14 prehearing conference and Notice for a Hearing to Receive Evidence from Members of the
15 Public (May 24, 2000).

16 **Issue Identification:** The Council requested that an issues list be developed to
17 clarify what would be adjudicated. Chehalis Power submitted a list and responded to the Critical
18 Issues Council's (CIC) list of issues contained in CIC's Notice of Appearance. In Chehalis
19 Power's response, CIC's issues were numbered for clarity. That numbering system has
20 continued to be used by all the parties and will be used in this order to denote issues. At the
21 April 21, 2000, prehearing conference, the other parties submitted their list of issues to Chehalis
22 Power.

23 On April 19, 2000, Chehalis Power filed a "Motion to Exclude Certain Issues
24 from Adjudicative Hearing and to Refine Certain Issues from Adjudicative Hearing." In addition
25 Chehalis Power asked the Council to preclude submission of additional issues subsequent to the

1 Council's ruling on Chehalis Power's motion, except for good cause shown. Each of the parties
2 filed responses to Chehalis Power's Motion and Chehalis Power filed a Reply to the Responses.
3 The following

4
5 **Agreed Issues:** Based on the submittals by the parties, the following is a
6 summary of those issue that the parties have agreed will be addressed in these proceedings:

- 7 1. Air Cooling: Changes to facility design and operation to "air" (dry) cooling
8 instead of the evaporative (wet) cooling presently permitted by the SCA.
9 (Chehalis Power)
 - 10 a. Elimination of the required acquisition and retirement of surface water
11 rights, because of reduction in water use. (Chehalis Power)
 - 12 b. Change from the National Pollution Discharge Elimination System
13 (NPDES) Permit to a State Waste Discharge Permit. (Chehalis Power)
- 14 2. Turbines: Change to the newer version of the General Electric 7FA combustion
15 turbines, that would increase the nominal electrical output of the facility to 520
16 MW from the currently approved 460 MW. (Chehalis Power)
- 17 3. Power Purchase Agreements: Elimination of the requirement that Chehalis Power
18 obtain power purchase agreements for at least 60% of the design capacity of each
19 unit prior to beginning construction. (Chehalis Power)
- 20 4. PSD changes: Amending the air quality Notice of Construction/ PSD permit:
21 (Chehalis Power)
 - 22 a. To reflect the changes in the proposed turbines; and (Chehalis Power)
 - 23 b. To change short-term NOx emission limits to reflect the proposed turbine
24 and operational changes. (Chehalis Power)

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- 5. Deletion of the requirement of Attachment 7, Part III, Paragraph A, Need.
(CTED)
- 6. Deletion of the requirement of Attachment 7, Part III, Paragraph B, Consistency.
(CTED)
- 7. New, different, or additional level of resource or habitat protection, mitigation, or enhancement, for possible natural resource impacts resulting from requested changes to the power plant site and operation. (Fish & Wildlife)
- 8. Impacts to natural resources from new, different, or additional construction in the local area. (Fish & Wildlife)
- 9. Deletion of the requirement of Attachment 6, Part III, paragraph E, Management Plan. (Fish & Wildlife)
- 10. New, different, or additional natural resource impacts to the Chehalis River. (Fish & Wildlife)
- 11. Revisions to the mitigation conditions. (Ecology)
- 12. Revisions to the water use mitigation requirements for differences in amount and timing of municipal water use between the existing and the proposed revised SCA. (Ecology)
- 14. Wastewater Pretreatment
 - a. Assuming EFSEC has the necessary authority, should a pretreatment discharge permit be issued after examination of recent monitoring data from the City's wastewater treatment system. (Ecology)
 - b. Assuming EFSEC has the necessary authority, should a pretreatment discharge permit be issued after examination of the impacts of the facility's discharge temperature, metals, and volume impact to the

1 receiving wastewater discharge facility and its permit compliance.

