

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

In the Matter of:

APPLICATION NO. 2001-01

**WALLULA GENERATION, L.L.C.
WALLULA POWER PROJECT**

COUNCIL ORDER NO. 772

**Findings of Fact, Conclusions of Law, and
Order Recommending Approval of Site
Certification on Condition**

SYNOPSIS: The Energy Facility Site Evaluation Council (EFSEC or Council) has reviewed Wallula Generation L.L.C.'s application for site certification (Application), No. 2001-01; conducted public and adjudicative hearings; and by this Order recommends approval of the Application to the Governor of the state of Washington. The Applicant, Wallula Generation, L.C.C., has entered into stipulation and settlement with all parties to the proceeding. The Council approved each settlement agreement. As a result of the settlement agreements, no party to the proceeding presented any contested issues to the Council. In addition, the Applicant made a prima facie showing that its proposal complies with all applicable laws. Furthermore, pursuant to the requirements of the settlements, the Applicant will provide offset and mitigation measures such that the planned project will produce minimal adverse impacts on the environment, the ecology of the land and its wildlife, and the ecology of the state waters and their aquatic life. Thus, the proposed project with its revisions and settlement agreement requirements meets the requirements of applicable law and comports with the policy and intent of Chapter 80.50 RCW.

Nature of the Proceeding: This matter involves an application for certification of a proposed site near the community of Wallula in Walla Walla County, Washington, for the construction and operation of the Wallula Power Project (Project), a natural gas-fired energy

production facility and an associated electric transmission line and natural gas pipeline. Wallula Generation, L.L.C. (Wallula Gen or Applicant) seeks a Site Certification Agreement (SCA) to construct and operate the combined cycle natural gas-fired 1,300 megawatt (MW) electric generation facility, an associated 500 kilovolt (kV) electric transmission line, and a natural gas pipeline.

Executive Summary: The Energy Facility Site Evaluation Council (EFSEC or Council) is the state agency charged with making a recommendation to the Governor as to whether a new major energy facility should be sited in the state of Washington. Chapter 80.50 RCW. The Council is aware of the region's need for energy and electrical generation capacity. The Council is also mindful of its duty to protect the broad public interest. The Council decides whether this energy facility, at the proposed site with the requirements of the various settlements and the environmental mitigation measures to which the Applicant has agreed, will produce a net benefit after balancing the availability and costs of energy to consumers and the impact to the environment.

The Council determined, upon careful consideration of the state's need for energy at a reasonable cost and the need to minimize environmental impacts, that this facility with the agreed upon requirements of the various settlements and stipulated mitigation measures will provide the region with significant energy benefits while not resulting in unmitigated, significant adverse environmental impacts. The Council recommends that the Governor approve the siting of this project as described in this Order and the accompanying Site Certification Agreement.

Table of Contents

Synopsis.....	1
Nature of the Proceeding	1
Executive Summary.....	2
Procedural History	5
Appearances	7
The Council.....	8
Memorandum.....	9
Introduction.....	9
The Applicant and the Project.....	9
The EFSEC Process.....	12
Public Testimony and Comment	14
Issues.....	14
Settlement and Stipulations.....	15
Land Use Consistency	18
Need and Consistency Requirements	18
Air Quality.....	22
Water Quantity	25
Water Quality.....	33
Wetlands, Fish and Wildlife	36
Climate Change / Greenhouse Gas Emissions	39
Noise.....	41
Natural Gas Supply.....	42
Flooding and Geological Hazards	43
Traffic and Transportation.....	44
Cultural Resources.....	44
Decommissioning Plan / Site Restoration.....	44
Term of the Site Certification Agreement	45
Conclusion.....	46

Findings of Fact..... 47
 Nature of Proceeding..... 47
 Findings of Fact..... 47
Conclusions of Law..... 70
Order and Recommendation 72
Signatures..... 73
Notice To Parties..... 73

Procedural History: On August 20, 2001, Wallula Generation, L.L.C. (Wallula Gen or Applicant) submitted an application to the Council for certification to construct and operate the Wallula Power Project (Project) in Walla Walla County, Washington. Pursuant to its statutory obligations, EFSEC reviewed the Project Application for Site Certification (Application), No. 2001-01. These obligations included reviewing the Application itself, conducting hearings to determine if the proposal complies with local land use regulations, issuing a Draft Environmental Impact Statement (DEIS), adopting and issuing a Final Environmental Impact Statement (FEIS), considering state and federal required permits, and conducting formal adjudicative and public comment hearings. EFSEC duly published all required notices of these proceedings.¹ Prior to the adjudicative hearing, all parties entered into stipulations and settlements with the Applicant. The Council approved each stipulation and settlement. Collectively, the stipulations and settlements resolved all issues between the parties.

Statutory parties to the EFSEC adjudicative hearings include the Applicant and the Counsel for the Environment. The Council received petitions for intervention and granted party status to the Department of Fish and Wildlife, the Department of Community Trade and Economic Development, and the Washington Utilities and Transportation Commission, all of whom are entitled to intervene under Council rules. WAC 463-30-050. The Council also granted party status to the Washington State Department of Transportation, Walla Walla County, the Port of Walla Walla, the Confederated Tribes of the Umatilla Indian

¹ These include notices of the Application, public meetings, land use hearing, intent to hold adjudicative proceedings; notice for filing of petitions for intervention and deadline for filing such petitions; and notices of prehearing conferences, adjudicative hearings, Determination of Significance and request for comments on scope of the Environmental Impact Statement (EIS), Draft Environmental Impact Statement (DEIS) comment hearings, and Draft Prevention of Significant Deterioration (PSD) and Draft Notice of Construction (NOC) air emissions permits hearings. Due to a procedural error, EFSEC opened a second 30-day public comment period for the PSD and NOC air permits. The re-opened period, which is based on the same draft permits, began September 24, 2002.

Reservation, the Walla Walla Watershed Alliance, and the Association of Washington Business.

As the lead agency for environmental review of Wallula Gen's application pursuant to the requirements of the State Environmental Policy Act (SEPA), Chapter 43.21C RCW, on September 14, 2001, the Council issued a Determination of Significance and request for comments on the scope of the Environmental Impact Statement (EIS). A public comment meeting on the scope of the EIS was held in the community of Burbank, Walla Walla County, on October 2, 2001. The Council accepted written comments on the scope of the EIS until October 5, 2001.

On February 22, 2002, EFSEC issued a DEIS prepared by an independent consultant.² The Council accepted written comment on the DEIS postmarked through April 11, 2002. The Council held hearings to accept oral comment from the public on the DEIS on March 13, 2002, in the community of Burbank, Walla Walla County, Washington, and on March 14, 2002, in the community of McNary, Umatilla County, Oregon. The Council heard comment from 2 members of the public at the Burbank hearing and from 2 members of the public at the McNary hearing. The Council received 29 written comment letters. The Council adopted and issued an FEIS on August 12, 2002, and August 16, 2002, respectively.³

Prior to the formal adjudicative hearings, the Council held prehearing conferences on March 1, 2002; April 2, 2002; June 4, 2002; and July 16, 2002, and issued Prehearing Orders Numbers One through Four (Council Order Nos. 765, 767, 769, 771).

The Council issued a draft Prevention of Significant Deterioration air emissions permit, a draft Notice of Construction air permit, and a Fact Sheet on July 9, 2002. On August 8, 2002, the Council held a public hearing regarding the listed drafts in the

² The DEIS and FEIS were issued jointly with the Bonneville Power Administration (BPA).

³ See footnote 2 supra.

community of Burbank, Walla Walla County, Washington. One member of the public offered oral comment at the hearing. The Council accepted written comments through August 8, 2002. The Council received eleven written comment letters. The Council also accepted written comments during a second 30-day period⁴.

The Council received public testimony regarding the project at public witness hearings held July 16, 2002, and July 17, 2002, in Walla Walla, Washington. The Council heard oral testimony from 25 members of the public and received 19 written comment letters. Although public comment was mixed, the majority favored the Project. On July 17, 2002, the Council also held a land use consistency hearing.

The Council held a formal adjudicative hearing regarding Wallula Gen's Application, No. 2001-01, on July 17, 2002, in the city of Walla Walla, Walla Walla County, Washington.

Appearances: The parties were represented in the hearings as follows:

Wallula Generation, L.L.C.: Darrel Peeples, 325 Washington Street N.E., #440, Olympia, Washington, 98501; Charles Lean, 3035 Quince Street S.E., Olympia, Washington, 98501.

Counsel for the Environment: Ron Lavigne and Michael Dunning, Assistant Attorneys General, Office of the Attorney General, 2425 Bristol Court S.W., Olympia, Washington, 98504-0017.

Washington Department of Fish and Wildlife: William Frymire, Assistant Attorney General, Office of the Attorney General, Highways-Licenses Building, 1125 Washington Street S.E., P.O. Box 40100, Olympia, Washington 98504-0100.

Washington Department of Community, Trade and Economic Development: Tony Usibelli,

⁴ See footnote 1 supra.

Director, 925 Plum Street S.E., Building 4, P.O. Box 43173, Olympia, Washington 98504-3173.

Washington State Utilities and Transportation Commission: Sally G. Johnston, Senior Assistant Attorney General, Office of the Attorney General, 1400 S. Evergreen Park Drive S.W., P.O. Box 40128, Olympia, Washington 98504-0128.

Washington State Department of Transportation: Steve E. Dietrich, Assistant Attorney General, Office of the Attorney General, 905 Plum Street S.E., Building 3, P.O. Box 40113, Olympia, Washington 98504-0013.

Walla Walla County: Dennis B. Reynolds, Davis Wright Tremaine L.L.P., 2600 Century Square – 1501 Fourth Avenue, Seattle, Washington 98101-1688.

Port of Walla Walla: Thomas K. Baffney; Reese, Baffney, Schrag & Frol, P.S., 216 S. Palouse Street, Walla Walla, Washington 99362.

Association of Washington Business: Daniel Seligman, 209 W. Evergreen Boulevard, Suite 605, Vancouver, Washington 98660.

Walla Walla Watershed Alliance: Robert N. Caldwell; Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim L.L.P., 1201 Pacific Avenue, Suite 2200, Tacoma, Washington 98401.

Confederated Tribes of the Umatilla Indian Reservation: Rick George, P.O. Box 638, 73239 Confederated Way, Pendleton, Oregon 97801.

The Council: Council representatives participating in these proceedings to consider the Application are the following: James O. Luce, Council Chair; Richard Fryhling, Department of Community, Trade and Economic Development; Charles J. Carelli,

Department of Ecology (Ecology); Jenene Fenton, Department of Fish and Wildlife; Tony Ifie, Department of Natural Resources; Jeffrey Showman, Washington Utilities and Transportation Commission; Pam Ray, Walla Walla County; and Paul Gerola⁵, Port of Walla Walla. Donald G. Meath was retained by the Council as an administrative law judge to facilitate and conduct the hearings.

MEMORANDUM

As indicated above, the Applicant reached a stipulation and settlement with each party. At the adjudicative hearing, the Council did not have to decide any contested issues. Nonetheless, in order to comply with its statutory duty, the Council had to determine that the Project met all the legal requirements and was consistent with the intent and policy of Chapter 80.50 RCW. Based on the above, the Council sets out its findings and conclusions.

Introduction

The Applicant and the Project

The site certification applicant is Wallula Generation, L.L.C. (Wallula Gen or the Applicant), a Delaware Limited Liability Company formed to develop, permit, finance, construct, own, and operate the Wallula Power Project (Project).

Wallula Gen proposed to locate the physical portion of the Project on 60 acres within a larger 175-acre site approximately 2 miles north of the unincorporated community of Wallula, 8 miles south of the City of Pasco, and 7 miles southeast of the unincorporated community of Burbank. The entirety of the site is located within Walla Walla County. The project site is bordered by U.S. Highway 12 on the west and the Union Pacific Railroad on the east. The site is zoned for agriculture/heavy industrial use in the Attalia Urban Growth

⁵ Paul Gerola was a non-voting member of the Council. RCW 80.50.030 (6).

Area in Walla Walla County. The site has historically been farmed with a variety of crops, and is presently growing alfalfa.

The Project is a nominal 1,300 megawatt (MW) gas-fired combined cycle, electric generating facility. The physical portion of the power plant will occupy approximately 60 acres within the 175-acre site. The Project will consist of two (2) independent power blocks. Duct-burners and inlet evaporative cooling will be utilized to maximize plant output for peak summer operating conditions. Each power block will be nominally rated at 650 MW and consists of two (2) General Electric Model PG7241FA combustion gas turbines, one (1) General Electric D-11 steam turbine generator, two (2) heat recovery steam generators (HRSGs), and one (1) 11-cell wet-mechanical-draft cooling tower. Each combustion gas turbine generator will generate approximately 167 MW of gross generation. Each steam turbine generator will generate approximately 333 MW of gross generation. A natural gas/air mixture is combusted in the combustion gas turbine generator compressors.

