

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

In the Matter of
Application No. 99-1
of
SUMAS ENERGY 2, INC.

COUNCIL ORDER NO. 743

PREHEARING ORDER GRANTING,
GRANTING ON CONDITION, AND
DENYING PETITIONS FOR
INTERVENTION;

ADOPTING HEARING GUIDELINES

SUMAS ENERGY 2 GENERATION
FACILITY

PREHEARING ORDER NO. 1

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:

On January 4, 1999, Sumas Energy 2, Inc. (the Applicant) submitted Application No. 99-1 to the Council to construct and operate the Sumas Energy 2 Generation Facility. On January 3, 2000, the Applicant submitted a revised application, also designated Application No. 99-1. On February 8, 2000, the Council issued a Notice of Intent to Hold Adjudicative Proceeding, Notice for Filing Petitions for Intervention, and Notice of Intent to Hold Prehearing Conference. On March 15, 2000, the Council issued a Notice of Deadline for Filing Petitions for Intervention by April 17, 2000, and Notice of Prehearing Conference setting the first prehearing conference for April 24, 2000.

The Council convened the first prehearing conference in the adjudication regarding this matter on Monday, April 24, 2000, pursuant to due and proper notice to all interested persons. The Conference was held before Council Chair Deborah Ross, and Council members: Heather Ballash (Community, Trade & Economic Development), Charles Carelli (Department of Ecology), Jenene Ratassepp (Department of Fish & Wildlife), Daniel Jemelka (Department of Agriculture), Diane Offord (Military Department), Gayle Rothrock (Department of Natural Resources), Gary Ray (Department of Transportation), Dan McShane (Whatcom County), Mike Quinn (City of Sumas), Ellen Haars (Department of Health) and the administrative law judge, Nan Thomas.

Participants:

The following persons participated in the prehearing conference:

Applicant	Sumas Energy 2, Inc. , by Karen McGaffey and Charles Blumenfeld, attorneys, Perkins Coie, LLP, Seattle
Counsel for the Environment	Mary Barrett , Assistant Attorney General (AAG), Olympia
Council Member Agencies	Department of Fish and Wildlife by William Frymire, AAG, Olympia Department of Community Trade & Economic Development , by Suzanne Shaw, AAG, Olympia Washington Utilities and Transportation Commission by Jonathon Thompson, AAG, Olympia Department of Ecology by Joan Marchioro, AAG, Olympia
Petitioners for Intervention:	Whatcom County , by Karen Frakes City of Sumas , by David Davidson City of Abbotsford , by Richard Danziger Abbotsford Chamber of Commerce , by Christopher Smith Northwest Energy Coalition and Washington Environmental Council , by Roger Leed Bonneville Power Administration by Sonya Baskerville Constance Hoag , Lynden, Pro se Robert Loch , Custer, Pro se Michael Kaufman , Bellingham, Pro se Barbara Brenner , Bellingham, Pro se

Hearing Guidelines:

On April 24, 2000, the Council distributed draft hearing guidelines for the conduct of the hearing to assist parties in understanding the Council's expectations and to show how it will manage the adjudicative hearing. The parties were invited to submit comments or objections to the draft hearing guidelines; such comments were to be submitted to the Council by May 1, 2000. No objections or comments were received. The Council therefore adopts for this proceeding the Hearing Guidelines that are attached as Appendix A. The Council reserves the authority to vary from these guidelines when there is good cause to do so. The Council expects all parties and intervenors to be familiar with and comply with the guidelines.

Parties in EFSEC adjudicative proceedings:

Pursuant to WAC 463-30-060 and 463-30-050, parties to the adjudicative portion of an EFSEC proceeding include:

- The applicant; in this case Sumas Energy 2, Inc.;
- Each member agency as defined in RCW 80.50.030(3)¹; in this case, the Department of Fish and Wildlife, the Department of Community Trade & Economic Development, the Washington Utilities and Transportation Commission, and the Department of Ecology;
- The "counsel for the environment" as defined in RCW 80.50.020(12); in this case Assistant Attorney General Mary Barrett;
- Each person admitted to the adjudicative proceeding as an "intervenor", but such party is only a party for the purposes, and subject to any limitations and conditions, specified in the council order granting intervention.