2 (Ecology)

- 3 16. New, different, or additional environmental health or public safety impacts in the
4 vicinity of the Chehalis Generating Facility Plant site. (CFE)
- 5 18. CFE also joins in the issues proposed by Ecology and Fish & Wildlife.
- 6 19. Is there sufficient water during low flow to operate this facility. (CIC)
- 7 26. Concerns about water quality, quantity, intake and discharge. (CIC)
- 8 27. Protection against potential impacts on the Chehalis River if surface water rights
9 are not acquired. (CIC)
- 10 45. Provision requiring Chehalis Power to revisit the water issues after 3 years (Mar.
11 7, 1997) or 9 months before construction. (CIC)
- 12

13 **Disputed Issues:** The following is a list summarizing issues that Chehalis Power
14 has moved to have excluded from the hearing:

- 15 12. Water timing, amount and mitigation (Ecology) CP proposed re-wording
- 16 13. Treatment of reclaimed water (Ecology) CP moved to exclude as redundant with
17 Issue 1
- 18 14. EFSEC's jurisdiction to authorize wastewater discharge to City (Ecology) CP
19 moved to exclude as being addressed by prehearing motion
- 20 a. Ability of City system to treat facility wastewater (Ecology) Issue
21 accepted by CP
- 22 b. Impacts of facility wastewater discharge (Ecology) Issue accepted by CP
- 23 15. Issues relating to PSD permit (including subparts) (Ecology) CP moved to
24 exclude as either procedural (rather than factual), beyond scope of proposed
25 amendment, or fully resolved.

- 1 17. CO₂ (CFE) CP moved to exclude as beyond scope of amendment and fully
2 addressed by SCA.
- 3 20. Gas pipeline capacity (CIC) CP moved to exclude as beyond EFSEC's
4 jurisdiction
- 5 21. Potential diesel fuel fire (CIC) CP moved to exclude as beyond scope of
6 amendment and fully addressed by SCA.
- 7 22. Fire flow (CIC) CP moved to exclude as beyond scope of amendment and fully
8 addressed by SCA.
- 9 23. Fire fighting resources (CIC) CP moved to exclude as beyond scope of
10 amendment and fully addressed by SCA.
- 11 24. Traffic (CIC) CP moved to exclude as beyond scope of amendment and fully
12 addressed by SCA.
- 13 25. Emergency access (CIC) CP moved to exclude as beyond scope of amendment
14 and fully addressed by SCA.
- 15 28. Treatment of reclaimed water (CIC) CP moved to exclude as redundant with Issue
16 1.
- 17 29. Validity of PSD permit (CIC) CP moved to exclude as beyond scope of proposed
18 amendment, and/or fully resolved.
- 19 30. Annual water usage (CIC) Withdrawn.
- 20 31. City water service line route and capacity (CIC) CP moved to exclude as City's
21 water system is beyond EFSEC jurisdiction.
- 22 32. Gas pipeline route (CIC) CP moved to exclude as beyond EFSEC's jurisdiction.
- 23 33. Eminent domain for gas pipeline (CIC) CP moved to exclude as beyond EFSEC's
24 jurisdiction.
- 25

- 1 34. Site restoration (CIC) CP moved to exclude as beyond scope of proposed
2 amendment.
- 3 35. Amended application (CIC) CP moved to exclude as procedural
- 4 36. Control of NOx emissions (CIC) CP moved to exclude as beyond scope of
5 proposed amendment, and / or fully resolved.
- 6 37. SEPA (CIC) CP moved to exclude as EIS addressed air cooling and is beyond
7 scope of proposed amendment.
- 8 38. Route of electric connection to BPA, substation characteristics (CIC) CP moved
9 to exclude as beyond scope of proposed amendment.
- 10 39. Water use priorities (CIC) CP moved to exclude as City’s water system is beyond
11 EFSEC jurisdiction.
- 12 40. GMA compliance (CIC) CP moved to exclude as beyond scope of proposed
13 amendment.
- 14 41. Size of air condensers (CIC) Withdrawn.
- 15 42. Footprint of air condensers (CIC) Withdrawn.
- 16 43. Need for a NPDES permit (CIC) Withdrawn.
- 17 44. Noise (CIC) Conditionally withdrawn¹.
- 18 46. Chemical use (CIC) Conditionally withdrawn.
- 19

20 **Council Determination of Issues:** The Council has reviewed the submissions
21 and statements made by all the parties and determines which issues will be included in these
22 proceedings, as follows:

23

24 _____

25 ¹ Chehalis Power noted in its reply to the parties responses that it will enter into the stipulation requested by the CIC regarding issues 44 and 46, provided that the CIC’s withdrawal of the issues operates as a dismissal with prejudice of the issues with regard to the CIC.

