

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

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

**PREHEARING ORDER No. 4
COUNCIL ORDER NO. 747**

SUMAS ENERGY 2, INC.

**Order Describing Hearing Schedule
and Format, the Marking of Exhibits,
and Notice of Prehearing Conference
(July 17, 2000).**

**SUMAS ENERGY 2 GENERATION
FACILITY**

Nature of the Proceeding: This matter involves an application to the Washington State Energy Facility Site Evaluation Council (EFSEC or Council) for certification to construct and operate the Sumas Energy 2 Generation Facility, a natural gas-fired electrical generation facility located in Sumas, Washington.

Procedural Setting: The Council convened a prehearing conference on June 12, 2000, pursuant to due and proper notice. The hearing was held before Nan Thomas, the Administrative Law Judge with the Office of Administrative Hearings; Council Chair Deborah Ross; and Council members Charles Carelli (Department of Ecology), Ellen Haars (Department of Health), Gary Ray (Department of Transportation), Gayle Rothrock (Department of Natural Resources), Heather Ballash (Department of Community, Trade, and Economic Development), Daniel Jemelka (Department of Agriculture), Jenene Ratassepp (Department of Fish and Wildlife), and Bob Hilpert (Port of Bellingham). Richard Heath was also present as the Assistant Attorney General for the Council. Appearances of the parties were taken and made part of the record.

Hearing Schedule: It was noted that as of June 12, 2000, there are over 50 witnesses presently identified by the parties. The present schedule, set in Prehearing Order No. 3 (Council Order No. 746) sets the hearing dates from July 24 through July 28, 2000, in Whatcom County and from July 31 through August 3, 2000, in Olympia. The schedule set in that order will remain the current hearing schedule. However, the Council alerts the parties that, as necessary to stay on schedule and hear the scheduled witnesses, the hearing may extend into Saturday, July 29, 2000, in Whatcom County and, as needed, may extend into August 4 and 5, 2000, in Olympia.

Sumas Energy 2, Application No. 99-1
Prehearing Order No. 4

Hearing Format: In response to questions regarding the presentation of the direct testimony of the Applicant's witnesses, it was explained that it was the expectation of the Council that the Applicant's witnesses would be placed under oath, asked preliminary identification questions, asked if their prefiled testimony is true and correct, and whether there were any corrections to that written prefiled testimony. The prefiled testimony would then be offered as an exhibit and the witness would be presented for cross-examination. The Applicant confirmed that this would be the general procedure followed for the direct testimony; no other party objected to this format.

Several parties also asked for clarification of the hearing format. The Council expressed its wishes for the parties to decide on the format which is most effective for the presentation of the parties' cases and most convenient to the witnesses. The parties agreed that the most efficient format will be to proceed by issue, allowing for cross-examination of witnesses on each given topic. The Council will remain flexible to hear the views of any parties, should good reason exist for altering this format. The Applicant and the Counsel for the Environment submitted a preliminary list of issues and witness order for the hearings which identifies 16 issues; that list was distributed to all parties at the prehearing and, for the convenience of the parties who were present telephonically, is also appended to this order as Appendix A. The Council expresses its appreciation of the effort of the parties in formulating the preliminary issue list and proposed order of witnesses and, according to the terms of that document, recognizes that the parties have reserved the right to revise this list and submit additional witnesses, as well as the right to object to the designation of additional witnesses by other parties.

Subsequent to the prehearing conference, the Council met to consider a party's request that they be allowed to listen to the hearings telephonically from other locations while the hearings are proceeding in Whatcom County. The Council regrets that this request cannot be granted. Due to limited access of telephone connections, the Council has decided that equal access would be denied to some if such telephone connections were allowed for some persons and others necessarily excluded.

Exhibits: Allen Fiksdal, EFSEC manager, explained the method of marking exhibits which conforms to the instructions contained in the Hearing Guidelines which have been adopted for this hearing and distributed to all parties. If the parties have any further questions regarding exhibits, they may contact Irina Makarow at the EFSEC office. The Applicant's application will be admitted as an exhibit in the hearings as will the draft environmental impact statement.

Discovery: When parties were asked if there were any problems or concerns with the discovery process, no one raised any issues. It is, therefore, concluded that discovery is proceeding with the cooperation of the parties.

Next Prehearing Conference: The parties agreed to continue to communicate and meet informally among themselves for the purpose of further refining issues and for the purpose of exploring further stipulations and settlements. The next prehearing conference is scheduled for 9:00 a.m. on July 17, 2000, at the Attorney General's Conference Center, Rowe Six, Building One, 4224 6th Ave, Lacey, Washington. Parties may appear telephonically for the prehearing conference. At that conference, procedural matters such as the order of cross-examination, the parties' estimates of length of time needed for cross-examination of each witness, whether parties wish to present oral or written opening statements, whether parties wish to present closing statements orally or in writing, and any other procedural matters will be discussed. In addition, any stipulations or settlements may be presented to the Council through witnesses during the July 17, 2000, prehearing. The Council and parties agreed that closing arguments would be submitted in writing in post-hearing briefs on a schedule to be set at a later date. At the July 17, 2000, conference, the Council and parties will consider whether another prehearing conference will be needed on the morning of July 24, 2000, prior to the adjudicative hearings beginning in Whatcom County.

Notice to Participants: Unless modified, this prehearing order will control the course of the hearing. Any objection to the provisions of this order must be filed within ten days after the date of service of this order, pursuant to WAC 463-30-270(3). Unless modified, this prehearing conference order shall control further proceedings in this Docket.

DATED and effective at Olympia, Washington, the 21st day of June, 2000.

WASHINGTON STATE ENERGY FACILITY SITE EVALUATION COUNCIL

_____/s/_____
Nan Thomas, Administrative Law Judge