

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

**In re Matter of
Application No. 99-1**

**Second Revised Application
of**

SUMAS ENERGY 2, INC.

**SUMAS ENERGY 2 GENERATION
FACILITY**

**PREHEARING ORDER No. 2
In consideration of Second Revised
Application**

COUNCIL ORDER NO. 760

Nature of the Proceeding: This matter involves an application by Sumas Energy 2, Inc. (SE2 or Applicant) to the Washington State Energy Facility Site Evaluation Council (EFSEC or Council) for certification to construct and operate the Sumas Energy 2 Generation Facility (SE2GF), a 660-megawatt combustion turbine natural gas-fired electrical generation facility in Sumas, Washington.

Procedural Setting: This Order reflects the agreements of parties and the decisions of the Council following the second prehearing conference held to consider the Applicant's Second Revised Application for the SE2GF project.

Pursuant to due and proper notice, the Council conducted a prehearing conference on August 1, 2001. The hearing was held before, Acting Council Chair Charles Carelli, (Department of Ecology), Ellen Haars (Department of Health), Gary Ray (Department of Transportation), Tony Ifie (Department of Natural Resources), Heather Ballash (Department of Community, Trade and Economic Development), Gerald Richmond (City of Sumas), Jenene Fenton (Department of Fish and Wildlife), Dennis J. Moss (Washington Utilities and Transportation Commission) and Dan McShane (Whatcom County). Also present were Robert Fallis who serves as the Assistant Attorney General for the Council and Nan Thomas, Administrative Law Judge with the Office of Administrative Hearings, who has been retained by the Council to facilitate and conduct hearings. Appearances of the parties were taken and made part of the record.

Public Informational Meeting

The public Informational Meeting described in Council Order No. 759 will be held at Nooksack Valley Middle School, 404 W Columbia St., Everson, Washington, 98247, from 3:00 p.m. until 9:00 p.m. on August 14, 2001.

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Flood Modeling

At the prehearing, the Applicant confirmed that an unsteady flood model for the Whatcom County region does exist. It was developed by, and is in the possession of, a flood modeler in California, Mr. Franz, who performed flood work for the City of Sumas and is currently using the model in a flood analysis project for Whatcom County. However, the Applicant explained that the model is not currently developed in a way to permit its immediate application to evaluate flood impacts at the SE2 site. Rather, the Applicant explains that the model will have to be adapted and further detail added before it could be used for the site. The Applicant indicated that it won't know exactly what is necessary to adapt and refine the model and how long that might take until SE2's flood consultants have an opportunity to analyze the existing model.

The Applicant also explained that parameters for 10, 25, and 50 year flood events in the region do not currently exist and that it would take approximately three to four months for this information to be researched and developed to the point that it could be used in a flood model. The Applicant has also explained that SE2's flood consultants have already engaged in discussions with Paula Cooper, flood manager for Whatcom County, regarding the lack of 10, 25 and 50 year flood data and alternatives for analyzing such flood events. SE2 has stated that it is willing to continue to work with Ms. Cooper to agree on appropriate parameters to analyze such events.

During the prehearing conference, a Council member requested that a representative from the Council's consultant, Jones & Stokes Associates, be permitted to participate in those discussions and SE2 indicated that it has no objection to that proposal. Hence, Council staff will contact Jones & Stokes, to discuss its possible participation.

SE2's flood consultants have requested a copy of the existing unsteady flood model from Mr. Franz. The Applicant has informed the Council that it does not know whether the model is owned by the City of Sumas or Whatcom County. The City of Sumas previously authorized Mr. Franz to provide SE2 with requested flood modeling data. As of August 1, 2001, the Applicant had spoken to Whatcom County's attorney, David Grant, about whether the County will also authorize SE2 to have a copy of the model. Mr. Grant will inform the Council by August 10, 2001, whether the County will authorize the Applicant to use a copy of the model. The Applicant has represented to the Council that once SE2 obtains the model, the Applicant's flood consultants will analyze it to determine how it must be adapted for the SE2 site and how long that process may take. The Applicant will keep the Council informed of its progress in this regard.

In light of the Applicant's representations regarding the apparent limitations of the existing unsteady model and the lack of 10, 25 and 50 year flood data, the Council grants SE2's request that the Council suspend the portion of Council Order No. 759 pertaining to flood hazards until August 17, 2001, to allow SE2 to obtain a copy of the model and to develop a method to address smaller flood events. By August 21, 2001, SE2 will report to the Council

what flood modeling could reasonably be performed by October 1, 2001, and how SE2 proposes to the Council that it proceed on the flood issue.

Witness Lists

By August 20, 2001, all parties, except intervenor Constance Hoag, will serve each other and the Council with a good faith preliminary witness list with names and a brief statement of subject matter. If a party does not have a witness's name, they will list the type of expertise or factual information and subject matter. Parties are expected to supplement their witness lists as specific individuals are selected to testify. Witness Lists shall be final when all prefiled testimony is filed. Ms. Hoag will submit her aforementioned list by August 22, 2001.

Intervention

As announced during the prehearing conference, the Council grants the Canadian Province of British Columbia's motion to intervene and will allow the Province to intervene within the scope described in Council Order No. 759. We caution that late intervenors must take the case as they find it and will not be permitted to broaden the scope of the proceedings beyond what previously has been determined by the Council to be appropriate to the case.

