

BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of the petition of FPL
Energy Inc. for a declaratory order

COUNCIL ORDER NO. 762
DECLARATORY ORDER

SUMMARY

Proceeding: On June 14, 2001, FPL Energy, Inc. ("FPL Energy") filed a Petition for Declaratory Order with the Energy Facility Site Evaluation Council (EFSEC), regarding the applicability of the site certification provisions of chapter 80.50 RCW to two separately owned and permitted power plants on adjoining lots, neither of which when constructed will exceed the jurisdictional threshold for certification in RCW 80.50.020(14)(a), that propose to share certain common facilities.

Appearances: FPL Energy is represented by Charles E. Maduell, Williams, Kastner & Gibbs, PLLC.

Council Decision: The Everett Delta I power plant and the Everett Delta II power plant do not constitute an "energy facility" subject to EFSEC's siting jurisdiction under chapter 80.50 RCW.

A. Procedural History:

On July 2, 2001 EFSEC issued a notice announcing its receipt of the petition and inviting written comment on the process that EFSEC should undertake to review the petition request. On August 9 and again on September 17, 2001, EFSEC issued a notice inviting written comment on the merits of the petition request, including factual and legal aspects of the request.

B. Council Discussion and Decision

FINDINGS OF FACT

1. FPL Energy owns the controlling ownership and management interest in Northwest Power Company, LLC, owner and developer of a proposed two hundred forty eight megawatt water-cooled, natural gas combined cycle generating facility to be located at 121 Marine View Drive in the City of Everett, Washington ("Everett Delta I").
2. Wasserstein Perella & Co., Inc. ("Wasserstein Perella") owns the controlling ownership and management interest in the Everett Delta Power Company, LLC, owner and developer of a proposed two hundred forty eight megawatt water-cooled natural gas combined cycle generating facility to be located on an adjoining lot at the same address ("Everett Delta II").
3. FPL Energy is in the process of developing the Everett Delta I Power Project and Wasserstein Perella is in the process of developing the Everett Delta II Power Project
4. On August 25, 1997, Northwest Power Company, LLC applied for land use and zoning permits and approvals from the City of Everett for construction of a two hundred forty eight megawatt natural gas fired combined cycle power plant (Everett Delta I) on Lot 1 of a binding site plan for the former Weyerhaeuser Company Kraft pulp mill site at 121 East Marine View Drive in the City of Everett.

5. The Everett Delta I Project was originally proposed as a cogeneration facility that would produce steam that would be used by adjoining industrial users, in particular, the Snohomish River Pulp Company's paper de-inking facility proposed on adjoining Lot 2A, as well as for production of electrical energy.
6. In the Fall of 1997, the City issued land use and zoning approvals and permits for the Everett Delta I Project, including a special property use permit (SPU II No. 99-97), a mitigated determination on non-significance ("MDNS") under the State Environmental Policy Act ("SEPA"), and an industrial waste discharge permit from the Everett Department of Public Works (No. 7724).
7. In October 1997, Northwest Power Company, LLC also obtained an air quality permit (Order of Approval/Notice of Construction No. 7016), from the Puget Sound Air Pollution Control Agency (now the Puget Sound Clean Air Agency).
8. In 1998, Northwest Power Company LLC also obtained NPDES Construction and Industrial General Permits from the Washington State Department of Ecology (Nos. SO3-003271, SO3-003470), and a Wastewater System Permit from Ecology (NWRO 1997-134).
9. The Everett Delta I facility is a two hundred forty eight-megawatt combined cycle "one-on-one" facility, which includes a combustion turbine, a heat recovery steam generator with a 150-foot exhaust stack, a steam turbine, an administration building, a parking lot, and a cooling tower.
10. Natural gas is proposed to be delivered to Everett Delta I via a 20-inch diameter high-pressure gas distribution line approximately 9 miles in length connecting Everett Delta I to a major gas distribution line near the City of Lake Stevens. This pipeline, which was originally proposed to be constructed by Puget Sound Energy, Inc., is now to be

constructed by Williams Pipeline Company and is expected to be completed by August 2002.