The hot combustion gases then exit the combustion gas turbine generator compressors and enter the HRSGs where the hot gases convert water into superheated steam and additional heat from gas-fired “duct” burners located in the HRSG inlet duct. The steam is then delivered to the steam turbine generators to produce additional electrical energy. The hot gases exit each HRSG through a 175-foot tall and 20-foot diameter steel exhaust stack. Nitrogen oxide (NO_x) and carbon monoxide (CO) reduction catalysts are included in the HRSG ductwork to reduce power plant emissions. The stacks include continuous emission monitoring systems and sampling ports, exterior ladders and platforms, lighting, and grounding systems as well as aircraft warning lights designated in accordance with U.S. Fish and Wildlife Service (USFWS) guidelines and Federal Aviation Agency (FAA) Advisory Circulars. The steam from the steam turbine exhausts to a water-cooled condenser that condenses the steam to water (condensate). The condensate then is pumped back to the HRSG feed water system for reuse. The water from the cooling water system will be pumped to the wet-mechanical-draft cooling tower, where the heat will be transferred to the atmosphere. The wet-mechanical-draft cooling tower cools the water in the closed loop

circulating water system by spraying hot circulating water over a large surface area using a fan to pull air through the falling water. As part of the cooling process a portion of the circulating water is evaporated and must be replaced.

NO_x emissions will be controlled to 2.5 parts per million (ppm) during normal steady state by a combination of dry low-NO_x combustion in the combustion gas turbine generators and selective catalytic removal (SCR) systems in the HRSGs. CO emissions will be controlled to not more than 2 ppm during normal steady state operations using low emission combustors in the combustion gas turbines and an oxidation catalyst system in the HRSGs. The levels of NO_x and CO will be higher during initial plant commissioning and when the combustion gas turbine-generators are in the startup or shutdown modes during commercial operations.

The sole fuel source for the facility will be natural gas, except for diesel oil use in the emergency diesel generator and the emergency diesel fire pumps. The Project will be supplied by a single source of natural gas tapped off of the PG&E Gas Transmission-Northwest (GTN) transmission line located 5.9 miles to the southeast of the Project site. The natural gas pipeline lateral will be constructed, owned, and operated by GTN and subject to Federal Energy Regulatory Commission (FERC) jurisdiction.

The power plant makeup supply water will be provided from two sources. One source is the single on-site deep well, and the second source is from ten (10) Boise Cascade Corporation fiber farm wells.

There will be no direct aquatic discharge from the Project site to any surface water. Stormwater will be collected in a stormwater infiltration pond. All cooling tower blowdown will be cleaned and filtered by a sidestream treatment system and reverse osmosis system and then directed to a brine concentrator, where clean water will be captured and reused in the power plant, and the brine concentrate will be directed to two (2) evaporation ponds. Solids produced by the brine concentrator will be periodically removed from the evaporation ponds

and shipped to a disposal site that is properly licensed to receive the solids, as needed. All sanitary wastes will be collected and pumped to an on-site sanitary waste system.

The electrical power from the Wallula Power Project will be generated by six generators at 18 kilovolt (kV) and stepped up to the 500 kV transmission voltage. A 5.1 mile, 500 kV transmission line will be constructed from the dead end transmission structure, located in the substation at the power plant, to a new switchyard located adjacent to the existing Bonneville Power Administration (BPA) McNary to Lower Monumental transmission line. The 500 kV transmission line will be constructed, owned, and operated by BPA and subject to BPA jurisdiction.

The EFSEC Process

EFSEC was created to assist the Governor to decide which proposed locations are appropriate for the siting of large new energy facilities. Chapter 80.50 RCW. The Legislature has recognized that the selection of sites will have a significant impact on the welfare of the population, the location and growth of industry, and the use of the natural resources of the state. It is the policy of the state of Washington to recognize the pressing need for increased energy facilities and to ensure, through available and reasonable methods, that the location and operation of such facilities will produce minimal adverse effects on the environment, ecology of the land and its wildlife, and the ecology of state waters and their aquatic life. RCW 80.50.010.

The Council has a comprehensive mandate to balance the need for abundant energy at a reasonable cost with the broad interest of the public. RCW 80.50.010. The Council is charged to protect the health of citizens and recommend site approval for power plants where minimal adverse effects on the environment can be achieved. RCW 80.50.010; *see also* WAC 463-47-110.

The Council is also charged with the responsibility to apply the laws of Chapter 43.21C RCW, the State Environmental Policy Act (SEPA), which provides for the consideration of probable adverse environmental impacts and possible mitigation. WAC 463-47-140. EFSEC is the lead agency for environmental review under SEPA, and the Council Manager is the SEPA responsible official. WAC 463-47-051.

The Council conducted its review of the Application as an adjudicative proceeding pursuant to Chapter 34.05 RCW as required by RCW 80.50.090(3) and Chapter 463-30 WAC.

In this proceeding, the Council complied with SEPA requirements by issuing a Determination of Significance and Scoping Notice, conducting a scoping hearing, issuing a Draft Environmental Impact Statement (DEIS) for public comment, conducting a public hearing and accepting written comments on the DEIS, and adopting a Final Environmental Impact Statement (FEIS). The Council adopted and issued an FEIS on August 12, 2002 and August 16, 2002, respectively.

A Draft Prevention of Significant Deterioration (PSD) air emissions permit, a Draft Notice of Construction (NOC) permit, and a Fact Sheet were issued for comment on July 9, 2002, and a public hearing on the Draft PSD and NOC permits was held on August 8, 2002. The Council accepted written comments on the Draft PSD and NOC permits through August 8, 2002 and, after re-opening the comment period, accepted comments through October 24, 2002.⁶

⁶ See footnote 1 supra.

Public Testimony and Comment

The Council is required to hold public hearings where any person is entitled to be heard in support of, or in opposition to, an application. RCW 80.50.090; *see also*, WAC 463-14-030. The Council heard public witnesses during the hearing on the DEIS, the hearing on the Draft PSD and NOC permits, public hearings on the proposed Project, and the hearing on land use consistency. The Council received oral comments during public witness hearings, as follows: comment on the DEIS on March 13, 2002, in the community of Burbank, Walla Walla County, Washington, 2 members of the public; comment on the DEIS on March 14, 2002, in the community of McNary, Umatilla County, Oregon, 2 members of the public; comment on the Draft PSD and NOC air emissions permits, on August 8, 2002, in Burbank, Washington, one member of the public; at public witness hearings held July 16, 2002, and July 17, 2002, in Walla Walla, Washington, 25 members of the public; the land use consistency hearing on July 17, 2002, in Walla Walla, Washington, one member of the public.

The Council received 19 comment letters from members of the public regarding the Application, in addition to 29 letters on the DEIS, and 11 written letters on the Draft PSD and NOC air emissions permits, and one written submission on land use consistency.

The Council carefully considered both the specific comments of the witnesses and the topics they addressed as indications of matters significant to the public as well as the written comments submitted by the public. The Council expresses its appreciation for these witnesses' testimony and written comments.

Issues

The Council did not have to decide any contested issues. Notwithstanding settlement agreements and the resulting absence of contested issues, the Council still had to consider

issues such as land use consistency with local regulations, water quality, Prevention of Significant Deterioration and Notice of Construction air emission permits, and whether the applicant made a *prima facie* demonstration that the project met the requirements of law and was consistent with the legislative policy and intent of Chapter 80.50 RCW.

Settlement and Stipulations

In connection with Application No. 2001-01, the Council encouraged the parties to make all reasonable efforts to settle contested issues. The parties worked hard to achieve settlements and the Council acknowledges the professionalism, attention to detail, and advocacy underlying each settlement. The Council held settlement hearings on June 4, 2002, and July 16, 2002. After review of each settlement document and consideration of testimony concerning the settlement, the Council approved each settlement agreement.

The settlement agreement between the Washington State Utilities and Transportation Department (WUTC) and Wallula Gen sets forth all conditions, obligations, and restrictions for the design, construction, operation, and maintenance of a 5.9-mile natural gas pipeline as required by federal pipeline safety regulations. 49 Code of Federal Regulations (CFR) § 192 et seq. The settlement agreement addresses all pipeline issues under both the Federal Energy Regulatory Commission (FERC) and EFSEC jurisdictions. The design, construction, operation, and maintenance of the pipeline are proposed in a manner that meets all federal pipeline safety regulations to adequately protect the citizens of the state of Washington. Based on the approval of the settlement, the WUTC withdrew all of its issues from the adjudicative proceeding.

The settlement agreement between the Washington State Department of Fish and Wildlife (WDFW) and Wallula Gen provides specific mitigation and protection measures as well as monitoring and performance standards at the project site and along specified utility corridors. Based on the commitments of Wallula Gen contained in the settlement agreement, discussed in greater detail under Fish and Wildlife Mitigation, the WDFW agreed that

Wallula Gen's compliance with those terms mitigates the impact to fish and wildlife resources, including habitat and wetlands. Based on the approval of the settlement, the WDFW withdrew its issues from the adjudicative proceeding.

The settlement agreement between the Washington State Department of Transportation (WSDOT) and Wallula Gen provides that Wallula Gen will access U.S. Highway 12 from Dodd Road during construction and operation. The access point will meet WSDOT requirements and any necessary traffic control, including a possible temporary signal, shall be designed, installed, and removed at the sole expense of Wallula Gen. Based upon approval of this settlement, WSDOT withdrew all its issues from the adjudicative proceeding.

The settlement agreement between the Washington State Department of Community Trade and Economic Development (CTED) and Wallula Gen was contingent upon Wallula Gen settling with the Counsel for the Environment (CFE). CTED acknowledged that the environmental enhancements proposed by Wallula Gen, including but not limited to, wildlife protection, salmon and stream restoration, development of renewable energy resources, greenhouse gas reduction, and rural low-income weatherization assistance augmented by appropriate reporting adequately protected its interests. CTED also opined that it was satisfied with the proposed plan for natural gas transmission and supply.

When the Council approved the settlement between Wallula Gen and Counsel for the Environment, the Council approved the settlement between Wallula Gen and CTED as well. CTED withdrew all its issues from the adjudicative proceeding.

The settlement agreement between Counsel for Environment and Wallula Gen is comprehensive and detailed. The parties vigorously negotiated the settlement agreement. It was also a settlement condition precedent to settlements with other parties such as CTED, the Port of Walla Walla, and the Association of Washington Business (AWB). The settlement provides for a broad range of environmental enhancement, and mitigation measures,

including wildlife habitat and greenhouse gas mitigation, of an approximate value of fourteen million dollars, as well as other requirements and conditions. The Council approved the settlement, finding that, on balance, it comported with the legislative policy and intent of RCW 80.50.010. Based upon the approval of the settlement agreement, discussed in more detail below, CFE withdrew all its issues from the adjudicative proceeding.

The settlement agreement between the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) and Wallula Gen was divided into two distinct settlements. In the first part, Wallula Gen agreed to contributions for environmental and educational programs. This same agreement was also a part of the settlement agreement between Counsel for the Environment and Wallula Gen. In the second part, Wallula Gen agreed to cultural and archeological mitigation measures and requirements. Based on the approval of the two agreements, CTUIR withdrew all of its issues from the adjudicative proceeding.

The settlement agreement between the Port of Walla Walla, within whose district the project is to be sited, was also contingent upon acceptance of the settlement between Counsel for the Environment and Wallula Gen. Likewise, the settlement with the AWB was contingent upon the acceptance of the settlement between Counsel for the Environment and Wallula Gen. Based on the acceptance of the settlement with Counsel for the Environment, the Port of Walla Walla and AWB withdrew their issues from the adjudicative hearing. Neither the Port nor AWB sought mitigation measures in excess of those provided in the settlement between CFE and Wallula Gen.

The settlement agreement between Walla Walla County and Wallula Gen is a comprehensive settlement that assures compliance with all applicable land use laws and environmental laws; conformity with construction, operation, and safety plans; mitigation measures; environmental indemnity; and requirements for pipeline safety, hazardous materials, and electrical interconnection facilities. Walla Walla County will provide to EFSEC review and monitoring of all phases of project construction in conjunction with

applicable state agencies. The Council approved the settlement and Walla Walla County withdrew all issues from the adjudicative proceeding.

Land Use Consistency

The Council is required to hold a public hearing to determine whether the proposed use of the site is consistent with county or regional land use plans or zoning ordinances in effect at the time of Application submittal to the Council. WAC 463-14-030. A land use consistency hearing was conducted on July 17, 2002, in Walla Walla. At this hearing, Connie Krueger, Director of Planning for Walla Walla County, gave unrefuted testimony that the project complied with all applicable land use laws.

A Statement of Land Use Consistency from Walla Walla County was entered into evidence. *Land-Use Hearing Exhibit 1*. That document confirmed that the portion of Wallula Gen's proposed project within the jurisdiction of Walla Walla County is consistent with its comprehensive land use plan and applicable zoning.

Certificates from local authorities attesting to the fact that the proposal is consistent and in compliance with county or regional land use plans or zoning ordinances are regarded as *prima facie* proof of consistency and compliance with such zoning ordinances or land use plans absent contrary demonstration by anyone at the hearing. WAC 463-26-090. At the land use hearing, one citizen presented public comment. That testimony did not refute the testimony of Connie Krueger. The Council finds and concludes with regard to Application No. 2001-01 that the proposed use of the site is consistent and in compliance with county land use plans and zoning ordinances.

