

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

**In re the Matter of
Application No. 2001-01**

WALLULA GENERATION, L.L.C.

WALLULA POWER PROJECT

COUNCIL ORDER NO. 765

PRE-HEARING ORDER NO.1

**GRANTING, GRANTING ON
CONDITION PETITIONS FOR
INTERVENTION, AND SETTING
PROCEDURE FOR LATE
INTERVENTION**

Nature of the Proceeding:

This matter involves an application to the Washington State Energy Facility Site Evaluation Council (EFSEC or Council) for certification to construct and operate a natural gas-fired energy facility located near Wallula, in Walla Walla County, Washington.

PROCEDURAL SETTING AND PARTICIPATION:

On August 20, 2001, Wallula Generation, L.L.C. submitted to the Council Application for Site Certification No.2001-01 to construct and operate the Wallula Power Project in Walla Walla County, Washington. On December 19, 2001, the Council issued a Notice of Adjudicative Proceeding, Notice of Opportunity to File Petitions for Intervention, and Notice of Intent to Hold Prehearing Conference. On January 24, 2002, the Council issued a Notice of Prehearing Conference, and Notice of Schedule for Responses to petitions for Intervention. On January 25, 2002, the Council issued a Notice of Change of Start Time of Prehearing Conference, March 1, 2002.

The Council convened the the first prehearing conference in Tumwater, WA, on March 1, 2002, pursuant to due and proper notice to all interested persons. (WAC 463-30-270)

The conference was held before Council Chair, James Luce, and Council members Charles Carelli (Department of Ecology), Jenene Fenton (Department of Fish and Wildlife), Dick Fryhling (Department of Community trade and Economic Development), Paul Gerola (Port of Walla Walla), Tony Ifie (Department of Natural Resources), Pam Ray (Walla Walla County), Jeffrey Showman (Washington Utilities and Transportation Commission), and the Administrative Law Judge Donald G. Meath.

The following persons participated in the prehearing conference:

Applicant:	Wallula Generation LLC: by Darrel Peeples, Chuck Lean, counsel, Olympia.
Counsel for the Environment:	Ronald Lavigne , Assistant Attorney General (AAG), and Michael Dunning , AAG, Olympia
Department of Fish and Wildlife:	William Frymire , AAG, Olympia
Office of Trade and Economic Development:	Mark Anderson , Sr. Energy Policy Specialist, Olympia
Washington Utilities and Transportation Commission:	Sally G. Johnston , AAG, Olympia
Walla Walla County:	Dennis B. Reynolds , Davis Wright Tremaine LLP, Seattle
Port of Walla Walla:	Thomas K. Baffney , Reese Baffney Schrag &Frol, PS, Walla Walla
Association of Washington Businesses:	Daniel Seligman , Attorney at Law, Vancouver
Walla Walla Watershed Alliance:	Robert N. Caldwell , Gordon Thomas Honeywell Malanca Peterson & Daheim LLP, Tacoma

The Washington Department of Transportation and the Confederated Tribes of the Umatilla Indian Reservation did not participate but filed a Notice of Appearance and Petition to Intervene.

Ex-Parte Disclosures:

No member of the Council disclosed any ex-parte communication of a type that could not properly be received or would violate RCW 34.05.455

Stipulation and Settlements:

The Council expressed a strong desire that all parties and intervenors consider entering into settlements and stipulations with the Applicant. WAC 463-30-250. To that end, the Council offered to facilitate settlements and stipulations by providing to parties to the

adjudication, upon request, the names of qualified mediators, and to procedurally accommodate the hearing of settlements and stipulations as quickly as possible.

As in past practice, the Council will consider approving stipulations between two or more parties as to be agreed upon facts or minimum levels or measures for mitigation, provided the stipulating parties provide substantial evidence supporting the agreement. Approved stipulations are binding only upon stipulating parties.

The council expects that any parties that come into such agreements present copies of their settlements and stipulations, and any supporting documents, to the Council a minimum of 2 business days prior to a scheduled settlement hearing date. The Council requests that it be notified no less than 2 business days in advance of any settlements or stipulation agreement presentations at scheduled prehearing conferences.

Intervention:

Pursuant to RCW 34.04.443, WAC 463-30-400 and 410, the Council considered petitions for intervention from the following groups:

1. Walla Walla Watershed Alliance
2. Walla Walla County
3. Association of Washington Business
4. Washington State Department of Community, Trade and Economic Development (CTED)
5. Confederated Tribes of the Umatilla Indian Reservation
6. Washington State Department of Transportation (WSDOT)
7. Port of Walla Walla
8. Washington State Department of Fish and Wildlife (WDFW)
9. Washington State Utilities and Transportation Commission (WUTC)

The Washington State Department of Ecology (DOE) did not file a petition to intervene but placed the Council on notice that it reserved its right to file a late notice to intervene in the appropriate circumstance. Furthermore, the Council acknowledges that some persons might file a late petition to intervene (as outlined below) or may seek to expand the scope of intervention based on new information contained in the Draft Environmental Impact Statement (DEIS).