11. Electricity generated by Everett Delta I would be transmitted from the site via Snohomish PUD transmission lines.
12. On December 23, 1998, FPL Energy purchased the controlling interest in Northwest Power Company LLC, owner of the Everett Delta I Project, and purchased the project site (Lot 1 of the binding site plan of the former Weyerhaeuser Company mill site) from Weyerhaeuser Company. Since then, FPL Energy has undertaken substantial demolition of structures on the proposed site, has had additional geotechnical assessments performed regarding seismic design, has completed assessments regarding the dismantling of the existing warehouse facilities, has engaged an engineering firm which is performing preliminary design work, and has completed soil sampling.
13. FPL Energy has been in repeated contact with the City of Everett regarding site design and permitting issues and is in discussions with the Snohomish Public Utilities District regarding transmission interconnection issues.
14. Lot 2A of the binding site plan had originally been committed to an industrial paper deinking plan that would utilize cogeneration energy from Everett Delta I. When that proposal failed, and with it the cogeneration potential, Everett Delta II Power Company LLC submitted land use and zoning applications with the City of Everett on April 21, 1999 for construction of a nearly identical two hundred forty eight megawatt power plant (Everett Delta II) on Lot 2A of the binding site plan of the former Weyerhaeuser Company mill site, immediately adjacent to the lot on which Everett Delta I is to be located.

15. In July, 1999, the City of Everett issued land use approvals and permits for construction of the Everett Delta II Power Project, including a special property use approval (SPU II No. 99-007), a SEPA MDNS, and an industrial water discharge permit (No. 7725).
16. In July, 1999, Everett Delta II Power Company obtained an air quality permit (Order of Approval/Notice of Construction No. 7791) from the Puget Sound Air Pollution Control Agency (now the Puget Sound Clean Air Agency) and a NPDES Construction Stormwater General Permit (SO3-003637) from the Department of Ecology.
17. The Everett Delta II facility is also a two hundred forty eight-megawatt combined cycle "one-on-one" facility, which includes a combustion turbine, a heat recovery steam generator with a 110-foot exhaust stack, a steam turbine, an administrative building, a parking lot, and a cooling tower. It also will receive natural gas from the proposed 9-mile lateral gas pipeline and transmit electricity from the facility via Snohomish PUD transmission lines.
18. On June 14, 2000, Wasserstein Perella acquired through foreclosure all ownership interest in Everett Delta II Power Company LLC, owner of Everett Delta II. Since then, Wasserstein Perella has been marketing the Everett Delta II project as well as continuing with its development, most recently obtaining water and sewer connections for the project.
19. Since Wasserstein Perella acquired Everett Delta II, Wasserstein Perella, as well as prospective purchasers of Everett Delta II, have been in discussions with FPL Energy about the prospect of the two power projects sharing certain common facilities, such as a control room (with separate controls for each facility), an administrative building, switch yard/electrical interconnections, information technology infrastructure, fuel supply equipment, a stormwater detention pond and a parking lot. FPL Energy and Wasserstein

Perella intend to share such common facilities, equipment and infrastructure if it can be accomplished without affecting their status as separate power plants that, because of their electrical generating capacity, would not otherwise be subject to the energy facility site certification provisions of chapter 80.50 RCW.

20. The potential for sharing facilities has arisen because of the unique circumstances relating to the location and timing of the two projects, both of which are now poised and required to begin construction of the projects because of financial and other legal commitments made in connection with the projects to date.
21. The EFSEC site certification process would delay the construction of the Everett Delta I and Everett Delta II projects. The developers have already obtained permits and incurred substantial development costs.
22. The Everett Delta I and II Power Projects are separate and distinct projects and have been developed as such.
23. FPL Energy and Wasserstein Perella intend to maintain the two power plants as separately owned and independently operated energy facilities, each with a generating capacity under three hundred fifty megawatts, notwithstanding some shared functions and components.
24. Without assurance that certain facilities, equipment and infrastructure can be shared without affecting the status of the projects as two separately owned and operated energy facilities, FPL Energy and Wasserstein Perella will be forced to proceed with the final design and construction of their respective projects with unnecessarily duplicative functions and components that, if shared, would substantially increase plant efficiencies, lower costs, and lessen environmental impacts.