“Need and Consistency” Requirements

“Need and Consistency” is a term developed in EFSEC siting proceedings. The Council determines the “Need and Consistency” requirements on a case-by-case basis guided

by state legislative intent and policy. *See* RCW 80.50.010; *see also*, RCW 43.21F.015. The Council considers need and consistency as a single concept, not just a demonstration of the need to produce power based on current supply and demand. Consistent with legislative intent, the Council views the concept more broadly asking whether an energy facility at a particular site will produce a net benefit after balancing the need for abundant power at a reasonable cost and the impact to the environment.

The traditional question of whether consumers “need” a particular plant may be largely obsolete in an electricity market structure where the developers bear the risk of an unsuccessful project. However, the Council still questions whether consumers “need” a plant *at a given location* considering the environmental costs of that facility at that location. At a minimum, the Council must discharge its statutory obligation to assure that the project provides “abundant power at reasonable cost” while protecting the “broad interests of the public” and “preserving and protecting the quality of the environment.”

Here, the Council finds, as evidenced by the settlement agreements such as the agreement with CTED, that the Project will contribute to the diversification and reliability of the state’s electrical generation capacity, and, thereby, add economic benefits to the region. The evidence in the record supports the conclusion that the region needs to continue to add electrical generation capacity. One of the resources for meeting need is a combined cycle combustion turbine. The Council finds that the proposed facility will provide a benefit to the western power grid and to the residents and businesses in this region.

At the same time, the Applicant has committed to investments for environmental enhancement within the Columbia Basin area and has agreed to mitigation requirements for the Project.

In considering what benefit a proposed facility might bring to the people, the Council may also consider such factors as whether the Applicant’s project will minimize environmental impacts and/or provide offsets that mitigate such impacts. Here, as indicated

above, the record and settlement agreements show that there is a need for the Project and the Applicant has committed to specific mitigation measures or to provide offsets that mitigate environmental impacts. The environmental enhancement programs include, but are not limited to, wildlife protection, salmon and fish restoration, development of renewable energy resources, greenhouse gas (GHG) reduction, and rural low-income weatherization assistance. The Applicant has committed to enhancements as follows:

- (1) The Last Mile Electric Cooperative (LMEC) is a non-profit organization committed to the development of renewable energy resources for publicly owned power entities. In order for LMEC to develop renewable energy resources, Wallula Gen will pay one million dollars (\$1,000,000) in installments directly to LMEC. All funds paid to LMEC resulting from this settlement will be expended at the sole discretion of LMEC as long as the funds are used to develop renewable energy resources or for other greenhouse gas mitigation and/or reduction efforts. The LMEC will not charge an administrative fee to administer these funds.
- (2) Wallula Gen will also pay two million five hundred and fifty thousand dollars (\$2,550,000) in installments to the Washington State University Cooperative Extension Energy Program (WSU Energy Program), a non-profit organization dedicated to GHG mitigation and/or reduction projects and/or renewable energy resource development, to be used for GHG mitigation and/or reduction projects and/or renewable energy resource development through a Request for Projects (RFP) process. The WSU Energy Program will limit overhead charges for administration of these funds to no more than 10 percent.
- (3) The Bonneville Environmental Foundation (BEF) is a non-profit environmental organization whose focus is to encourage and fund projects that develop renewable energy resources, and/or to acquire, maintain, preserve, restore, and/or sustain fish and wildlife habitat within the Pacific Northwest.

Wallula Gen will directly pay one million six hundred and fifty thousand dollars (\$1,650,000) in installments to BEF. Wallula Gen has previously contributed fifty thousand dollars (\$50,000) for the photovoltaic solar project at the Hanford, Washington, site, and fifty thousand dollars (\$50,000) for a manure digester feasibility study and/or watershed restoration planning study. In addition to these direct cash payments to BEF, Wallula Gen will transfer certain real property to a 501 (C) (3) tax-exempt supporting organization (“Supporting Organization”) for the benefit of BEF. The real property for purposes of settlement is valued at six million dollars (\$6,000,000). These funds are subject to use solely for the purpose of environmental enhancements and renewable energy projects located in the Mid-Columbia River Area (upstream from the Dalles Dam), with a preference for projects located in or benefiting the state of Washington. The BEF will limit overhead charges to administer these funds to no more than 20 percent.

- (4) The Blue Mountain Action Council (BMAC) is a non-profit organization that works together with low-income people to achieve their self-sufficiency by providing vital, self-help techniques, advocacy, and limited financial assistance. BMAC accomplishes this mission by: mobilizing resources in the public, private and non-profit sectors of the communities; creatively and effectively utilizing these resources to benefit low-income persons; promoting better understanding and improving relationships among the people of all economic and social levels; seeking to make governing bodies in Columbia, Garfield, and Walla Walla Counties more responsive to the cultures, needs and problems of their low-income residents; and participating in a network of community action agencies in Washington State and the nation. One of BMAC’s programs is weatherization and energy education assistance for low-income households, both rental and owner occupied, to control energy consumption and heating costs by comprehensive weatherization of homes, along with education about energy saving techniques. Wallula Gen shall pay a

total of one hundred fifty thousand dollars (\$150,000) in installments to BMAC. These funds are for the sole purpose of weatherizing homes for low-income persons in the Walla Walla County area. The BMAC will limit overhead charges to administer these funds to no more than 10 percent.

Air Quality

EFSEC is charged with protecting the people's health and welfare and with reviewing proposed power plants to assure minimal adverse effects on the environment. RCW 80.50.040 (12); WAC 463-39-010 see *also*, WAC 463-47-110. Additionally, EFSEC is charged with responsibility to apply the laws of Chapter 43.21C RCW, the State Environmental Policy Act (SEPA), which provides for the consideration and mitigation of probable adverse environmental impacts. WAC 463-47-140. The Council carefully considers public comment on proposed power facilities. RCW 80.50.090; WAC 463-14-030.

The Wallula Power Project is subject to federal and state emissions control requirements: Notice of Construction Approval (NOC), Prevention of Significant Deterioration (PSD); New Source Performance Standards (NSPS); and air toxics standards. The project would be a major new source of air pollution under the PSD program because it has the capacity to emit more than 100 tons per year of any of the following: nitrogen oxides (NO_x), carbon monoxide (CO), volatile organic compounds (VOCs), particulate matter (PM), or particulate matter smaller than 10 microns in diameter (PM10).

Walla Walla County and the immediate surrounding area is an attainment area for all criteria pollutants except for PM10, meaning that ambient air concentrations of all criteria pollutants, except PM10, are below National and Washington Ambient Air Quality Standards. The Project is located in a non-attainment area for PM10 and is subject to NOC non-attainment area permitting requirements for PM10 emissions. These requirements include use of the Lowest Achievable Emission Rate (LAER) and the acquisition and/or

creation of PM10 offsets equal to no less than 100 percent of the Project's annual PM10 emissions.

The Project qualifies as a major source because it is one of 28 listed industries that becomes a "major source" when emitting more than 100 tons per year of any regulated pollutant. Emissions of PM10 are greater than the non-attainment major stationary source significance rate of 70 tons per year. The Applicant proposes exclusive use of natural gas for electric energy production and good combustion practice to limit VOC and PM10 emissions. VOC emissions will not exceed 5 parts per million (ppm) averaged over one hour, and 16.2 pounds per hour (lbs/hr) averaged over 24 hours per turbine with HRSG and duct burners. PM10 emissions will not exceed 0.0029 grains per dry standard cubic foot when averaged over one hour, and 20.8 lbs/hr averaged over 24 hours per turbine with HRSG and duct burners.

The Applicant proposes to use Selective Catalytic Reduction (SCR) and catalytic oxidation as emission control techniques to control NO_x and CO, respectively. The emission controls will be installed in each HRSG associated with each set of combustion gas turbine and HRSG duct burners. With the use of SCR, the NO_x emissions will be limited to 2.5 ppm, averaged over three hours. Ammonia emissions will not exceed 5 ppm, averaged over 24 hours, except for a short period of time during startup. CO emissions would be limited to 2.0 ppm, averaged over three hours during normal steady state operations.

The Council's air permit writing contractor has opined that the proposed emission controls would be Best Available Control Technology (BACT), as required under WAC 173-400-113(2). The Council agrees with this opinion.

Due to the fact that the Project is located in the Wallula Non-Attainment Area, the proposed PM10 emissions controls have been designated to meet Lowest Achievable Emission Rate (LAER) standards. The Applicant is required to offset PM10 emissions generated by the Project by reducing PM10 emissions from other sources within the Wallula

Non-Attainment Area. The Applicant has agreed to offset the Project's PM10 emissions by a ratio of 1.1 to 1, meaning 11 tons of offsets will be provided for every 10 tons of projected PM10 emissions. This offset ratio will create an overall net reduction of PM10 emissions from the Project within the Wallula Non-Attainment Area.

The Project's emissions of toxic air pollutants would result in concentrations that are below the Acceptable Source Impact Levels. Such concentrations are not considered to pose a significant risk to public health.

The Applicant's consultants have performed air quality modeling to determine the impact of emissions from the project on ambient air quality. The modeling reveals that the emissions will have no significant impact on ambient air quality. The Council's permitting contractor has opined that the emission controls proposed for this project would be BACT for NO_x, CO, VOC, PM, SO_x, and Sulfuric Acid Mist and LAER for PM10.

The Applicant's consultants have performed sophisticated regional modeling to determine the effect of the Project on regional haze and visibility. Although public comment indicated concern about haze and visibility, the modeling indicates that the Project emissions will not have a significant effect on visibility and regional haze.

Emissions from the Project will not cause the haze or visibility in Federal Class I areas to increase above allowed increments. The Council finds that the Project emissions will be consistent with making reasonable progress toward meeting the national goal of preventing any future, and remedying any existing, impairment of visibility by human-caused air pollution in mandatory Federal Class I areas.

The Council has carefully considered the uncontested evidence and public comment and finds that the Project as proposed with the PM10 mitigation measures will have no adverse effect on the ambient air quality in the air shed. The Council finds that the Wallula

Power Project satisfies all requirements for PSD, attainment area NOC, and non-attainment area NOC approval.

Water Quantity

The maximum expected water demand of the proposed Wallula Power Project is listed in the Application (Table 3.3.5.3-2) as 7,901 gallons per minute (gpm) and 6,591 acre-feet per year (afy). The Applicant has purchased or purchased options to acquire water rights for a quantity of water sufficient to meet these requirements. These water rights fall within two general categories.

First, the Applicant will be able to utilize water pursuant to water right permit number G3-29640P, which authorizes the withdrawal and use of up to 1,200 gpm and 1,800 afy of public ground water for continuous industrial use on the project site from a well on the site, which has already been constructed. This permit was issued by the Washington State Department of Ecology to the Port of Walla Walla on April 16, 1996. The permit is suitable for use by the power plant without change. It will be used independent of the Site Certification Agreement (SCA), and the SCA will not limit or change permit number G3-29640P in any way. The authorization to use water set forth herein is in addition to water authorized to be used pursuant to permit number G3-29640P. The provisions herein relating to the transfer of water rights to the trust water rights program do not apply to permit number G3-29640P.

Second, the Applicant holds options to purchase seven water right certificates, which authorize use of water for irrigation of the Boise Cascade fiber farm located south and east of the project site. The certificate numbers of these irrigation rights are: G3-21037C, G3-21038C, G3-21039C, G3-21936C, G3-24791C, all issued to Dean Howe, and G3-28146C, and G3-28683C issued to Boise Cascade Corporation. These certificates (hereafter collectively termed “the irrigation certificates”) authorize a total water use, after adjusting for duplication in a supplemental permit, of 11,000 gpm and 5,826 afy. The irrigation certificates, however, would have to be changed in order to authorize use by the power plant. The purpose of use, time of use, place of use, and point of withdrawal would all have to be changed in order to allow water use for the power plant based upon the irrigation certificates.

The Applicant has requested that EFSEC, as part of the one stop process authorized by chapter 80.50 RCW, make any necessary changes to these water rights in the SCA. Rather than change the irrigation certificates issued under authority of Ecology, EFSEC is authorizing water use in the Site Certification Agreement (SCA) under the authority of Chapter 80.50 RCW in an amount, and subject to the same conditions, as if the irrigation certificates had been changed pursuant to provisions of the water codes administered by Ecology. For guidance in this respect, Ecology has submitted to EFSEC “Reports of Examination” detailing the quantities of water, which would be authorized for use if the irrigation certificates were changed together with the conditions which should be applicable to such water use. The Applicant has accepted the conclusions of the reports of examination submitted by Ecology, and the Council will rely on them in drafting appropriate SCA provisions.

The first step in Ecology’s “report of examination” process is to determine the history of water use under the irrigation certificates. If a water right has not been used, it has not been perfected and is thus not eligible for most changes under the water codes (primarily Chapters 90.03 and 90.44 RCW). Boise Cascade provided to Ecology well metering data for the past seven years for the ten wells installed pursuant to the seven irrigation water rights certificates. These data show that Boise Cascade used 9,671 gpm and 5,120 afy.