This order will grant, deny, and grant with limitations and conditions the intervention of those persons identified above who have petitioned for intervention.

Laws on intervention in EFSEC adjudicative proceedings:

The laws controlling the intervention of parties in EFSEC adjudicative proceedings are contained in the Washington Administrative Procedures Act (APA), at RCW

¹ RCW 80.50.030(3) provides that the council shall consist of the directors, administrators or their designees of the following departments, agencies, commissions and committees: the departments of ecology; fish and wildlife, health, military, community, trade, and economic development, natural resources, agriculture, transportation, and the utilities and transportation commission. In addition, RCW 80.50.030 (4) provides that the county legislative authority of the county where an application for a proposed site is located shall appoint a voting member to the Council during the consideration of that site. RCW 80.50.030(5) provides that the city legislative authority of a city within whose corporate limits an energy plant is proposed to be located shall appoint a member or designee as a voting member of the Council while the Council considers the proposed site.

34.05.443, and in the Rules on Siting Energy Facilities at WAC 463-30-400 and 410.

RCW 34.05.443, the part of the APA which addresses intervention, provides:

(1) The presiding officer may grant a petition for intervention at any time, upon determining that the petitioner qualifies as an intervenor under any provision of law and that the intervention sought is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings.

(2) If a petitioner qualifies for intervention, the presiding officer may impose conditions upon the intervenor's participation in the proceedings, either at the time that intervention is granted or at any subsequent time. Conditions may include:

(a) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition; and

(b) Limiting the intervenor's use of discovery, cross-examination, and procedures so as to promote the orderly and prompt conduct of the proceedings; and

(c) Requiring two or more intervenors to combine their presentations of evidence and argument, cross-examination, discovery, and other participation in the proceedings.

(3) The presiding officer shall timely grant or deny each pending petition for intervention, specifying any conditions, and briefly stating the reasons for the order. The presiding officer may modify the order at any time, stating the reasons for the modification. The presiding officer shall promptly give notice of the decision granting, denying, or modifying intervention to the petitioner for intervention and to all parties.

The Washington Administrative Code's Rules on Siting Energy Facilities at WAC 463-30-400 and 410 provide:

Intervention. On timely application in writing to the council, intervention shall be allowed to any person upon whom a statute confers a right to intervene and, in the discretion of the council, to any person having an interest in the subject matter and whose ability to protect such interest may be otherwise impaired or impeded. All petitions to intervene shall be verified under oath by the petitioner, shall adequately identify the petitioner, and shall establish with particularity an interest in the subject matter and that the ability to protect such interest may be otherwise impaired or impeded. In exercising discretion with regard to intervention, the council shall consider whether intervention by the petitioner would unduly delay the proceeding or prejudice the rights of the existing parties. The council may establish a date after which petitions to intervene will not be considered

except for good cause shown. When such a date has been established, the council will assure that adequate public notice is given.

Participation by intervenor. In general, it is the policy of the council to allow any intervenor broad procedural latitude. To the extent that the council determines that numerous intervenors might unduly delay the proceedings or prejudice the rights of existing parties, intervenor status may be conditioned upon assent by the prospective intervenor and counsel for the environment to allow the counsel for the environment to act as lead counsel for the balance of the hearing, where the intervenor's interests more closely align with those of the counsel for the environment. Intervenor status may also be conditioned upon allowance of other parties to act as lead parties, where appropriate. The council reserves the right to prescribe other limitations and conditions, where appropriate.

