

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

**In re Matter of
Application No. 99-1
of**

**POSTHEARING ORDER No.3
COUNCIL ORDER NO. 755**

SUMAS ENERGY 2, INC.

**ORDER ON SE2's MOTION TO STAY
COUNCIL ORDER NO. 754**

**SUMAS ENERGY 2 GENERATION
FACILITY**

On February 16, 2001, at a special Council meeting in Bellingham, Washington, the Energy Facility Site Evaluation Council (Council) announced its decision to recommend that the Governor of Washington deny Sumas Energy 2's application to site the Sumas Energy 2 Generation Facility, an electrical generation facility, in Sumas, Washington. The Council served Council Order No. 754 containing the Findings of Fact, Conclusions of Law, and Order Recommending Denial of Site Certification and Order Denying Motion to Reopen Record on all parties on February 20, 2001.

On February 18, 2001, the Council received by electronic mail from the Applicant a pleading entitled "SE2's Motion to Stay Council Order No. 754" which requested that the Council stay the effectiveness of Council Order No. 754 and postpone transmitting its recommendation to the Governor pending filing and resolution of any motions for reconsideration. The Applicant informed the Council that it intended to file a Motion for Reconsideration.

On February 20, 2001, the Council informed all parties to the proceeding that they could file responses to this motion by February 26, 2001. Whatcom County and Constance Hoag filed timely responses and opposed the Applicant's motion.

The Applicant has made two different requests to this Council, to stay the effectiveness of the Council's Order No. 754 and to postpone transmittal of the Council's order and recommendation to the Governor pending completion of the EFSEC process following any motions for reconsideration. The Council grants the second request, but does not find that a stay of the order is the proper designation.

In an application for a Site Certification Agreement, one of the Council's roles is to prepare a written report to the governor which includes a recommendation as to the disposition of the application and a draft certification agreement when the Council

recommends approval of the application. RCW 80.50.040(8); *see also*, RCW 80.50.100(1). Following recommendation from the Council, the Governor has the statutory duty under RCW 80.50.100 to take one of the following actions: approve the application and execute the draft certification agreement; or reject the application; or direct the council to reconsider certain aspects of the draft certification agreement. Therefore, under the statute, the Council's Order has no automatic effect other than triggering the ten day period for petitions for reconsideration. Therefore, the concept of "staying" the effectiveness of the Council's order does not have direct relevance to this proceeding. The Applicant is essentially requesting that the Council delay the transmittal of its recommendation to the Governor pending the receipt and resolution of any motions for reconsideration. This is a sensible procedural mechanism.

Since the Applicant has informed the Council that it intends to petition for reconsideration, which is its statutory prerogative, it is proper and sensible to transmit the Council's recommendation to the Governor after resolution of any motions for reconsideration. Under WAC 463-30-335, any party may petition for reconsideration of this order under RCW 34.05.470 within 10 days of service of the order.

DATED and effective at Olympia, Washington, the ____ day of February, 2001.

Nan Thomas, Administrative Law Judge