The Wallula Power Project will recycle cooling water and discharge a concentrated, treated blowdown to non-overflow lined evaporation ponds. Thus, the project will “consume” 100 percent of the process water—in that none of this water returns to surface or ground water. Through the process of irrigation, the Boise Cascade poplar farm consumes less than 100 percent of the water applied for irrigation purposes. At such a lower amount, an adjustment must be made to ensure that the change in purpose of use will not result in an actual increase in consumptive water use.

Boise Cascade utilizes nine neutron probes set five feet into the ground to read soil moisture and thus avoid over irrigating the poplars. After reviewing these data and consulting with the WSU Extension Office, Ecology concluded that 5 percent of the water applied for irrigation was a return flow component. An adjustment for this amount means that 4,864 afy was actually used consumptively and is available for change.

The Applicant intends to use the wells currently used by Boise Cascade, but has requested that all ten of the existing wells be listed as points of withdrawal for all of the water rights. This will allow design of a water withdrawal system that can utilize the most efficient of the existing wells. Ecology examined this change, the change in place of use, and the change of the season of use to determine whether the changes will harm existing rights or river flows. Ecology concluded that the potential for harming other water rights or instream flows should actually be reduced by expanding the season of use into the winter months.

The total amount of water, which Ecology determined was suitable for change, is 9,671 gpm and 4,864 afy. Ecology indicated that the difference between these amounts and the face amounts of the certificates (a difference of 1,329 gpm and 962 afy) would be subject to relinquishment. EFSEC will not order a relinquishment, but will not include an authorization for water use in the SCA for those portions of the rights Ecology has identified as subject to relinquishment.

As indicted above, two of the irrigation certificates, G3-28146C and G3-28683C, are subject to minimum flows on the Columbia River established by WAC 173-563-040 and -050, which are set forth in the certificates and in the appropriate Reports of Examination. When the Columbia River is below minimum flows, then the amount withdrawn under those certificates may be restricted as determined by Ecology. In the aggregate this could reduce the instantaneous rate of withdrawal under the irrigation certificates by a total of 6,200 gpm. (The acre-feet per year, being an annual measurement, are unlikely to be affected by a two or

three month restriction.) Thus, if the Columbia River is running below low flows, Ecology may reduce the total water withdrawal for the Wallula Power Project to 4,671 gpm, including the Port of Walla Walla well. This is above the amount the Application has identified as being the average gpm needed, but below the 7,901 gpm maximum amount requested.

Ecology has indicated that compliance with the Columbia River low flows should be required, because otherwise the proposed changes to the water rights in question could be considered an expansion of the rights—which is not permitted in a change. The Council will recommend that the Applicant be required to comply with the Columbia River minimum flow provisions.

The same two certificates (G3-28146C and G3-28683C) were issued as “family farm development certificates” pursuant to chapter 90.66 RCW. Without going into a long discussion of this legislation, the Council notes that Ecology has concluded that, once the Applicant becomes the owner of the certificates, it will be eligible to change the certificates to family farm permits, which can then be changed as proposed. The Council, therefore, shall require that the Applicant exercise its options to purchase those two certificates prior to using the water from them on the power plant site, or for any industrial purpose.

The timing of project construction will depend upon financial decisions of the Applicant (and others), and could occur at any time during a ten year build window. Even though the SCA has been issued, it may be necessary to irrigate the fiber farm until it is removed. Also, prior to the beginning of construction, Boise Cascade will remove the poplar

trees and the Applicant intends to reseed the fiber farm with grasses. The grasses may need to be irrigated for one irrigation season to become established. Since water use will be restricted to that authorized by the SCA, it will be necessary that the purpose of use be broad enough to encompass irrigation of the original site after the SCA is issued but prior to the completion of construction. In no event shall the quantity of water used exceed that recommended by Ecology, or additional restriction imposed by the Council (7, 901 gpm and 6,591 afy as detailed below).

Based upon Ecology's reports of examination which are part of the record herein, and as discussed above, the Council finds and concludes that the irrigation certificates may lawfully be changed to add power plant construction and operation to the purposes of use, to add the Wallula Power Project site as the place of use, to consolidate the existing points of withdrawal, and to change the time of use from the irrigation season to the whole year. As discussed above, the Council will not actually change the water right certificates, but will include site certification provisions, which authorize a changed use of the water identified for use under the certificates.

The SCA will authorize a transfer of 11,000 gpm and 5,826 acre-feet of water per year to the water certificate holder. However, due to actual usage and the proposed change in the consumptive use associated with the "irrigation certificates", 1,392 gpm and 962 afy will be withheld and not available for use by the Certificate Holder. As a result, the Certificate Holder will acquire rights to 9,671 gpm and 4,864 afy. This, when combined with the Port of Walla Walla well, will give Wallula Gen access to a total of 10,871 gpm and

6,664 afy. This amount is greater than the maximum need of 7,901 gpm and 6,591 afy, set out above. The SCA will not authorize the Certificate Holder to use more water than the amount identified in the Application for Site Certification (7,901 gpm and 6,591 afy) and any subsequent revisions. In addition, the right to use water from Certificates Nos. G3-28146C and G3-28683C are subject to low flow restrictions. When low flow restrictions are in place, the Certificate Holder's right to use water from these two wells is also restricted.

Although the irrigation certificates will not be changed by the SCA, the water identified for use under the irrigation certificates will be the water authorized for use under the SCA and the irrigation certificates form the basis for the authorization to use water contained in the SCA. The irrigation certificates will be attached as an exhibit to the SCA. No other use of the water rights embodied in the irrigation certificates shall be allowed during the life of the SCA. The SCA will thus overlay and supersede the irrigation certificates for the life of the SCA, as provided within its terms.

Once the SCA is issued authorizing water use by the Wallula Power Project based upon the water right certificates identified by the Applicant, use of those water rights must be restricted in order to avoid duplicative use of water. The SCA shall contain provisions requiring: (1) The Applicant shall obtain ownership or the right to use the seven irrigation water right certificates after project financing is secured and before any non-irrigation use is made under the certificates; (2) After that time, if all or part of the property which is identified in the irrigation certificates as the property on which water is to be used is sold or transferred to an affiliate or to a third party, then the Applicant (in the deed or other transfer

document) shall specifically retain ownership of the water rights embodied in the irrigation certificates; (3) After issuance of the SCA, the Applicant shall not allow any water use pursuant to the irrigation certificates except as authorized by the SCA, and any water use will be limited by the amounts and conditions set forth in the SCA.

If construction of the proposed power plant is not completed, or the proposed power plant does not commence commercial operations, then upon termination of the SCA, the Applicant or its successor will retain ownership of the rights embodied in the “irrigation certificates” without any limitation or change arising from the SCA or the EFSEC process.

After the Wallula Power Project construction is completed and water is used for the commercial operations of the plant, regardless of the length of time that such operation occurs, then the SCA shall control subsequent ownership of the irrigation water rights. The Applicant has stipulated with the Counsel for the Environment that the Applicant will retain ownership of the irrigation certificates until the close of the Project’s operations. At that time, and by the terms of the SCA the seven irrigation certificates will be transferred in perpetuity to the state of Washington no longer than ninety days after the close of project operations under chapter 90.42 RCW (establishing the trust water rights program) or any succeeding or equivalent legal mechanism available at the time, to be used for the purpose of benefiting instream water flows. Nothing in the SCA prevents the Applicant from transferring the irrigation certificates to the state of Washington for the above purpose at any point prior to the close of project operations. In such case, the SCA provides that water under the certificates will become available for benefiting instream flows immediately upon

the close of project operations. “Close of project operations” means the termination of the SCA after any commercial operation has occurred. If the project is modified in a manner that EFSEC determines that a portion of the water authorized for use by the irrigation certificates is no longer necessary for power production at the site, then the modification will be considered the “close of project operations” with respect to that portion of the irrigation certificates. In such case Wallula Gen will be required to transfer in perpetuity ownership of that portion of the irrigation certificates no longer necessary for power production to the state of Washington under Chapter 90.42 for the purpose of retaining the water rights in trust for the benefit of instream flows.

Once a power plant is constructed on the site and placed into commercial operations, the Applicant will be entitled, without meeting any other state or local regulatory or licensing requirements, to use water in a manner consistent with the terms of the SCA until the close of Project operations.

Water Quality

The Council contracted with the Department of Ecology and an independent consultant, Jones and Stokes, to review the conditions and requirements for wastewater discharge. The consultants also evaluated storm water collection and discharge, wastewater and sanitary waste treatment and discharge, and impoundment construction safety. The Council’s contractors recommended water quality conditions and requirements. The Council approves the conditions and requirements set forth below.

There shall be no direct storm water discharges from the Project site to any surface waters of the state. Storm water will be collected in a storm water infiltration pond sized to contain the 100-year rainfall event of 1.8 inches in a 24-hour period. Collected storm water from the power plant impacted areas will be pumped through oil/water separators to the storm water infiltration pond. All on-site storm water collected outside the power plant impacted areas will be directed to the storm water infiltration pond without processing the water through oil/water separators. No storm water will be released off-site except through evaporation or ground percolation. The storm water will be collected and handled utilizing Best Management Practices as prescribed in the Stormwater Management Manual for Western Washington (August 2001), which currently applies state-wide. When a Stormwater Management Manual for Eastern Washington is available, the Eastern Washington manual shall apply.

Wallula Gen will prepare a number of water quality plans for both construction and operation phases of the Project. These plans will be submitted to the Council for approval and, at the same time, to Ecology and Walla Walla County for review and comment.

There will be no wastewater discharge from the Project site into any waters of the state. The primary wastewater stream would be cooling tower blowdown. The system will use a combination of reverse osmosis equipment, a brine concentrator, and two evaporation ponds for the on-site wastewater control and reuse, to the maximum extent possible. The cooling tower blowdown will contain concentrated salts and residue of chemicals added to the system to control scaling, fouling, and biological contaminants. The cooling tower blowdown will be treated to concentrate the solids in the reverse osmosis system and the brine concentrator where a high portion of the water is produced as distilled water and directed back to the power plant water systems for re-use, allowing water conservation and PM10 control.

The concentrated brine fluid will be discharged into two 11-acre evaporation ponds. The evaporation ponds will be provided with a double liner, a leak detection and recovery

system underlain with an additional liner. Beginning at the bottom of the ponds, the lowest liner will consist of a 60-mil high-density polyethylene (HDPE) membrane. Appropriate fill material will be placed on top of the lowest liner within which a perforated HDPE pipe will be placed that runs down the low-point center of the pond. Above the fill will be a 30-mil HDPE membrane. Above this liner will be placed another liner comprised of both a geonet and a geocomposite material. The geonet will be used on the bottom of each pond and will be comprised of a ¼-inch thick layer of geo-synthetic textile comprised of high quality sodium bentonite. The geocomposite will be used on the pond side slopes and consist of a 200-mil bi-planar geonet bonded on both sides with a 6 oz. geo-textile. Any liquid that could pass through the top two liners would drain through the fill material to the collection pipe system. Liquid in the collection pipe would drain to a sump at the low end of the respective pond, where samples can be taken and collected liquids pumped back to the pond or into a separate collection vessel. A 2-foot cover of on-site soils will be provided over the top liner system to protect against possible tears or punctures that may occur during operation and maintenance. The accumulated solids will be removed periodically and shipped to a disposal site that is properly licensed to receive the solids from the evaporation ponds.

All sanitary wastes will be collected and directed to an on-site sanitary waste system. Treated liquid effluent from the system will be pumped to a leaching field while collected solids in the holding tank will periodically be removed by a sanitary waste hauler and disposed of at a local wastewater treatment facility or publicly owned treatment works that is licensed to handle these sanitary wastes. No power plant drains will be collected by the sanitary waste system, eliminating the potential for contamination of the leaching field.

Wallula Gen will be allowed to discharge its wastewater and storm water subject to discharge limitations, conditions, monitoring requirements, plan submittals, and reporting and record keeping requirements set out in the SCA.

The construction, operation, and maintenance of the evaporation ponds will be made pursuant to plans submitted to and approved by EFSEC, which will include the equivalent of a Chapter 173-175 WAC Dam Safety Regulations application.

Wetlands, Fish and Wildlife

The Project site consists of approximately 175 acres. The settlement between the Applicant and the WDFW divides the project site into two principal areas. The first area, referred to as the Habitat Reserve Area, consists of approximately 22 acres, including approximately 5 acres are wetlands. The second area is the approximately 153 acre remainder of the site that will be directly affected by grading and project construction activities. The settlement agreement provides specific requirements and mitigation measures, summarized below, for each area.

The Council finds that the settlement between Wallula Gen and the WDFW, augmented by the settlements with CFE, CTUIR and Walla Walla Watershed Alliance, protect the ecology of the land and its wildlife and the ecology of state waters, including wetlands, and their aquatic life.

The wetlands and shrub-steppe habitat on the western boundary of the Project site, are designated as the Habitat Reserve Area, and will not be disturbed during construction. Buffers of 100 feet will be placed around the wetland habitats to ensure that construction equipment and activity is excluded from the area. There will be no construction in the wetland areas as defined by the setbacks, which will be flagged prior to construction. The total area of wetlands, upland habitats, and wetland buffers on the western edge of the property is estimated to be 22 acres.

