

BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of Application No. 2006-01:

ENERGY NORTHWEST

**PACIFIC MOUNTAIN ENERGY
CENTER**

COUNCIL ORDER NO. 828

**ORDER ON CONSISTENCY WITH
LOCAL AND REGIONAL LAND USE
PLANS OR ZONING ORDINANCES**

Nature of the Proceeding: This matter involves an application by Energy Northwest (“Applicant”), for certification to construct and operate the Pacific Mountain Energy Facility (“PMEC or Project”). PMECC is an Integrated Gasification Combined Cycle (IGCC) power generation facility that will use fuel flexible gasification technology and processes to produce approximately 650 megawatts of electrical power.

Background and Procedural Matters: On September 12, 2006 Energy Northwest, submitted application No. 2006-01 to Energy Facility Site Evaluation Council (“EFSEC or Council”) to construct and operate the PMECC. The proposed Project is located in the Port of Kalama, near Kalama, Washington. On October 20, 2006, the Council issued a *Notice of Public Informational Meeting, Land-Use Hearing, and Scoping Meeting Under the State Environmental Policy Act*. On November 6, 2006, at 6:30 p.m., pursuant to RCW 80.50.090 and Chapter 463-26 WAC, the Council convened a land-use hearing at the Kalama Community Center, in Kalama, Washington. The purpose of the meeting was to determine if the proposed PMECC site is consistent with local and regional land use plans or zoning ordinances. The hearing was reconvened on March 13, 2007 at 2:00 p.m. at the EFSEC offices in Olympia, Washington.

Hearing Procedure:

November 6, 2006 Land Use Hearing.

The following EFSEC members were present: Chair Jim Luce, Judy Wilson (Department of Natural Resources), Hedia Adelman (Department of Ecology), Jeff Tayer (Department of Fish & Wildlife), Richard Fryhling (Department of Community, Trade, and Economic Development), Tim Sweeney (Utilities and Transportation Commission), Justin Erickson (City of Kalama), and Vern

Eaton (Cowlitz County). Adam E. Torem, Administrative Law Judge of the Office of Administrative Hearings, presided over the hearing.

Participants:

Representing the Applicant: **Elisabeth Thomas**, Attorney at Law
Katy Chaney, URS Corporation

Counsel for the Environment: **Michael Tribble**, Assistant Attorney General

The following additional persons presented testimony to the Council orally at the November 6, 2006, hearing: Allan Wise, citizen; Phillip Massey, citizen; Brett Vandeneuvel, attorney for the Columbia River Keepers; Barbara Scardigli, citizen; and Darrel Whipple, Willapa Hills Audubon Society.

The Applicant submitted letters from the City of Kalama dated October 24, 2006 (14) and from the Cowlitz County Department of Building and Planning dated October 24, 2006 (Exhibit 2) as certificates of land use and zoning consistency. Questions were raised at the hearing whether the language in the letters held some reservation by the City and County regarding land use consistency.

The Columbia River Keepers noted ambiguity in the consistency letters and raised concern regarding how the project could be consistent when issues regarding wetlands, aquifer recharge areas, and flood management permits had not been addressed (Exhibits 5, 7 & 8). Several citizens raised concerns over potential environmental impacts from the project (Transcript). Written comments were also received from Allan and Marie Wise (Exhibits 3 & 4), Cheryl Purvis (Exhibit 6), and Daniel Serres (Exhibit 9).

Based on the questions raised at the November 6, 2006 hearing the Council issued a letter on November 16, 2006 seeking clarification from the City of Kalama and Cowlitz County regarding their letters pertaining to shoreline jurisdiction, floodplains, and critical areas.

March 13, 2007 Reconvened Land Use Hearing

The following EFSEC members were present: Chair Jim Luce, , Hedia Adelman (Department of Ecology), Jeff Tayer (Department of Fish & Wildlife), Richard Fryhling (Department of Community, Trade, and Economic Development), Tim Sweeney (Utilities and Transportation Commission), , Vern Eaton (Cowlitz County) and by phone Judy Wilson (Department of Natural Resources) and Justin Erickson (City of Kalama). Adam E. Torem, Administrative Law Judge of the Office of Administrative Hearings, presided over the hearing.

Participants:

Representing the Applicant: **Elisabeth Thomas**, Attorney at Law

Counsel for the Environment: **Michael Tribble**, Assistant Attorney General

The following additional persons presented testimony to the Council orally at the March 13, 2007 reconvened hearing: Brett Vandenheuvel, attorney for the Columbia River Keepers; Roger Cole and Lehman Holder, Sierra Club; and Ron Marshall representing Cowlitz County.

The applicant argued the letters from the City of Kalama (Exhibit 10) and more specifically, the letter from Cowlitz County (Exhibit 11) responding to the Council's November 16, 2007 questions confirmed consistency with local land use and zoning ordinances.

River Keepers submitted a letter dated November 20, 2006 (Exhibit 8) outlining its opposition to the Council's finding of consistency and argued that the City and County letters do not demonstrate consistency, and that prior to any consistency determination the Council must complete its analysis of compliance with critical areas ordinances, Shorelines Management Master Program, and other issues not addressed in either the City or County compliance letters. Also, submitting letters against a finding of consistency were Liam Holder (Exhibit 12) and Roger Cole (Exhibit 13).