The Council considered the petition to intervene of each party and any remarks of the party at the pre-hearing conference. The applicant did not file objection to any petition to intervene. In light of those petitions and with consideration of the applicable rules and statutes, the Council makes the following decision regarding the petitions to intervene:

Port of Walla Walla, County of Walla Walla, Confederated Tribes of the Umatilla Indian Reservation:

The Council unconditionally grants the petitions to intervene of the Port of Walla Walla, County of Walla Walla, and the Confederated Tribes of the Umatilla Indian Reservation. The proposed plant is located on Port property within the County of Walla Walla. Both entities demonstrate all the legal requirements for intervention. The Confederated Tribes of the Umatilla Indian Reservation, a separate sovereign, demonstrate treaty and cultural interests within their ceded lands.

Washington Department of Community, Trade and Economic Development, Washington Department of Fish and Wildlife, Washington Utilities and Transportation Commission:

Pursuant to RCW 80.50.030(3) and WAC 463-30-050, State agencies with members on the Council, i.e., Department of Fish and Wildlife, Department of Community, Trade and Economic Development, and the Washington Utilities and Transportation are parties. The Council limits the participation of these State agencies to issues within their respective jurisdictions. WAC 463-30-410.

Washington Department of Transportation:

The Council grants intervention to the Washington Department of Transportation limited to issues within its jurisdiction. WSDOT demonstrates the requisite interests for intervention. WAC 43-30-400 and 463-30-410.

Walla Walla Watershed Alliance:

The Council grants intervention to Walla Walla Watershed Alliance limited to issues involving the restoration of streamflows and the improvement of water quality and quantity, including mitigation measures, in the Walla Walla River Basin. The Alliance has special expertise in these issues and shows that its members might be affected by the proposed facility. WAC 463-30-400.

Association of Washington Business:

The Council grants intervention to the Association of Washington Business limited to the following specific issues:

- 1) The economic health and vitality of the State's economy, with particular concern for the employment, tax revenue and tax base of rural areas, such as Walla Walla County;
- 2) The supply, stability, and price of electricity for businesses in the state;
- 3) The regulatory climate and clarity needed to ensure investments in new electric generating capacity and related infrastructure in the state;
- 4) The process by which the Council "balances" the availability and cost of energy with the impact of new, thermal power plants on the environment; and

5) The legality, fairness and reasonableness of any site certification condition that imposes requirements on applicants which exceed existing state or federal standards. This includes, but is not limited to, issues regarding air quality and mitigation issues for siting new thermal power plants. The ASB has special expertise in these issues and shows that its members might be affected by the proposed facility. WAC 463-30-400.

Counsel for the Environment:

The Counsel for the Environment is a statutory party without limitation. WAC 463-30-060.

Notwithstanding the foregoing, the granting of the petitions to intervene referred to above is expressly conditioned upon the Council's right to designate certain parties to act as lead parties, where judged appropriate by the Council. The council reserves the right to prescribe other limitations and conditions where appropriate. WAC 463-30-410.

A revised service list is attached to this order as Attachment A.

Preliminary List of Issues:

The Council is sensitive to the diligent and good faith efforts by counsel toward settlement. Nonetheless, the Council is charged with the responsibility to proceed with timely resolution of the litigation within the Council's statutory timeframe for issuance of a recommendation on site certification to the Governor. Toward that end, the Council requires that by April 2, 2002, the date set for the next pre-hearing conference, the parties will prepare and submit (in the required number of copies) a preliminary set of issues. The Council understands that such a list is preliminary but nevertheless encourages the parties to begin to narrow and define the issues in order to clarify the litigation.

Petitions for Late Intervention:

The Council will publicly announce a deadline for filing late notices to intervene based solely upon issues, stated with specificity, that are raised in the Draft Environmental Impact Statement but were not previously known or reasonably discoverable.

Hearing Guidelines:

On January 24, 2002, the Council distributed draft hearing guidelines for the conduct of the hearing to assist parties in understanding the Council's expectations and to show how it will manage the adjudicative hearing. The parties are invited to submit to the Council comments or objections to the draft hearing guidelines no later than **5 p.m. March 26, 2002.**

Next Scheduled Pre-Hearing Conference:

The next pre-hearing conference will be held at 8:30 a.m., Tuesday, April 2, 2002, at a location to be announced. Items to be discussed will include progress on settlement and stipulation agreements reached, the issues list, any discovery issues, adoption of the hearing guidelines, and development of the hearing schedule. Further, there will be an opportunity for evidentiary hearings on any stipulations that are submitted for Council's approval not later than 2 business days prior to the April 2, 2002, prehearing conference.

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 case.

Dated at Olympia, Washington and Effective this ___12th___ day of March, 2002.

By

_____/s/_____
Donald G. Meath
Administrative Law Judge