Wallula Gen will prepare a clearing and grading plan, a landscaping and revegetation plan and wetland protection plans as required in Article IV of the SCA, including protection of the Habitat Reserve Area along the western edge of the Project site. Delineated wetlands

and wetland buffers and adjacent upland habitats within the Habitat Reserve Area will be protected from ground disturbance during construction and operation of the Project. Limited ground disturbance will be allowed only as necessary to accomplish weed management objectives within the Habitat Reserve Area and to monitor and protect wetland hydrology.

Wallula Gen will install a staff gauge in the deepest portion of the wetland complex and regularly monitor water level changes in the wetlands. Wallula Gen will use its best efforts to secure authorization to use the South Columbia Irrigation District water right or adjacent domestic water well or industrial water supply for the purposes of maintaining a minimum seasonal water level in the Habitat Reserve Area. If dewatering of the wetlands occurs for reasons other than the U.S. Highway 12 widening project, Wallula Gen will investigate alternative mitigation options ensuring that the water levels in the wetlands are maintained or wetland impacts are otherwise mitigated. EFSEC acknowledges that the U.S. Highway 12 four-lane widening project may adversely affect the wetlands in the Habitat Reserve Area due to no fault of Wallula Gen. Wallula Gen will not be held accountable for habitat loss due to the U.S. Highway 12 four-lane widening project.

Wallula Gen agrees to mitigate the impacts resulting from construction and operation of the Project on the Project site by taking the following actions: a) plant and maintain approximately 74 acres of dry land cultivated native grass habitat with a component of native shrubs and forbs on the Project site; b) place a perpetual conservation easement upon the approximate 640 acre Benton County property, Section 35, T. 7 N., R. 30 E., Willamette Meridian in favor of an entity sufficient to satisfy the requirements for the permanent protection of wildlife habitat and for the permanence of air emission PM10 offsets; c) seed, reseed, or plant approximately 640 acres of the Benton County property in dry land cultivated native grass habitat with a component of native shrubs and forbs; d) take actions necessary to control livestock grazing on the approximate 640 acre Benton County property; e) actively support WDFW funding requests to fund the acquisition of native shrub habitat; f) provide, at the time of Project Financial Closing (closing), fifty thousand dollars (\$50,000) to the United States Fish and Wildlife Service, at the McNary National Wildlife Refuge for

wetland and riparian enhancement activities under the USFWS Wallula Wetlands and Riparian Project, Phase II, located along the Walla Walla River in Section 35, T. 7 N., R. 32 E.; and g) provide, at the time of closing, twenty five thousand dollars (\$25,000) to be apportioned between Dr. Gary Piper at Washington State University and Dr. Linda Wilson at University of Idaho. The funding to the two researchers will be used to assist with the development of biological control agents, which will ultimately benefit weed control efforts on the Project site and on surrounding ownerships.

In addition, Wallula Gen will make a payment to the CTUIR of \$1,250,000 for environmental enhancement activities and \$300,000 to the Walla Walla Watershed Alliance to promote its purposes of sound management of water resources in the Walla Walla River Basin. These are detailed as follows:

- (1) Wallula Gen will make a payment to the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) in the amount of one million two hundred fifty thousand dollars (\$1,250,000) for environmental enhancement activities. Wallula Gen previously provided a payment of fifty thousand dollars (\$50,000) cash to the CTUIR to be used (A) for planning activities with respect to Walla Walla River Basin environmental enhancement projects or (B) for seed capital to secure water rights options within the Walla Walla River Basin.
- (2) The Walla Walla Watershed Alliance (WWWA) is a non-profit organization dedicated to the sound management of water resources in the Walla Walla River Basin and the balancing of agricultural and environmental interests. Wallula Gen will directly pay three hundred thousand dollars (\$300,000) in installments to WWWA. The funds shall be allocated at the sole discretion of WWWA, consistent with the purposes for which it was formed.

The Council accepts the stipulations between the Applicant and the WDFW and the CFE as establishing requirements that will be incorporated in the Site Certification Agreement to ensure that wetland and fish and wildlife impacts are avoided or fully mitigated.

Climate Change / Greenhouse Gas Emissions

The Wallula Power Project is fueled by natural gas. The burning of natural gas will result in the annual emission of about 4.2 million tons of carbon dioxide (CO₂). Additionally, fugitive leaks from the natural gas pipeline will result in the emission of approximately 24,000 tons of methane annually. There is a consensus in the international scientific community that various byproducts of human activity, including CO₂ and other gaseous emissions produced by the combustion of fossil fuels, and emissions of gases such as methane, contribute to global atmospheric warming through the so-called “greenhouse effect.” Although there remains uncertainty with regard to the precise impacts and speed of onset, it is well understood that global warming has potentially profound consequences for all people, including citizens of Washington State.

The state of Washington recognizes the people’s need for abundant power at reasonable cost. It is also the policy of the Legislature that the location and operation of energy facilities produce minimal adverse effects on the environment, ecology of the land and its wildlife, and the ecology of the waters and their aquatic life. RCW 80.50.010.

Wallula Gen has agreed to provide an environmental mitigation enhancement program in the approximate amount of fourteen million, five hundred thousand dollars (\$14,500,000), which includes a greenhouse gas reduction program. Specifically, Wallula Gen provides the following mitigation directed at the reduction of impacts due to greenhouse gas emissions:

- (1) The Last Mile Electric Cooperative (LMEC) is a non-profit organization committed to the development of renewable energy resources for publicly owned power entities. In order for LMEC to develop renewable energy resources, Wallula Gen will pay one million dollars (\$1,000,000) in installments directly to LMEC. All funds paid to LMEC resulting from this settlement will be expended at the sole discretion of LMEC as long as the funds are used to develop renewable energy resources or for other greenhouse gas mitigation and/or reduction efforts.
- (2) Wallula Gen also will pay two million five hundred and fifty thousand dollars (\$2,550,000) in installments to the Washington State University Cooperative Extension Energy Program (WSU Energy Program), a non-profit organization dedicated to GHG mitigation and/or reduction projects and/or renewable energy resource development, to be used for GHG mitigation and/or reduction projects and/or renewable energy resource development through a Request for Projects (RFP) process.
- (3) In addition, Wallula Gen will pay one million, six hundred and fifty thousand dollars (\$1,650,000) to the Bonneville Energy Foundation for renewable energy projects and one hundred and fifty thousand dollars (\$150,000) to the Blue Mountain Action Council to fund home weatherization projects.

As set forth above, each of the above listed organizations agrees to limit its overhead charges to administer the funds paid by Wallula Gen.

The Council views the mitigation measures specifically directed at greenhouse gas reduction as part of the total picture of all mitigation. The Council considers whether the total package of mitigation measures offset the environmental impacts of the Project. Viewed in balance, with respect to this Project, and in the context of all volunteered mitigation, the Council finds that the mitigation package offered by Wallula Gen minimizes

adverse effects on the environment, ecology of the land and its wildlife, and the ecology of the state waters and their aquatic life. This finding is underscored by all the settlements but principally the settlements with CFE and CTED.

The Council finds that the Applicant's proposal with its revisions and settlement requirements creates an appropriate balance between encouraging the development of efficient generating facilities and recognizing that such thermal electric generating facilities impact the environment and are a source of greenhouse gas emissions.

Noise

The Wallula Power Project shall be designed to meet applicable Washington State Environmental Noise Levels, Chapter 173-60 WAC, and Walla Walla County noise ordinances.

During construction, Wallula Gen will incorporate noise attenuation features such as use of appropriate mufflers, hearing protection for workers, use of noise reducing panels and temporary barriers. The operation of the proposed facility includes combustion gas turbine generators, heat recovery steam generators, steam turbine generators, cooling towers, and other components that all generate noise, which must be mitigated to meet noise regulations. Wallula Gen has incorporated noise attenuation features, such as gas turbine inlet silencers, auxiliary boiler fan inlet silencers and steam turbine generator weather enclosures, in the preliminary Wallula Power Project design.

Wallula Gen has undertaken noise studies and modeling which show that the operation of the Wallula Power Project will comply with all state and county noise ordinances and regulations. The Council finds that the noise levels for the proposed Project are lower than the allowable limits specified by the County noise ordinance and the comparable state regulations. In addition, the SCA will require noise monitoring after the beginning of Project operation. If, at any time, the Project is not in compliance with

applicable noise standards and regulations, the SCA will require investigation of the source of the noise and identification and implementation of mitigation measure to bring the project back into compliance.

Natural Gas Supply

The Wallula Power Project will be fueled by natural gas for power production. Natural gas is a non-renewable fossil fuel. Although there has been identified adequate current natural gas supply to meet the needs of the Project over its anticipated economic life, the supply could be limited by future cumulative demands.

It has been suggested that the Council specify the type of agreements that Wallula Gen enters into when it purchases natural gas supplies. It is not the Council's role to regulate the sorts of contractual relationships Wallula Gen may enter into with its suppliers. If natural gas is not economically available, the plant will not be financed or will not continue to operate and the risks of these contingencies fall on the developers, and not on taxpayers.

The issue of natural gas supply involves policy issues that are more effectively addressed at the national or regional level and are not appropriately addressed in EFSEC's siting recommendations.

As far as the design, construction, maintenance and operation of the 5.9 mile natural gas supply pipeline is concerned, the Council finds that the settlement between Wallula Gen and the Washington Utilities and Transportation Commission requires compliance with federal pipeline regulations. This finding applies to that distance of pipeline under EFSEC jurisdiction and that portion under FERC jurisdiction. Compliance with federal pipeline regulations adequately protects the environment and the safety of the population.

Flooding and Geological Hazards

The proposed site is located on the east bank of the Columbia River and within the Columbia Plateau physiographic province of southeastern Washington and northeastern Oregon. This province encompasses an area of approximately 78,000 square miles, centered roughly around the Tri-cities area in southeastern Washington.

The Project site is above the mapped 100- and 500-year flood levels of the Columbia River. Erosion due to flooding was determined to be a low risk since the Project site is above the 500-year flood level, and generally above the flood potential of all upstream dam failure scenarios.

The site is within Seismic Zone 2B. The risks associated with ground movements due to landslides, subsidence, expansive soils, etc., were determined to be minimal and no special design or construction considerations were recommended. The risks to the project associated with seismicity were evaluated. All risks associated with ground rupture, liquefaction of soils, and slope failure were determined to be low. The greatest risk associated with seismicity is therefore from ground shaking. This risk will be managed by incorporating appropriate seismic hazard considerations into the design of the proposed structures. Seismic design criteria based on the 1997 Uniform Building Code (UBC) were compared to a probabilistic hazard assessment for the Project site. The 1997 UBC criteria were determined to be conservative and appropriate for design of the proposed facilities.

The Council finds that the risks of geological hazard, seismic activity, and flooding are low. Wallula Gen will manage risks associated with ground shaking in the design and construction of the proposed structures. At a minimum, the Generation Facility will be designed and constructed to comply with the Seismic Zone 2B standards of the UBC.

Traffic and Transportation

Based on the settlement agreement between the Washington State Department of Transportation and Wallula Gen, the Council finds that Wallula Gen meets the requirements of providing safe access to the Project site. The SCA incorporates the mitigation requirements agreed upon in the settlement agreement.

Cultural Resources

The construction and operation of a power generation facility and its ancillary components could impact cultural resources. The Applicant and the CTUIR have entered into a settlement agreement whereby the Applicant has agreed to a variety of mitigation measures, including an on-site cultural resource monitor, to avoid sites of archeological significance, if discovered and identified as such, and to develop mitigation measures for any significant non-avoidable sites. The Council is satisfied and finds that the settlement between the Applicant the CTUIR adequately protects any cultural resources. The SCA incorporates the mitigation requirements agreed upon in the settlement agreement.

Decommissioning Plan / Site Restoration

WAC 463-42-655 requires an applicant to provide a plan for site restoration in sufficient detail to identify, evaluate, and resolve all major environmental and public health and safety issues presently anticipated. The rule requires that the plan address provisions for funding or bonding arrangements to meet the site restoration or management costs.

In the Application, Wallula Gen has outlined an initial Project site restoration plan. As described in the plan, Wallula Gen proposes that, after the useful life of the facility, the equipment would be removed and the facility would be converted for other industrial use.

The Applicant proposes to maintain a Project site closure bond, or other financial security as required by the Council, in an amount to be determined by the Council and to maintain environmental liability insurance. However, Wallula Gen has not proposed an amount of a site closure bond, a designated surety, or the amount of environmental insurance it will maintain. In general, the Applicant's proposal provides assurance that Project site restoration could occur even if Wallula Gen or the then certificate holder is not in a position to finance restoration activities in the future. The SCA will require the Applicant to re-submit an initial site restoration plan to be approved by the Council prior to the beginning of site preparation. To be sufficiently detailed, the plan shall include the amount of environmental insurance that the certificate holder will maintain as well as require the amount and surety for the site closure bond or other specific security.

As guidance in the preparation of the site closure plan, the Council may accept a plan consistent with future industrial use, as opposed to restoration to the current agricultural use. The plan must be consistent with zoning and other land use plans.

Term of the Site Certification Agreement

The Council finds that there is a benefit to the public to have permitted facilities that meet standards ready to move toward operation in times when it becomes known that generation is needed. The greater number of efficient, less polluting facilities that can be quickly brought on line, the less the state will need to rely on old, less efficient, and dirtier facilities when capacity is inadequate to meet demand.