Constance Hoag's motion to expand the scope of her intervention is denied. Ms. Hoag does not have an interest in the subject of air quality that is different from the public at large, which includes individuals with health problems. As the Council has explained in the past, potential impacts that are shared in common by many other citizens may be addressed by the Counsel for the Environment, the local jurisdictions, or by individual testimony at the public hearings rather than by individual party intervention at the adjudicative proceedings.

Stipulations and Settlement Agreements

The Applicant represented that the Washington Utilities and Transportation Commission (WUTC) and the Applicant intend to adhere to the stipulations and settlements reached in the Partial Settlement Agreement Between WUTC and SE2 Concerning Natural Gas Pipeline Issues (Exhibit 1) and the Stipulation and Settlement Agreement Between WUTC and SE2 (Exhibit 10) previously submitted to the Council during the adjudication of the Applicant's first Revised Application. As noted in Council Order No. 759, the Council is in receipt of the letter from the WUTC confirming this intention.

The Applicant informed the Council that on August 8, 2001, it was meeting with the Department of Ecology and the Department of Fish & Wildlife to discuss wetland issues and intends to report to the Council shortly thereafter.

The Council will conduct a prehearing conference on September 4, 2001, starting at 9 a.m., for the purpose of receiving testimony on stipulations and settlements and for other issues as necessary. The Prehearing conference will be held at Rowe Six Conference Center, Bldg. 1, 4224 6th Ave SE, Lacey, Washington.

Environmental Review and SEPA Determination

All parties were supplied with copies of the "Notice of Preparation of a Supplemental Environmental Impact Statement [SEIS] for the Proposed Sumas Energy 2 Generation Facility" prepared by Allen Fiksdal, the SEPA responsible official for the project. The proposed schedule is that the Draft SEIS will be issued the week of September 17, 2001, the 30-day comment period will end during the week of October 15, 2001, the public comment hearing on the Draft SEIS will be held during the week of October 15, 2001 in the Whatcom County area, and the Final SEIS will be issued in December 2001 or January 2002.

Procedural Schedule

A revised procedural schedule reflecting the changes to the prior schedule is attached in Appendix A.

Notice to Participants: Unless modified, this prehearing order will control the course of the hearing. 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).

DATED and effective at Olympia, Washington, the ___9th___ day of August, 2001.

WASHINGTON STATE ENERGY FACILITY SITE EVALUATION COUNCIL

_____/s/_____
Nan Thomas
Senior Administrative Law Judge

Appendix A

Sumas Energy 2, Inc. - 2nd Revised Application Tentative Review Schedule - Revised August 9, 2001

WEEK OF	Adjudicative Process	Other Permits/Contracts (Tentative)
August 6	August 10, 2001: <ul style="list-style-type: none"> • Whatcom County to notify Council regarding authorization for SE2 to use copy of flooding model. 	
August 13	August 14, 2001 <ul style="list-style-type: none"> • Public Information Meeting at Nooksack Valley Middle School, 404 W Columbia St, Everson, WA, 3 – 9 p.m. 	JSA Provides 2 nd Revised Application Review Report
August 20	August 20, 2001: <ul style="list-style-type: none"> • Preliminary Witness Lists (Except for Intervenor Hoag) August 21, 2001: <ul style="list-style-type: none"> • SE2 to report on status of flood modeling. August 22, 2001: <ul style="list-style-type: none"> • Preliminary Witness Lists - Intervenor Hoag 	
August 27		
Sept. 3	September 4, 2001 <ul style="list-style-type: none"> • Applicant Prefiled Testimony • Prehearing Conference No. 3, with hearing on stipulations as needed 	
Sept. 10		
Sept. 17		Week of September 17, 2001 <ul style="list-style-type: none"> • EFSEC Issues Draft Supplemental EIS • Comment Period on Draft SEIS begins.
Sept. 24		<ul style="list-style-type: none"> • PSD and 401 permits are ready for public comment. EFSEC issues notices of availability and distributes. • Notice of Public Hearings on draft permits.

WEEK OF	Adjudicative Process	Other Permits/Contracts (Tentative)
Oct. 1	October 1, 2001 <ul style="list-style-type: none"> • Other Parties' Direct PFT • Applicant provides results of unsteady-state flood modeling. 	
Oct. 8		<ul style="list-style-type: none"> • Notice of Adjudicative Hearings (actual dates)
Oct. 15	October 15, 2001 <ul style="list-style-type: none"> • Prefiled Rebuttals 	<ul style="list-style-type: none"> • Public comment hearing on Draft Supplemental EIS - October 16 or October 17, 2001 • Draft SEIS comment period closes
Oct. 22		<ul style="list-style-type: none"> • EFSEC staff distribute comments on Draft SEIS to Council and Parties' • Jones and Stokes begins response to Draft SEIS comments.
Oct. 29	October 29, 2001 <ul style="list-style-type: none"> • Prehearing Conference No. 4 (as necessary) • Adjudicative Hearings in Whatcom County • Public hearing, two evenings 	
Nov. 5		
Nov. 12	November 13-16, 2001 <ul style="list-style-type: none"> • Adjudicative Hearings in Thurston County. 	
Nov. 19		
Nov. 26	November 26, 2001 <ul style="list-style-type: none"> • Applicant's Brief 	
Dec. 3		
Dec. 10	December 10, 2001 <ul style="list-style-type: none"> • Other Parties' Response Briefs 	
Dec. 17		
Dec. 24	December 24, 2001 <ul style="list-style-type: none"> • Applicant's Reply Brief 	
Dec. 2001 - Jan. 2002		Final SEIS Issued