- 1 ▪ Any issue that relates to changes in the construction, operation, and impacts due
2 to the requested amendments and requested changes to the Site Certification
3 Agreement are subject to examination during this adjudication. Further, if any
4 issue is not clearly excluded and it is germane to the amendment request it will be
5 included.
- 6
- 7 ▪ CIC has agreed that many of the issues it identified will be reviewed at a later
8 time by the Council as part of any final design, or as a result of current SCA
9 requirements for review and approval by the Council. Therefore, CIC agrees that
10 these issues need not be part of this amendment adjudication. The CIC is satisfied
11 that it will have an opportunity to bring its concerns to the Council at that time.
- 12
- 13 ▪ All issues regarding water use, discharge, or mitigation are subject to adjudication
14 as long as they can be related to proposed amendment changes. Issues of the
15 treatment of reclaimed water may be treated as a separate issue. If a party can
16 demonstrate that construction of any lines on the site to supply the site with water
17 or to take away any discharge water would have significant environmental
18 impacts, those issues may also be included in this adjudication.
- 19
- 20 ▪ The Council will not exclude NO_x and CO₂ issues related to air emission changes
21 resulting from the proposed amendment. The parties shall be aware that the
22 Council will issue a proposed amendment to the PSD permit that will have its
23 own comment period and hearing.
- 24
- 25

- 1 • The issues regarding the natural gas pipeline will not be a part of this proceeding.
2 The Council in its original adjudication in this proceeding ruled that the natural
3 gas pipelines were not subject to its jurisdiction. This ruling was based on both
4 state and federal law, which place jurisdiction for the siting of the natural gas
5 pipeline to this project under the Federal Energy Regulatory Commission
6 (FERC). Chehalis Power will have to get authority to site the natural gas pipeline
7 from FERC.
8
- 9 • The Council has jurisdiction to deal with water usage and water treatment issues
10 contained in the SCA and their impacts on the environment. The issues regarding
11 the allocation of water by the City of Chehalis and where it will run its ordinary
12 water and sewer lines to access the site are not subject to the jurisdiction of the
13 Council.

14
15 Specifically the Council finds that the uncontested issues 1-12, 14, 16, 18, 19, 26,
16 27, and 45 are matters within the jurisdiction of the Council and are topics to be resolved in the
17 hearings. The Council further finds that disputed issues 13², 15, and 17 also within the issues to
18 be resolved in this adjudication in that for issue 15 the environmental impacts of any change in
19 air emissions will be heard, but will reserve the Council's ability to determine and issue the air
20 emission Notice of Construction/PSD permit in accordance with the Council's duly delegated
21 authority.

22 The Council finds that issues 20-25, 29-44, and 46 have either been withdrawn,
23 are not part of this proceeding, or are not within the legal jurisdiction of the Council. Therefore,
24 they will not be considered in this adjudication.

25 _____
² Issue 13 and 28 are duplicative and shall be considered as issue 13.

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2 **Prefiled Testimony:** The parties agreed that only Chehalis Power would submit
3 prefiled direct testimony and that the prefiled testimony is due May 12, 2000.
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5 **Witness and Exhibit List and Identification Schedule:** For issues that were
6 uncontested the dates for submitting witness and exhibits lists remain the same. Intervenor's
7 witness lists are due May 8, 2000 and intervenors exhibit lists is due May 10, 2000. For those
8 contested issues ruled on in this order, the witness lists are due one (1) day following issuance of
9 this order and the exhibit lists are due two (2) days following the issuance of this order.
10

11 **Dispositive Motions:** Any dispositive motions must be filed by May 18, 2000.
12

13 **Prehearing Conference:** The next prehearing conference will be held at 1:00
14 p.m., May 22, 2000 at the Utilities & Transportation Commission Hearing Room, 1300 S.
15 Evergreen Park Drive SW, Olympia, Washington for the marking of exhibits and other matters
16 relevant to these proceedings.
17

18 **Hearings Schedule:** The hearings are scheduled for May 24, 2000, and will be
19 held in Hearing Room 2 in the Cherberg Building (Senate Building) on the Capitol Campus,
20 Olympia Washington. A second and third days are reserved if needed, to complete the hearing,
21 on May 25 and May 26 in the same location. A public hearing will be held in the evening
22 beginning at 7:00 p.m., on May 24, 2000 in the Chehalis Middle School Commons, at 1060 SW
23 20th, Chehalis, Washington, 98532
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25

1 **Notice to Parties:** Any objection to the provisions of this order must be filed
2 within ten (10) days after the date of service of this order, pursuant to WAC 463-30-270(3).
3 Unless modified, this prehearing conference order shall control further proceedings in this
4 Docket.

5
6 DATED at Olympia, Washington and effective this _____ day of May 2000.

7 WASHINGTON STATE ENERGY FACILITY SITE EVALUATION COUNCIL

8 By

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10 _____
11 C. Robert Wallis
12 Presiding Officer
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