The Council recognizes that an indefinite build window is not appropriate. Various permits contain requirements that they be updated periodically or that extensions be granted if construction is not underway. This review process assures that current environmental standards are satisfied at the time the facility is constructed. The Council requires that such a provision be contained in the SCA for the Wallula project. The SCA for the Wallula project will authorize the Certificate Holder to begin construction within 10 years of the effective

date of the SCA subject to current environmental requirements as further described in the SCA.

Conclusion

The Council has carefully considered its statutory duties, applicable administrative rules, and all of the facts of this case in exercising its duty to balance the state's need for energy at a reasonable cost with the need to protect the environment and the health and safety of the residents of the area.

One of the Council's principal duties is to ensure that the location of energy facilities will produce minimal adverse effects on the environment. We have considered the testimony of expert witnesses and the public; and considered all the evidence, the settlement agreements and the FEIS on whether this plant, as proposed with revisions and the requirements of the settlement agreements, is appropriate for this location. As currently proposed, and with mitigation for a number of impacts, the plant would have a minimal impact on the environment. The Council is also aware that one of our duties is to ensure that the supply of energy, at a reasonable cost, is sufficient to ensure people's health and economic welfare; the record shows that this facility would serve those goals. Here, the Council considered whether the total package of mitigation measures offset the environmental impacts of the Project. Viewed on balance, with respect to this Project, and in the context of volunteered mitigation, the package offered by Wallula Gen comports with the legislative policy of Chapter 80.50 RCW. For all of the reasons discussed in the body of this Order, the Council recommends to the Governor that this project be approved for site certification.

FINDINGS OF FACT

Having discussed in detail above the facts relating to the material matters, and having stated findings and conclusions, the Council now states the following summary of those facts. Those portions of the findings pertaining to the Council's findings and conclusions stated below are incorporated by reference.

Nature of Proceeding

This matter involves an Application to the Washington State Energy Site Evaluation Council (EFSEC or Council) for certification to construct and operate the Wallula Power Project (Project), a combined cycle natural gas-fired energy production facility located near the community of Wallula, in Walla Walla County, Washington.

Findings of Fact

The Application, the Applicant, the State Environmental Policy Act (SEPA) Process and the Adjudicative Hearing Process

1. On August 20, 2001, the Applicant, Wallula Generation L.L.C., applied to the Council for certification to construct and operate the Wallula Power Project (Project) in Walla Walla County, Washington.
2. Wallula Generation L.L.C. is a Delaware Limited Liability Company formed to develop, permit, finance, construct, own, and operate the Project.
3. EFSEC is the lead agency for environmental review under the State Environmental Policy Act, RCW Chapter 43.21C. The Council Manager is the SEPA responsible official. WAC 463-47-051.

4. The Council issued a Determination of Significance and request for comments on the scope of environmental impacts on September 14, 2001. The Council held a hearing on the scope of the Environmental Impact Statement (EIS) in the community of Burbank, Walla Walla County, Washington, on October 2, 2001. The deadline for written comments on the scope of the EIS was October 5, 2001.
5. Wallula Gen's Application No. 2001-01 sought a Site Certification Agreement to construct and operate a 1,300 MW combined-cycle combustion gas turbine electric generating facility. The facility's fuel source will be natural gas.
6. EFSEC duly published notices of the Application, public meetings, and hearings - prehearing conferences, land use hearings, PSD hearings, DEIS hearings, and the adjudicative hearings - regarding Application No. 2001-01.
7. The Council and BPA issued a SEPA/NEPA Draft Environmental Impact Statement (DEIS) on February 22, 2002. The Council accepted public comments regarding the DEIS through April 11, 2002, and held public hearings regarding the DEIS on March 13, 2002, in the community of Burbank, Walla Walla County, Washington, and March 14, 2002, in the community of McNary, Umatilla County, Oregon.
8. Prior to formal adjudicative hearings on the Application, the Council held prehearing conferences on March 1, 2002; April 2, 2002; June 4, 2002; and July 16, 2002, and issued Prehearing Orders number 1 through 4 (Council Orders Nos. 765, 767, 769 and 771). At the pre-hearing conferences on June 4, 2002, and July 16, 2002, the Council considered and adopted the settlement agreements between Wallula Gen and all parties.
9. The Council held formal adjudicative hearings regarding the Application 2001-01 on July 17th, 2002, in the city of Walla Walla, Walla Walla County, Washington. As a result of the settlement agreements between Wallula Gen and all other parties there

were no contested issues presented to the Council at the adjudicative hearing.

Wallula Gen presented a *prima facie* case for siting certification.

10. The Council held public hearings regarding Application 2001-01 on July 16th and 17th, 2002, in the city of Walla Walla, Walla Walla County, Washington. Twenty-five members of the public offered comment.
11. EFSEC conducted a land use consistency hearing on July 17, 2002, in the city of Walla Walla, Walla Walla County, Washington. The Project is consistent and in compliance with the relevant zoning ordinances and land use regulations.
12. The Council issued a Draft Prevention of Significant Deterioration (PSD) air emissions permit, a Draft Notice of Construction (NOC) air emissions permit, and a Fact Sheet on July 9, 2002, and held a public hearing on the draft PSD/NOC permits on August 8, 2002, in the community of Burbank, Walla Walla County, Washington. The Council accepted written comments through August 8, 2002. The Council provided an additional 30-day comment period, based on the same draft permits, from September 24, 2002, through October 24, 2002.
13. The Applicant was given an opportunity to submit a Proposed Findings of Fact, Conclusions of Law, and Order and Proposed Site Certification Agreement, which were submitted to EFSEC.
14. On August 12, 2002 and August 16, 2002 respectively, the Council adopted and issued the Final Environmental Impact Statement (FEIS).

Project Description

15. The Project is a nominal 1,300 MW gas-fired combined cycle, electric generating facility. The physical portion of the power plant will occupy approximately 60 acres

within the 175-acre site. The Project will consist of two (2) independent power blocks. Duct-burners and inlet evaporative cooling will be utilized to maximize plant output for peak summer operating conditions. Each power block will be nominally rated at 650 MW and consists of two (2) General Electric Model PG7241FA combustion gas turbines, one General Electric D-11 steam turbine generator, two heat recovery steam generators (HRSGs), and one 11-cell wet-mechanical-draft cooling tower. Each combustion gas turbine generator will generate approximately 167 MW of gross generation. Each steam turbine generator will generate approximately 333 MW of gross generation. A natural gas/air mixture is combusted in the combustion gas turbine generator compressors. The hot combustion gases then exit the combustion gas turbine generator compressors and enter the HRSGs where the hot gases convert water into superheated steam and additional heat as needed from gas-fired “duct” burners located in the HRSG inlet duct. The steam is then delivered to the steam turbine generators to produce additional electrical energy. The hot gases exit each HRSG through a 175-foot tall and 20-foot diameter steel exhaust stack, with aircraft warning lights designated in accordance with U.S. Fish and Wildlife Service (USFWS) guidelines and Federal Aviation Agency (FAA) Advisory Circulars. NO_x and CO reduction catalysts are included in the HRSG ductwork to reduce power plant emissions. The stacks include continuous emissions monitoring systems and sampling ports, exterior ladders and platforms, lighting and grounding systems. The steam from the steam turbine exhausts to a water-cooled condenser that condenses the steam to water (condensate). The condensate then is pumped back to the HRSG feed water system for reuse. The water from the cooling water system will be pumped to the wet-mechanical-draft cooling tower, where the heat will be transferred to the atmosphere. The wet-mechanical-draft cooling tower cools the water in the closed loop circulating water system by spraying hot circulating water over a large surface area using a fan to pull air through the falling water. As part of the cooling process a portion of the circulating water is evaporated and must be replaced.

Stipulations and Settlements

16. In connection with the Application No. 2001-01, the Applicant entered into the settlement agreements and stipulations with all parties. The settlement agreements and stipulations are as follows: Settlement Agreement Between Washington State Department of Fish and Wildlife and Wallula Generation, L.L.C.; Settlement Agreement Between Washington State Department of Trade and Economic Development and Wallula Generation, L.L.C.; Settlement Agreement Between Washington State Department of Transportation and Wallula Generation, L.L.C.; Settlement Agreement Between Washington State Utilities and Transportation Commission and Wallula Generation, L.L.C.; Settlement Agreement Between the Counsel For the Environment and Wallula Generation, L.L.C.; Settlement Agreement Between the Confederated Tribes of the Umatilla Indian Reservation and Wallula Generation, L.L.C.; Settlement Agreement Between Wallula Generation, L.L.C. and Association of Washington Business; Settlement Agreement Between the Walla Walla Watershed Alliance and Wallula Generation, L.L.C.; Settlement Agreement Between the Port of Walla Walla and Wallula Generation, L.L.C.; and Local Project Impact Mitigation Agreement between Wallula Generation, L.L.C. and Walla Walla County. The Council approved each settlement agreement.

Site Characteristics

17. The Applicant seeks to locate the facility on an approximately 175-acre site in the northwest portion of Walla Walla County, Washington. The site is approximately 2 miles north of the unincorporated community of Wallula, 8 miles south of the City of Pasco, and 7 miles southeast of the unincorporated community of Burbank. U.S. Highway 12 borders the site on the west and the Union Pacific Railroad borders the site on the east.

18. The proposed site is located within a land use zone designated Agriculture Industrial Heavy in the Attalia Industrial Urban Growth Area in Walla Walla County.
19. The site has historically been farmed and is presently growing alfalfa.
20. The proposed facility will occupy approximately 60 acres of the proposed site.

Land Use Consistency

21. The Council is required to hold a public hearing to determine whether the proposed use of the site is consistent with county or regional land use plans or zoning ordinances at the time of the application. WAC 463-14-30. The Council held the required land use consistency hearing on July 17, 2002, in Walla Walla, Washington.
22. The Council heard testimony from Ms. Connie Krueger, Planning Director of Walla Walla County. Ms. Krueger attested that the proposal is consistent and in compliance with applicable land use plans or zoning ordinances. A Statement of Land Use Consistency was entered into evidence. *Land Use Hearing Exhibit 1*. The combination of Ms. Krueger's testimony and the document, *Land Use Hearing Exhibit 1* in the absence of a contrary demonstration, provides *prima facie* proof of consistency and compliance with such zoning ordinances or land use plans. WAC 463-26-090. The Council finds that the proposed use is consistent and in compliance with the land use plans and zoning ordinances of Walla Walla County.

Need and Consistency

23. There is a need for new electrical energy and capacity to meet state and regional demands. The settlement agreements with CFE and CTED evidence this need.

24. The project will benefit the state of Washington and the region by providing energy at reasonable low cost and a program of environmental enhancements. The Applicant's Project will minimize environmental impacts by providing mitigation measures and offsets.
25. Washington residents will further benefit from having more generating facilities permitted so that plants can be built more quickly in the event of an energy shortage.

Air Quality

26. The Wallula Power Project is subject to federal and state air emissions control requirements: NOC Approval, PSD Approval, and air toxics standards.
27. The Project would be a major new source of air pollution under the PSD program because it has the capacity to emit more than 100 tons per year of any one of the following: nitrogen oxides (NO_x), carbon monoxide (CO), volatile organic compounds (VOCs), particulate matter, or particulate matter smaller than 10 microns (PM10).
28. Walla Walla County and the immediate surrounding area is an attainment area for all criteria pollutants except for PM10, meaning that ambient air concentrations of all criteria air pollutants, except for PM10, are below National and Washington Ambient Air Quality Standards.
29. The Project is located in a non-attainment area for PM10 and is subject to NOC non-attainment area permitting requirements for PM10. These requirements include use of Lowest Achievable Emission Rate (LAER) and the acquisition and/or creation of PM10 offsets equal to no less than 100 percent of the Project's annual PM10 emissions.

30. The Project qualifies as a major source because it is one of 28 listed industries that becomes a “major source” when emitting more than 100 tons per year of any regulated pollutant. Emissions of PM10 are greater than the non-attainment major stationary source significance rate of 70 tons per year. The Applicant proposes exclusive use of natural gas for electric energy production and good combustion practice for VOC and PM10 emissions. VOC emissions will not exceed 5 parts per million (ppm) averaged over one hour, and 16.2 pounds per hour (lbs/hr) averaged over 24 hours per turbine with HRSG and duct burners. PM10 emissions will not exceed 0.0029 grains per dry standard cubic foot when averaged over one hour, and 20.8 lbs/hr averaged over 24 hours per turbine with HRSG and duct burners.
31. Wallula Gen proposes to use Selective Catalytic Reduction (SCR) and catalytic oxidation as emission control techniques for NO_x and CO, respectively. The emission controls will be installed in each HRSG associated with each set of combustion gas turbine and HRSG duct burners. With the use of SCR, the NO_x emissions will be limited to 2.5 ppm, averaged over three hours. Ammonia emissions will not exceed 5 ppm, averaged over 24 hours, except for a short period of time during startup. CO emissions would be limited to 2.0 ppm, averaged over three hours during normal steady state operations.
32. The proposed emission controls would be Best Available Control Technology for all criteria pollutants except PM10. Due to the fact that the Project is located in the Wallula Non-Attainment Area, the proposed PM10 emission controls have been designed to meet LAER standards.
33. Wallula Gen is required to “offset” the PM10 emissions generated by the Project by reducing the PM10 emissions from other sources within the non-attainment area. The Applicant has agreed to offset the Project’s PM10 emissions by a ratio of 1.1 to 1, meaning that 11 tons of offsets will be provided for every 10 tons of projected Project

PM10 emissions. The Applicant's proposed offset ratio will create an overall net reduction of PM10 emissions in the non-attainment area from the proposed Project.