In addition to persons participating and communicating to the Council as parties to the proceedings, the law at RCW 80.50.090(3) also provides that, prior to the Council making any recommendation to the governor on a site application, the Council will conduct a public hearing as an adjudicative proceeding under the APA, chapter 34.05. At that hearing, any person is entitled to be heard in support of, or in opposition to, the application for certification. WAC 80.50.090(3); WAC 463-14-030. Such public hearing is presently scheduled to be held in Whatcom County during the week of June 4, 2000.

Additionally, the Council is obligated, under state law, to determine whether or not the proposed use of the site is consistent and in compliance with county or regional land use plans or zoning ordinances at the time of application. WAC 463-14-030; RCW 80.50.090(1), (2). While public hearings were held in Whatcom County on the issue of land use law consistency, those hearings were continued to allow further input from local officials and for further public comment. Further public comment on land use consistency will be invited during the time that the Council is in Whatcom County conducting the adjudicative proceedings on this matter.

General principles for intervention in EFSEC adjudicative proceedings:

The Council is committed to providing an appropriate forum for all persons and entities to provide their views and expertise to the Council. Effective participation from all of the petitioners for intervention is encouraged. In individual cases, the most appropriate forum may be the formal adjudicative hearings with party status and responsibilities, participation as a witness for the Counsel for the Environment or another party to the hearings, participation in the public hearings provided for in WAC 463-14-030 and RCW 80.50.090, or in the land use law consistency and compliance hearings to be held in Whatcom County, or by submitting written comments for the Council's consideration.

“Alternative transmission lines”

The Applicant and some of the petitioners for intervention have requested that the Council enter an order on the admissibility of evidence at the proceedings with respect to the so-called “alternative transmission lines.” Since that decision affects the Council’s decision on intervention status and scope, the Council has decided to make that decision as a part of this order.

The Applicant has applied to construct a half-mile, 230 kilovolt transmission line to transmit the electricity generated at the facility to the U.S.-Canadian border. The Applicant has repeatedly represented to this Council that it does not propose to construct any other transmission lines through Whatcom County. Although such other “alternative transmission lines” are not a part of the application, before and during the scoping hearings on the Draft Environmental Impact Statement (DEIS), the Applicant raised the possibility that 115 KV lines through Whatcom County might be an alternative way to transmit the power generated from the plant. Hence, in response to this information from the Applicant, environmental impacts of these alternative lines were included in a general way in the DEIS. However, the Applicant now states in prefiled testimony, in statements of Applicant’s counsel at the prehearing conference, and in its objections to intervention, that there is no plan to build such lines and that testimony should not be introduced regarding them.

The Council rules that the alternative transmission lines are not an issue in this case since they are not included in the application nor are they addressed in the Applicant’s prefiled testimony. Therefore, no testimony relating to the “alternative transmission lines” will be admitted in this case. The Council relies upon the Applicant’s representations that the power would be transported directly to Canada by the proposed one-half mile line and not through transmission lines in other parts of Whatcom County. All interested persons should be aware that since the Council is not considering the alternative transmission lines, if the Council were to recommend approval of the project to the Governor, it would condition the authority to begin construction of the power plant on the Applicant’s securing all federal and Canadian agreements and permits to allow the transmission of the power through Canada as proposed in the Applicant’s application.²

If, during the adjudicative process, the Applicant desires to introduce evidence or amend its application to request the permitting of any alternative transmission line or lines, the Council will reconsider its orders on intervention and allow parties to seek intervention on the issue of the alternative transmission lines. The Applicant should be aware that such reconsideration of intervention for new parties, and

² Should it become apparent at a later date that transmission through Canada is infeasible or uneconomic, the applicant would be required to petition for an amendment to the Site Certification Agreement to allow a different transmission route to be permitted. Significant amendments to the agreements would not be allowed without opportunity for public involvement and review and approval by the Governor.

such broadening of the scope of intervention for existing parties, may cause a significant delay in the hearing process since such parties must be allowed adequate time for preparation and participation.

In light of this ruling, any intervenor whose only interest appears to be opposition to the alternative transmission lines will be denied intervention status and the intervenors who are interested in these lines among other issues will be required to limit their testimony to issues not relating to the “alternative transmission lines.”

