

**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. 745**

Order on Stipulations, EFSEC Pretreatment  
Authority, CTED's Dispositive Motion

**PREHEARING ORDER No. 4**

**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 conferences in the adjudication regarding this matter on March 27, 2000, April 21, 2000, May 2, 2000, and on May 22, 2000. At the May 22, 2000 prehearing conference Council members present were C. Robert Wallis (Utilities and Transportation Commission), Charles Carelli (Department of Ecology), Jenene Ratassepp (Department of Fish & Wildlife), Gary Ray (Department of Transportation), Daniel Jemelka (Department of Agriculture), Ellen Haars (Department of Health), Gayle Rothrock (Department of Natural Resources), and Ken Sabin (Lewis County). Appearances were entered as follows.

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

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

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

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

This order sets out matters that the Council conducted and resolved at its May 22, 2000 prehearing conference in this matter. Those matters include two stipulations filed by Chehalis Power, the question of whether EFSEC has authority to issue a pretreatment waste water discharge permit for the Chehalis Generation Facility, and whether the hearing should be continued. This order does not rule on CTED's dispositive motion to delete as a subject of the adjudication Attachment 7 of the Site Certification Agreement.

**Stipulation:** In an EFSEC adjudicative proceeding, any stipulation or settlement must be stated on the record or submitted in writing and is subject to review and approval by the Council. WAC 463-30-250(2). The Council's approval of a stipulation or settlement means that the Council accepts it as binding in the current proceeding between the stipulating and settling parties. No stipulation or settlement binds the Council either to approve or deny the project. Further, no stipulation or settlement is binding on parties other than the stipulating and settling parties. Non-stipulating/settling parties may present relevant evidence during the adjudicative proceeding to support a different standard.

The Council has considered the text of the settlements and the testimony presented at the hearing. If the amendment is approved, the Council accepts the stipulations and settlements contained in Exhibits 1 and 2, subject to the following conditions:

1. The Council is not foreclosed from adopting requirements more stringent than stated in the settlement agreements; and
2. Approval of these settlement agreements does not constitute any ceding of the Council's jurisdiction to other agencies. The Council is not foreclosed from determining that it has jurisdiction to monitor and enforce the terms of the stipulations. The Council may work with the stipulating agencies to determine plans and appropriate responsibilities for effective monitoring and enforcement of all stipulation requirements associated with construction and operation of the project.

The Council reserves the right to require increased specificity regarding any aspect of these settlements from the settling parties, particularly with respect to plans for monitoring, reporting, and enforcement. The Council may require this information at any time throughout, and after, this proceeding.

The Council also reserves the right to determine specific standards and detailed plans for monitoring and enforcement without submissions from the stipulating parties, if it deems doing so to be a significant element in its resolution of the issues in the proceeding.

**Pretreatment Discharge Permit:** An issue has been raised questioning EFSEC's authority to issue a pretreatment discharge permit to the Chehalis Generation Facility to discharge waste water to the City of Chehalis' waste water system. The Department of Ecology filed a brief outlining its assertions that EFSEC has not been delegated authority to issue pretreatment discharge permits under the National Pollutant Discharge Elimination System (NPDES) administered by the U. S. Environmental Protection Agency. In response, Chehalis Power argued that because EFSEC had been delegated authority to issue a NPDES permit by EPA, EFSEC has authority to issue a pretreatment permit under the NPDES program.

In a May 18, 2000 letter received by EFESC from Mr. Robert R. Robichaud, Chief NPDES Permits Unit of the EPA, EPA informs the Council that EFSEC has not been delegated pretreatment permitting authority by EPA. Based on the facts and law presented to it, the Council determines that it will not assert jurisdiction over the pretreatment discharge permit for the Chehalis Generation Facility.

**CTED's Dispositive Motion:** The Department of Community, Trade, & Economic Development (CTED) filed a motion for the Council to reject one of Chehalis Power's requested amendments to the Site Certification Agreement. The motion asks EFSEC to dismiss Chehalis Power's request to change the provision that is contained in Attachment 7 of the Site Certification Agreement. The Council will rule on the motion at a later date after parties have an opportunity to respond to the motion and the Council has the opportunity to consider it.

CTED, supported by the Counsel for the Environment and intervenors, asked for a continuance of the hearing. Chehalis Power opposed the request. After deliberations, the Council denied the request.

Any objection to the provisions of this order must be filed within ten (10) 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 and effective at Olympia, Washington, the 26 day of May, 2000.

WASHINGTON STATE ENERGY FACILITY SITE EVALUATION COUNCIL

By

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C. Robert Wallis  
Presiding Officer