34. The Project's emissions of toxic air pollutants would result in concentrations that are below the Acceptable Source Impact Levels and are not considered to pose a significant risk to public health.
35. The Applicant's consultants have performed extensive air quality modeling to determine the impact of the emissions from the Project on ambient air quality. The modeling reveals that the emissions will have no significant impact on ambient air quality.
36. The proposed emission control would be BACT for NO_x, CO, VOC, PM, SO_x, and Sulfuric Acid Mist and LAER for PM10.
37. The Applicant's consultants have performed regional modeling to determine the effect of the Project on regional haze and visibility. The modeling indicates that the Project emissions will have no significant effect on visibility and regional haze.
38. Emissions from the Project will not cause Federal Class I increments to be exceeded.
39. The Council has determined that the Project emissions will be consistent with making reasonable progress toward meeting the national goal of preventing any future, and remedying any existing, impairment of visibility by human-caused air pollution in mandatory Federal Class I areas.
40. The Project, as proposed with PM 10 mitigation measures, will have no adverse effect on the ambient air quality in the air shed. The Council finds that the Wallula Power Project satisfies all requirements for PSD, attainment area NOC, and non-attainment area NOC approval.

Water Quantity

41. The Applicant has identified and secured purchase options for two sources of water to meet project requirements. The first is a deep basalt groundwater right permit (permit number G3-29640P) issued to the Port of Walla Walla, which authorizes the use of up to 1,200 gpm limited to 1,800 afy of ground water for industrial purposes on the Project site. This permit is in good standing, and may be used without change to meet a portion of the Project's requirements. The water right embodied in the Port of Walla Walla permit exists independently of this order and SCA, and will not be affected thereby. The Council notes its existence in determining whether the Applicant has sufficient water for the Project.
42. Second, the Applicant holds options to purchase seven water rights currently used to irrigate the Boise Cascade Corporation fiber farm located near the community of Wallula. The certificate numbers of these irrigation rights are: G3-21037C, G3-21038C, G3-21039C, G3-21936C, G3-24791C, all issued to Dean Howe, and G3-28146C, and G3-28683C issued to Boise Cascade Corporation. These certificates (hereafter collectively termed "the irrigation certificates") authorize a total water use, after adjusting for duplication in a supplemental permit, of up to 11,000 gpm, limited to 5,826 afy. The irrigation certificates, however, would have to be changed in order to authorize use by the proposed power plant.
43. The Department of Ecology has submitted Reports of Examination to EFSEC for use by the Council in preparing site certification conditions. The purpose of these reports of examination is to aid the Council in determining whether the irrigation certificates could be lawfully changed to authorize use of the water by the proposed Project. The Council authorizes water use by issuance of the SCA, rather than by a change to the Ecology-issued irrigation certificates; however, consistency with the water law governing changes will prevent harm to existing rights or to regulated stream flows.

The Council hereby adopts and incorporates by reference herein the descriptions and findings set forth in each of the seven Reports of Examination.

44. The irrigation certificates may not be changed to allow a new consumptive use of water that is greater than the historic consumptive use. The Applicant provided information adequate to demonstrate historic consumptive use and minimal return flows to groundwater. In the Reports of Examination, Ecology determined that a 5 percent return flow component would be appropriate for determining water rights available for industrial use. Subtracting 5 percent from the maximum 5-year historical metered use at the fiber farm, results in aggregate usage under the seven irrigation certificates of 9,671 gpm, limited to 4,864 afy. The total water use based upon the irrigation certificates must not exceed those amounts. The amount of the irrigation certificates subject to relinquishment if such options are exercised is 1,392 gpm and 962 afy.
45. Two of the irrigation certificates (G3-28146C and G3-28683C) are subject to minimum flows on the Columbia River established by WAC 173-563-040 and -050, which are set forth in the certificates and in the appropriate Reports of Examination prepared by Ecology. When the Columbia River is below minimum flows established by regulation, then the amount withdrawn under those certificates may be restricted as determined by Ecology. In the aggregate this could reduce the instantaneous rate of withdrawal under the irrigation certificates by a total of 6,200 gpm. The Council has recommended that the in-stream flow regulations be applied to the SCA water use authorization based upon the two certificates.
46. The same two irrigation certificates (G3-28146C and G3-28683C) were issued as “family farm development certificates” pursuant to chapter 90.66 RCW. The Council notes that Ecology has concluded that, once the Applicant becomes the owner of the certificates, it will be eligible to change the certificates to family farm permits, which may then be changed as proposed. The Council, therefore, shall require that the

Applicant exercise its options to purchase these two certificates prior to using the water from these certificates on the power plant site, or for any industrial purpose, and provide notice of conversion of these two certificates to family farm development certificates.

47. The Wallula Power Project will use water during the whole year, rather than just during the irrigation season.
48. The Wallula Power Project wishes to utilize the ten existing Boise Cascade Corporation fiber farm wells to withdraw Project water; however, the Applicant has requested and EFSEC concurs that the points of withdrawal of the various irrigation certificates may be consolidated to allow withdrawal of all of the water from any one or combination of the existing ten wells. This will allow use of the more efficient wells while retaining the others for standby purposes. The Applicant does not intend to abandon any of the wells upon exercise of its Boise Cascade Corporation purchase options, but may request to do so in the future. This change will not harm other water users. All ten of the wells are relatively shallow, and withdraw water from the same body of public ground water.
49. Water governed by the SCA may be required for irrigation of the Boise Cascade Corporation fiber farm site prior to, or during, project construction. Water also will be required for pipeline testing, facility testing, dust control and other miscellaneous purposes during Project construction, as well as for power plant makeup, fire control, facility cleaning, and wetland maintenance (if required) during Project operation.
50. So long as the Columbia River minimum flow regulations are followed by EFSEC, the changes in water use resulting from the Project will not expand any water right. The changes will not harm any other water rights. The changes will not reduce the flow of any river or stream. The changes will not be detrimental to the public welfare.

51. As a result of all the irrigation certificates, Wallula Gen will acquire more rights to water than its maximum need. Wallula Gen or the current water certificate holder is not authorized to use more water than the amount identified in the Application for Site Certification, 7,901 gpm and 6,591 afy, and any subsequent revisions.
52. After the Wallula Power Project construction is completed and water is used for the commercial operations of the plant, regardless of the length of time that such operation occurs, then the SCA shall control subsequent ownership of the irrigation water rights.
53. At the close of project operations, and by the terms of the SCA, the seven irrigation certificates will be transferred in perpetuity to the state of Washington no longer than ninety days after the close of project operations under chapter 90.42 RCW (establishing the trust water rights program) or any succeeding or equivalent legal mechanism available at the time, to be used for the purpose of benefiting instream water flows.
54. If the project is modified in a manner that EFSEC determines that a portion of the water authorized for use by the irrigation certificates is no longer necessary for power production at the site, then the modification will be considered the “close of project operations” with respect to that portion of the irrigation certificates. In such case Wallula Gen will be required to transfer in perpetuity ownership of that portion of the irrigation certificates no longer necessary for power production to the state of Washington under Chapter 90.42 for the purpose of retaining the water rights in trust for the benefit of instream flows.

Water Quality

55. The Council contracted with the Department of Ecology and an independent consultant, Jones and Stokes, to review the conditions and requirements for wastewater discharge, storm water collection and discharge, wastewater and sanitary waste and impoundment construction safety. The Council's contractors recommended water quality conditions and requirements. The Council approves those conditions as set forth below.
56. There shall be no direct storm water discharge from the Project site into any surface waters of the state. Storm water will be collected in a storm water infiltration pond sized to contain the 100-year rainfall event of 1.8 inches in a 24-hour period. Collected storm water from the power plant impacted areas will be pumped through oil/water separators to the storm water infiltration pond. All on-site storm water collected outside the power plant impacted areas will be directed to the storm water infiltration pond without processing the water through oil/water separators. All storm water collected in the storm water infiltration pond will either be evaporated or will percolate into the ground. No storm water will be released off-site except through evaporation or ground percolation. The storm water will be collected and handled utilizing Best Management Practices.
57. Wallula Gen will prepare a water quality plans for both construction and operational phases of the Project to be submitted to the Council for approval and, at the same time, to Ecology and Walla Walla County for review and comment.
58. There will be no wastewater discharge from the Project site into any waters of the state. The primary wastewater stream would be cooling tower blowdown. The system will use a combination of reverse osmosis equipment, a brine concentrator, and two evaporation ponds for the on-site wastewater control and reuse, to the maximum extent possible. The cooling tower blowdown will contain concentrated

salts and residue of chemicals added to the system to control scaling, fouling, and biological contaminants. The cooling tower blowdown will be treated to concentrate the solids in the reverse osmosis system and the brine concentrator where a high portion of the water is produced as distilled water and directed back to the power plant water systems for re-use, allowing water conservation and PM10 control.

59. The concentrated brine fluid will be discharged into two 11-acre evaporation ponds. The evaporation ponds will be provided with a double liner, a leak detection and recovery system underlain with an additional liner. Beginning at the bottom of the ponds, the lowest liner will consist of a 60-mil high-density polyethylene (HDPE) membrane. Appropriate fill material will be placed on top of the lowest liner within which a perforated HDPE pipe will be placed that runs down the low-point center of the pond. Above the fill will be a 30-mil HDPE membrane. Above this liner will be placed another liner comprised of both a geonet and a geocomposite material. The geonet will be used on the bottom of each pond and will be comprised of a ¼-inch thick layer of geo-synthetic textile comprised of high quality sodium bentonite. The geocomposite will be used on the pond side slopes and consist of a 200-mil bi-planar geonet bonded on both sides with a 6 oz. geo-textile. Any liquid that could pass through the top two liners would drain through the fill material to the collection pipe system. Liquid in the collection pipe would drain to a sump at the low end of the respective pond, where samples can be taken and collected liquids pumped back to the pond or into a separate collection vessel. A 2-foot cover of on-site soils will be provided over the top liner system to protect against possible tears or punctures that may occur during operation and maintenance. The solids accumulation will be removed periodically and shipped to a licensed landfill.
60. All sanitary wastes will be collected and directed to an on-site sanitary waste system. Treated liquid effluent from the system will be pumped to a leaching field while collected solids in the holding tank will periodically be removed by a sanitary waste hauler and disposed of at a local wastewater treatment facility or publicly owned

treatment works that is licensed to handle these sanitary wastes. No power plant drains will be collected by the sanitary waste system, eliminating the potential for contamination of the leaching field.

61. Wallula Gen will be allowed to discharge its wastewater and storm water subject to discharge limitations, conditions, monitoring requirements, plan submittals, and reporting and record keeping requirements set out in the SCA.
62. The construction, operation, and maintenance of the evaporation ponds will be made pursuant to plans submitted to and approved by EFSEC, which will include the equivalent of a Chapter 173-175 WAC Dam Safety Regulations application.

Wetlands, Fish and Wildlife

63. The settlements between Wallula Gen and the Washington State Department of Fish and Wildlife, augmented by the settlements with the CFE, CTUIR, and the Walla Walla Watershed Alliance provide mitigation measures that adequately protect the environment, ecology of the land and its wildlife, and ecology of the water, including wetlands, and their aquatic life.
64. Contained within the 175 acre Project site is an area of approximately 22 acres containing approximately 5 acres of wetlands. The 22 acre area is referred to as the Habitat Reserve Area. The wetlands and shrub-steppe habitat on the western boundary of the Project site have been delineated and will not be disturbed during construction. Buffers of 100 feet will be placed around the wetland habitats to ensure that construction equipment and activity is excluded from the area. There will be no construction in the wetland areas as defined by the setbacks, which will be flagged prior to construction. The total area of wetlands, upland habitats, and wetland buffers on the western edge of the property is estimated to be 22 acres.

65. Wallula Gen will prepare a final clearing and grading plan, a landscaping and revegetation plan and wetland protection plans as required in Article IV of the SCA, including protection of a Habitat Reserve Area along the western edge of the Project site. Delineated wetlands and wetland buffers and adjacent upland habitats within the Habitat Reserve Area will be protected from ground disturbance during construction and operation of the Project. Limited ground disturbance will be allowed only as necessary to accomplish weed management objectives within the Habitat Reserve Area and to monitor and protect wetland hydrology.

66. Wallula Gen will install a staff gauge in the deepest portion of the wetland complex and regularly monitor water level changes in the wetlands. Wallula Gen will use its best efforts to secure authorization to use the South Columbia Irrigation District water right or adjacent domestic water well or industrial water supply for the purposes of maintaining a minimum seasonal water level in the Habitat Reserve Area. If dewatering of the wetlands occurs for reasons other than the U.S. Highway 12 widening project, Wallula Gen will investigate alternative mitigation options ensuring that the water levels in the wetlands are maintained or wetland impacts are otherwise mitigated.