25. Because of the timing and proximity of the development of Everett Delta I and Everett Delta II, these plants have a unique opportunity to share certain common facilities, equipment and infrastructure that would increase efficiency, lower costs, and lessen environmental impacts.
26. The two projects have never been under common ownership or developed as a single project or phased development. Instead, the two projects have been developed as two separate independent facilities.
27. Construction and operation of one project is not related to or dependent upon the other; each will produce electricity independently and be owned by different legal entities regardless of the presence or operation of the other facility.
28. FPL Energy purchased Everett Delta I before Everett Delta II was proposed and before any land use permits and approvals were sought for Everett Delta II.
29. Neither FPL Energy nor any of its corporate affiliates have or have had any ownership or financial interest in or connection with the Everett Delta II Power Company LLC or the Everett Delta II Power Project.
30. FPL Energy is the petitioner in this action, and Wasserstein Perella has consented in writing to entry of the requested declaratory order.
31. There is no evidence of collusion or intent to evade the requirements of chapter 80.50 RCW on the part of the owners and developers of Everett Delta I and Everett Delta II.
32. Given the specific, unique circumstances surrounding the development of Everett Delta I and Everett Delta II, considering the two plants as an “energy facility” for purposes of chapter 80.50 RCW would not materially advance the legislature’s purpose in that chapter of ensuring that “the location and operation of [energy] facilities will produce minimal effects on the environment,” will “provide abundant energy at reasonable cost,”

and “will avoid costly duplication in the siting process and ensure that decisions are made timely and without unnecessary delay.”

CONCLUSIONS OF LAW

1. The Council has authority under RCW 34.05.240 to issue this order.
2. The Council’s siting jurisdiction over “energy facilities” pursuant to chapter 80.50 RCW includes jurisdiction over “[a]ny stationary thermal power plant with generating capacity of three hundred fifty thousand kilowatts or more, measured using maximum continuous electric generating capacity, less minimum auxiliary load, at average ambient temperature and pressure” as well as its “associated facilities.” RCW 80.50.020(14)(a). “Associated facilities” means storage, transmission, handling, or other related and supporting facilities connecting an energy plant with the existing energy supply, processing, or distribution system, including, but not limited to, communications, controls, mobilizing or maintenance equipment, instrumentation, and other types of ancillary transmission equipment, off-line storage or venting required for efficient operation or safety of the transmission system and overhead, and surface or subsurface lines of physical access for the inspection, maintenance, and safe operations of the transmission facility and new transmission lines constructed to operate at nominal voltages in excess of 200,000 volts to connect a thermal power plant to the northwest power grid; PROVIDED, That common carrier railroads or motor vehicles shall not be included.” RCW 80.50.020(6).
3. The provisions of chapter 80.50 RCW “apply to the construction of energy facilities which includes the new construction of energy facilities and the reconstruction or enlargement of existing energy facilities where the net increase in physical capacity or dimensions resulting from such reconstruction or enlargement meets or exceeds those

capacities or dimensions set forth in RCW 80.50.020(7) and [(14)], as now or hereafter amended.” RCW 80.50.060(1).

4. Based upon the Council’s Findings of Fact, the Everett Delta I and Everett Delta II power plants are not an “energy facility” as defined in RCW 80.50.020(10).

Order

The Everett Delta I and Everett Delta II power plants are not an “energy facility” as defined in RCW 80.50.010(10) even if the two plants share a control room (with separate controls for each facility), an administrative building, information technology infrastructure, switch yard/electrical interconnections, natural gas fuel supply equipment, a stormwater detention pond, and parking lot, or if one of the two facilities owns and operates a one hundred ninety megawatt steam turbine located on its property which uses steam generated by its own facility but would also purchase steam generated by the other facility.¹

DATED and effective at Olympia, Washington, this 22nd day of October, 2001.

ENERGY FACILITY SITE EVALUATION COUNSEL

/s/

James O. Luce
EFSEC Chair

¹ This Order is expressly conditioned upon all of the Council’s Findings of Fact, including but not limited to Finding of Fact No. 23. If the total generating capacity of the power plant that is intended to consist in part of the one hundred ninety megawatt steam turbine is equal to or greater than three hundred fifty megawatts *including the generating capacity of the steam turbine*, then the plant would constitute an “energy facility” subject to the Council’s siting jurisdiction under chapter 80.50 RCW.