

**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. 771

PRE-HEARING ORDER NO. 4

Order on Settlement Agreements

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:

The Council convened a settlement hearing in Walla Walla, WA, on July 16, 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), Tony Ifie (Department of Natural Resources), Jeffrey Showman (Washington Utilities and Transportation Commission), Pam Ray (Walla Walla County), Paul Gerola (Port of Walla Walla), and the Administrative Law Judge Donald G. Meath.

Settlement Agreements:

The purpose of this hearing was for the Council to consider settlement agreements between the applicant and the following parties: Counsel for the Environment (marked and admitted as Exhibit 6), Confederated Tribes of the Umatilla Indian Reservation (marked and admitted as Exhibit 7), Walla Walla Watershed Alliance (marked and admitted as Exhibit 11), Walla Walla County (marked and admitted as Exhibit 10), Port of Walla Walla (marked and admitted as Exhibit 8) and the Association of Washington Businesses (marked and admitted as Exhibit 9). An additional purpose of the hearing was for the Council to make a final determination on the settlement between the applicant and the Washington Department of Community Trade and Economic Development (previously marked and admitted as Exhibit 5), deferred in Order 767,

and approve a corrected version of the settlement agreement between the applicant and the Washington Department of Fish and Wildlife (corrected version marked and admitted as Exhibit 3).

The Council considered the text of each settlement agreement as well as testimony presented in support thereof. The Council considered the settlement between the applicant and the Department of Community Trade and Economic Development in light of the settlement between the applicant and Counsel for the Environment. The Council noted that the corrected version of the Department of Fish and Wildlife settlement agreement, limited to minor non-substantive changes, comported with the Council's Order No. 767. This order sets forth the decision of the Council regarding each settlement agreement.

Discussion and Decision:

In an EFSEC adjudicative proceeding, any settlement must be stated on the record or submitted in writing and is subject to approval by the Council. WAC 463-30-250(2). The Council's approval of a settlement agreement means that the Council accepts the agreement as binding between the settling parties and as setting an appropriate minimum standard if the project is approved. No settlement binds the Council to approve or deny the project.

Furthermore, no settlement is binding on parties other than the settling parties. Non-settling parties may present relevant evidence during the adjudicative proceeding to support a different standard.

As indicated above, the Council considered the text of each settlement agreement and the testimony in support thereof. To the extent that the settlement agreements are approved, as discussed below, the approvals are 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 agreements does not constitute ceding of the Council's jurisdiction to other parties. The Council retains its jurisdiction to monitor and enforce the terms of the settlements. The Council may work with the settling agencies to determine plans and appropriate responsibilities for effective monitoring and enforcement of all settlement requirements associated with construction and operation of the project.

Settlement Agreement between the Counsel for the Environment and the Applicant

The Council approves the settlement agreement between the Counsel for the Environment and the Applicant. (Exhibit 6). The Council notes that, in balance, the agreement is fair and comports with the legislative policy and intent of RCW 80.50. 010.

Settlement Agreements between the Port of Walla Walla, Walla Walla County, the Confederated Tribes of the Umatilla Indian Reservation, the Walla Walla Watershed Alliance, the Association of Washington Businesses and the Applicant

It was noted for the record, that Council member Pam Ray, representing Walla Walla County, disqualified herself from participating on the decision on the settlements with the Walla Walla Watershed Alliance and the Counsel for the Environment.

The Council approves the above listed settlement agreements.

Settlement Agreement between Department of Community Trade and Economic Development and the Applicant

The Council reserved a decision on the agreement pending consideration of the settlement agreement between the Counsel for the Environment and the Applicant upon which this agreement is contingent. The Council now approves the settlement agreement.

Settlement Agreement between the Washington State Department of Fish and Wildlife and the Applicant

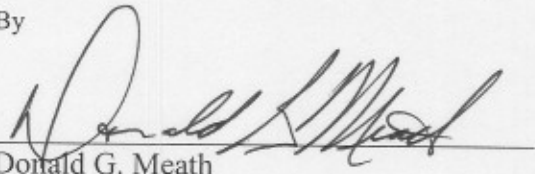
The Council accepts the corrected version of the settlement agreement, previously approved in Order No. 767, and replaces the original agreement with the corrected agreement.

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 31 day of July, 2002.

By


Donald G. Meath
Administrative Law Judge