67. Wallula Gen agrees to mitigate the impacts resulting from construction and operation of the Project on the 175-acre Project site by taking the following actions: a) plant and maintain approximately 74 acres of dryland cultivated native grass habitat with a component of native shrubs and forbs on the Project site; b) place a perpetual conservation easement upon the approximate 640 acre Benton County property, Section 35, T. 7 N., R. 30 E., Willamette Meridian in favor of an entity sufficient to satisfy the requirements for the permanent protection of wildlife habitat and for the permanence of air emission PM10 offsets; c) seed, reseed, or plant approximately 640 acres of the Benton County property in dryland cultivated native grass habitat with a component of native shrubs and forbs; d) take actions necessary to control livestock grazing on the approximate 640 acre Benton County property; e) actively support

WDFW funding requests to fund the acquisition of native shrub habitat; f) provide, at the time of Project Financial Closing (closing), fifty thousand dollars (\$50,000) to the United States Fish and Wildlife Service, at the McNary National Wildlife Refuge for wetland and riparian enhancement activities under the USFWS Wallula Wetlands and Riparian Project, Phase II, located along the Walla Walla River in Section 35, T. 7 N., R. 32 E.; and g) provide, at the time of closing, twenty five thousand dollars (\$25,000) to be apportioned between Dr. Gary Piper at Washington State University and Dr. Linda Wilson at University of Idaho. The funding to the two researchers will be used to assist with the development of biological control agents, which will ultimately benefit weed control efforts on the Project site and on surrounding ownerships.

68. In addition, Wallula Gen will make payments to the CTUIR and the Walla Walla Watershed Alliance of \$1,250,000 and \$300,000, respectively, for environmental enhancement activities associated with water resource management in the Walla Walla River Basin.
69. The U.S. Highway 12 four-lane widening project may adversely affect the wetlands in the Habitat Reserve Area due to no fault of Wallula Gen. Wallula Gen will not be held accountable for habitat loss that results from the U.S. Highway 12 four-lane widening project.
70. The Council accepts the stipulations between the Applicant and the Washington Department of Fish and Wildlife and the Council for the Environment as establishing requirements that will be incorporated in the Site Certification Agreement to ensure that wetland and fish and wildlife impacts are avoided or fully mitigated.

Climate Change – Greenhouse Gases

71. The Wallula Power Project is fueled solely by natural gas.

72. By burning natural gas, the operation of the Wallula Gen Project will result in the annual emission of about 4.2 million tons of carbon dioxide (CO₂).
73. Fugitive leaks from the natural gas pipeline will result in the emission of approximately 24,000 tons of methane each year.
74. There is a consensus in the international scientific community that various byproducts of human activity, including CO₂ and other gaseous emissions produced by the combustion of fossil fuels, and emission of gases such as methane contribute to global atmospheric warming through the so-called “greenhouse effect.” Although there remains an uncertainty with regard to the precise impacts and speed of onset, it is well understood that global warming has potentially profound consequences for all people, including citizens of Washington State.
75. The state of Washington recognizes the need for power at reasonable cost. At the same time, it is the legislative policy of this state that the location and operation of power generating facilities produce minimal adverse effects on the environment, ecology of the land and its wildlife, and ecology of the water and its aquatic life.
76. As set out in the settlement agreements described above, Wallula Gen has agreed to provide an environmental mitigation and environmental enhancement program in the approximate amount of fourteen million, five hundred thousand dollars (\$14,500,000), which includes a greenhouse gas reduction program.
77. The Council reviews each application on a case-by-case basis and considers the totality of mitigation measures offered by applicant, including greenhouse gas mitigation.

78. Viewed in totality, Wallula Gen's proposed mitigation measures, including measures specific for greenhouse gas mitigation, strike a balance between encouraging the development of efficient generating facilities and recognizing that such thermal electric generating facilities impact the environment and are a source of greenhouse gas emissions.
79. The settlement agreements with CFE and CTED underscore and support the Council's further finding that, in balance, the Applicant's mitigation enhancement program provides reasonable and available methods to minimize adverse impacts on the environment, ecology of the land and its wildlife, and ecology of the water and its aquatic life.

Noise

80. The Wallula Power Project will be designed to meet applicable Washington State Environmental Noise Levels Chapter 173-60 WAC and Walla Walla County noise ordinances.
81. The proposed facility includes combustion gas turbine generators, heat recovery steam generators, steam turbine generators, cooling towers, and other components that all generate noise, which must be mitigated to meet noise regulations. During both construction and operation, Wallula Gen will incorporate noise attenuation features in the Wallula Power Project design.
82. Wallula Gen has undertaken noise studies and modeling which show that the operation of the Wallula Power Project will comply with all state and county noise ordinances and regulations. With appropriate attenuation, noise levels for the proposed project are lower than the allowable limits specified by the County noise ordinance and the comparable state regulations.

83. The SCA will require noise monitoring after the beginning of Project operation. If, at any time, the Project is not in compliance with applicable noise standards, the SCA will require investigation of the source of the noise and identification and implementation of mitigation measure to bring the project back into compliance.

Natural Gas Supply

84. The Wallula Power Project will be fueled by natural gas for power production. Natural gas is a non-renewable fossil fuel.
85. At present there has been identified adequate supply to meet the needs of the Project over its anticipated economic life.
86. It is not the Council's role to regulate the sorts of contractual relationships Wallula Gen may enter into with its suppliers.
87. The design, construction, maintenance and operation of the entire 5.9 mile natural gas supply pipeline, as set out in the settlement agreement with the WUTC, will comply with federal pipeline regulations.
88. Compliance with federal pipeline regulations adequately protects the environment and the safety of the population.

Flooding and Geological Hazards

89. The proposed site is located near the east bank of the Columbia River and within the Columbia Plateau physiographic province of southeastern Washington and northeastern Oregon.

90. The Project site is above the mapped 100- and 500-year flood levels of the Columbia River. Erosion due to flooding was determined to be a low risk since the Project site is above the 500-year flood level, and generally above the flood potential of all upstream dam failure scenarios.
91. The Project site is in Seismic Zone 2B.
92. The risks associated with ground movements due to landslides, subsidence, expansive soils etc., were determined to be minimal and no special design or construction considerations were recommended. The risks to the project associated with seismicity were evaluated. The risks associated with ground rupture, liquefaction of soils, and slope failure all were determined to be low. The greatest risk associated with seismicity is therefore from ground shaking. This risk will be managed by incorporating appropriate seismic hazard considerations into the design of the proposed structures. Seismic design criteria based on the 1997 Uniform Building Code (UBC) were compared to a probabilistic hazard assessment for the Project site. The 1997 UBC criteria were determined to be conservative and appropriate for design of the proposed facilities.
93. The risks of geologic hazard, seismic activity, and flooding are low. Wallula Gen will manage the risks associated with ground shaking in the design and construction of the proposed structures. At a minimum, the Generation Facility will be designed and constructed to comply with the Seismic Zone 2B standards of the UBC.

Traffic and Transportation

94. Based on the settlement with the WSDOT, the project meets the requirements of providing safe access to the Project site. The SCA incorporates the mitigation requirements agreed upon in the settlement agreement.

Cultural Resources

95. The construction and operation of a power generation facility and its ancillary components could impact cultural resources.
96. The settlement agreement between Wallula Gen and the CTUIR adequately protects any cultural resources. The SCA incorporates the mitigation requirements agreed upon in the settlement agreement.

Site Restoration – Decommissioning Plan

97. WAC 463-42-655 requires an applicant to provide an initial plan for site restoration in sufficient detail to identify, evaluate and resolve all major environmental and public health and safety issues presently anticipated. The plan must address funding or bonding arrangements to meet site restoration or management costs.
98. In the Application, Wallula Gen has outlined an initial Project site restoration plan. As described in the plan, after the useful life of the Project, the equipment would be removed and the site would be converted for other industrial use.
99. The Applicant proposes to maintain a Project site closure bond, or other financial security as required by the Council, in an amount to be determined by the Council and to maintain environmental liability insurance.
100. The Site Certification Agreement shall require the Applicant re-submit an initial Project site restoration plan, including specifics for bonding and environmental insurance, to the Council for its approval prior to beginning of site preparation. The plan can include restoration consistent with future industrial as opposed to agricultural use.

Term of the Site Certification Agreement

101. The Site Certification Agreement authorizes Wallula Gen or the Certificate Holder to begin construction within 10 years of the effective date of the SCA. If the Certificate Holder does not begin construction within 5 years of the effective date of the SCA, the Certificate Holder shall report to the Council its intention to continue and shall certify that the statements and conditions contained in the Application are still valid and applicable, or identify any changes and propose appropriate resulting changes in the SCA to address those changes. The Certificate Holder shall comply with the terms of the SCA.

CONCLUSIONS OF LAW

Based on the foregoing findings of fact, the testimony received and evidence admitted during the adjudicative hearing, the environmental documents and environmental determinations made by the Council, and the record in this matter, the Council makes the following conclusions of law:

1. The Washington State Energy Facility Site Evaluation Council has jurisdiction over the persons and the subject matter of Application No. 2001-01, pursuant to Chapter 80.50 RCW and Chapter 34.05 RCW.
2. The Council conducted its review of the Wallula Gen Application 2001-01 as adjudicative proceedings pursuant to Chapter 34.05 RCW as required by RCW 80.50.090(3) and Chapter 463-30 WAC.
3. EFSEC is the lead agency for environmental review of Wallula Gen's Application pursuant to the requirements of Chapter 43.21C RCW. Because the SEPA responsible official determined that the proposed action may have one or more significant adverse environmental impacts, an Environmental Impact Statement (EIS)

was legally required. The Council complied with Chapter 43.21C RCW, Chapter 197-11 WAC, and Chapter 463-47 WAC, by issuing a Determination of Significance and Scoping notice, conducting a scoping hearing, issuing a Draft Environmental Impact Statement (DEIS) for public comment, conducting a public hearing and accepting written comments on the DEIS, and adopting a Final Environmental Impact Statement (FEIS).

4. The Prevention of Significant Deterioration (PSD) air emissions procedure is established in Title 40 CFR Part 52. Federal rules require PSD review of new air pollution sources that meet certain criteria, which includes this Project. The Council is the PSD permitting authority for energy facilities greater than 350 MW sited in the state of Washington per Chapter 463-39 of the Washington Administrative Code (WAC). The Council's permit contractor from the Washington Department of Ecology prepared a Draft PSD permit and a Draft NOC permit, which the Council issued for public comment. The Council has appended a Final PSD Permit and a Final NOC Permit as a part of the Site Certification Agreement it recommends that the Governor execute.
5. The Council is required to determine whether a proposed Project site is consistent with county or regional land use plans or zoning ordinances. RCW 80.50.090; WAC 463-14-030. The Council concludes that the proposed use of the site is consistent and in compliance with county land use plans and zoning laws.
6. The legislature has recognized that the selection of sites for new large energy facilities will have a significant impact upon the welfare of the population, the location and growth of industry, and the use of the natural resources of the state. It is the policy of the state of Washington to recognize the pressing need for increased energy facilities and to ensure through available and reasonable methods that the location and operation of such facilities will produce minimal adverse effects on the

environment, ecology of the land and its wildlife, and the ecology of state waters and their aquatic life. RCW 80.50.010.

7. The Council concludes that the certification of the Wallula Power Project, as described in Application 2001-01 with revisions and requirements of the settlement agreements would further the legislative intent to provide abundant energy at reasonable cost. At the same time, the mitigation measures and the conditions of the proposed Site Certification Agreement ensure that through available and reasonable methods, the construction and operation of the Wallula Project will produce minimal adverse effects to the environment, the ecology of the land and its wildlife, and the ecology of state waters and their aquatic life.

ORDER AND RECOMMENDATION

Based on the findings of fact, conclusions of law, and the record in this matter, the Council issues the following Order.

1. The Council recommends that the Governor of the state of Washington approve certification for the construction and operation of the Wallula Power Project located in Walla Walla County, Washington.
2. The Council orders that its recommendations as embodied in the findings of fact and conclusions of law together with the Site Certification Agreement appended hereto be reported and forwarded to the Governor of the state of Washington for consideration and action.
3. The Council reserves the authority to issue a supplemental order if the Council determines, based upon additional comments received regarding the PSD and NOC air permits, that a change to one or both of such permits is necessary.

SIGNATURES

DATED and effective at Olympia, Washington, this _____ day of October 2002.

/s/

James Oliver Luce, Chair

/s/

Richard Fryhling,
Department of Community, Trade and
Economic Development

/s/

Charles J. Carelli,
Department of Ecology

/s/

Jenene Fenton,
Department of Fish and Wildlife

/s/

Tony Ifie, P.E., Department of Natural
Resources

/s/

Jeffrey Showman,
Utilities and Transportation Commission

/s/

Pam Ray,
Walla Walla County

NOTICE TO PARTIES: This is a final order of the Council for purposes of RCW 34.05.470 (1). Administrative relief may be available through a petition for reconsideration, filed within ten days of the service of this order, pursuant to RCW 34.05.470 and filed with the Council Manager pursuant to WAC 463-30-335.