The Council held a public workshop the morning of April 10, 2007 at its office in Olympia and reviewed precedents and past practices regarding land use determinations and heard again from counsel for PMEC and River Keepers. At its monthly meeting beginning at 1:30 pm of April 10, 2007 the council approved a motion that specifically finds the project site to be "...consistent and in compliance with..." existing land use plans and zoning ordinances. The Council determination of consistency does not include a review or determination of whether the project is in compliance with the Cowlitz County's critical area ordinance.

The Council recognizes that Cowlitz County is not a Growth Management Act (GMA) County and as such is not required to follow the processes and procedures that GMA Counties might otherwise need to follow. The Council also expressly recognizes that issues such as water rights, critical areas, aquifer recharge, wetlands, recreation, fish and wildlife conservation and others will be addressed in both the Council's State Environmental Policy Act (SEPA) review and the Council's adjudicative hearing. Because these processes have not been completed, and because they are outside the scope of the Council's land use decision, the information and argument presented by River Keeper and others is not sufficient to overcome the prima facie declarations of consistency by the City and County.

Governing Statute and Regulations:

RCW 80.50.090 provides that the Council shall conduct a public hearing to determine whether or not the proposed site is consistent and in compliance with local and regional land use plans or zoning ordinances.

Chapter 463-26 WAC generally provides that the hearing shall be adversarial in nature and shall be held to determine whether the proposed facility is consistent and in compliance with local and regional land use plans or zoning ordinances.

Chapter 463-28 WAC provides for a process for resolving land use inconsistencies; applications for state preemption of land use plans and zoning ordinances; and Council determination of whether the state should preempt local and regional land use plans or zoning ordinances when an application is not consistent with such plans or ordinances in effect on the date of application.

Council Action:

Based on the testimony provided, the submittals by the City of Kalama and Cowlitz County, and all other evidence produced at the hearing, or timely submitted to EFSEC offices, the Council, having fully considered all such matters, adopts the following Findings of Fact, Conclusions of Law, Determination, and Order:

A. Findings of Fact:

1. EFSEC is required by RCW 80.50.090(2), WAC 463-143-030 and WAC 463-26-110 to consider whether the project complies with local land use plans and zoning ordinances, but EFSEC has preemptive authority to determine those matters . See WAC 463-28-020.
2. The proposed PMEC location is within Cowlitz County.
3. The proposed natural gas line connecting the PMEC to the Deer Island Natural Gas Station lies in part within the City of Kalama.
4. The applicant provided certificates affirming compliance with land use plans and zoning ordinances for the City of Kalama (Exhibit 1 and 10) and Cowlitz County (Exhibit 2 and 11).
5. The Council conducted a land use hearings on the matter of consistency pursuant to RCW 80.50.090(2).

6. The City of Kalama and Cowlitz County responded to questions concerning the consistency certificates presented to the Council.
7. At the hearings the public had an opportunity to comment on this matter.

B. Conclusions of Law:

1. The applicant presented certificates affirming compliance with land use plans and zoning ordinances from local authorities. WAC 463-26-110.
2. The Council, having considered the testimony at the hearings and Exhibits submitted, was not persuaded by a contrary demonstration that the PMEC and connecting natural gas pipeline were inconsistent with local land use plans and zoning ordinances.
3. The project is consistent with local land use plans and zoning ordinances. WAC 463-26-110.
4. EFSEC has the ultimate authority to determine questions as to critical area wetland mitigation, noise, wildlife, seismicity and site restoration and to determine mitigation as necessary for any problems connected this project.

C. Determination and Order:

Based upon these Findings of Fact and Conclusions of Law, the Council determines that the Applicant's proposed site is consistent and in compliance with the regional land use plans or zoning ordinances of the City of Kalama and Cowlitz County.

Therefore, it is hereby **ORDERED** that the Pacific Mountain Energy Center in accordance with WAC 463-26-110 is consistent and in compliance with local land use plans and zoning ordinances.

DATED at Olympia, Washington, and effective on this 26th day of April, 2007.

WASHINGTON STATE
ENERGY FACILITY SITE EVALUATION COUNCIL

James O. Luce, Chair

Attachment 1: List of Land Use Exhibits

Name	Land Use Exhibit Number	Date
City of Kalama	1	October 24, 2006
Cowlitz County	2	October 24, 2006
Marie Wise	3	November 6, 2006
Allan and Marie Wise	4	November 6, 2006
Columbia Riverkeeper	5	November 6, 2006
Cheryl Purvis	6	November 7, 2006
Brett VandenHeuvel	7	November 20, 2006
Columbia Riverkeeper	8	November 20, 2006
Daniel Serres	9	November 20, 2006
City of Kalama	10	November 29, 2006
Cowlitz County	11	February 13, 2007
Lehman Holder	12	March 13, 2007
Roger Cole	13	March 13, 2007
Columbia Riverkeeper	14	March 13, 2007