Intervention of environmental organizations

In general, the Council believes that environmental organizations or other public interest groups should be allowed to intervene in EFSEC adjudicative proceedings if the following criteria are met: (1) the organization appears to the Council to have special expertise in issues relevant to the proceeding that would provide the Council with guidance that might not otherwise be available through the participation of other parties; and (2) the organization shows that it, or its members, have an interest in amenities that would be affected by the proposed facility.

The Council believes that it is appropriate in light of the increased complexity of the energy industry, the sometimes limited financial resources of State agencies, the expertise and the diversity of perspectives available through such participation, and the ability to derive a more complete record than might otherwise be achievable. This approach will serve the public by enhancing the Council’s ability to make sound decisions. The Council does not intend, in the future, to automatically allow all public interest organizations to have intervenor status; rather, decisions will be made based on the potential contributions of the petitioning entities, their past history of expertise on relevant subjects, on the apparent non-duplicative contributions they can offer, and on their showing of a specific interest in the subject matter in the particular hearings.

Issues relating to whether the proposed use of the site is consistent and in compliance with county or regional land use plans or zoning ordinances

As noted above, the Council intends to reconvene the hearings on whether the proposed construction and operation of the project complies with the existing Whatcom County comprehensive plan and any other local land use laws. Therefore, the Council has decided that testimony relating to the consistency of the proposed facility with the local land use laws should be introduced in the land use portion of this proceeding. As noted, the Council temporarily adjourned the hearing on land use issues without ruling on consistency, pending receipt of further information.

Therefore, the Council rules that any proposed intervenors who are interested in presenting testimony on comprehensive plan consistency will be denied

intervention status at the adjudicative stage of these proceedings, but are encouraged to contribute to the record in the context of a reconvened hearing on land use consistency which is presently scheduled to be conducted during the week of June 4, 2000 in Whatcom County.

Requirement for individuals to participate as intervenors on their own behalf

The Council has decided that any individual who has sought intervention who has shown that the project may have a direct and unique impact on his/her property should be allowed to intervene. Such direct and unique impacts could include impingement of view beyond that experienced by the general public, noise caused by the proximity of the power plant to their property, potential flooding issues that specifically threaten their property, or a direct threat to a well. Potential impacts which are shared in common by many other citizens may be addressed Counsel for the Environment, the local jurisdictions, or by individual testimony at the public hearings scheduled to be held in Whatcom County in early June, rather than by party intervention at the adjudicative proceedings. Any person allowed intervention because of such direct threat of impacts to their property will be allowed to present direct testimony and cross examine only as to those identified direct and unique impacts.

Authority of an elected official to a governing body
to act in a representative capacity

In EFSEC proceedings in which pleadings are filed and a hearing is held involving the taking of testimony on the record subject to review by the courts, the following persons may appear in a representative capacity: attorneys at law duly qualified and entitled to practice before the supreme court of the state of Washington, or before the highest court of any other state, or upon permission of the presiding officer, an officer or employee of a party or person seeking party status. WAC 463-30-100. The rules which the Council must abide by do not allow a person other than an attorney or an officer or employee of a party to serve in a representative capacity before the Council during the adjudicative portion of the process.

It would be inappropriate, therefore to grant intervenor status to an elected official of a local governmental body who wishes to act personally in a representative capacity for other citizens. Only the governmental body to which that official is elected is the entity entitled to claim representative status for other citizens, unless the proposed intervenor is otherwise qualified under WAC 463-30-100 to serve in a representative status.

In addition, in this case, the Whatcom County Council is elected to represent the concerns of the citizens of Whatcom County and is charged with the responsibility of protecting the health and safety of the public. In this case, the Whatcom County Council issued a resolution that the County petition EFSEC to intervene as

a party in these proceedings and they have done so. In this order, the County is granted intervenor status. The resolution of the Whatcom County Council provides that:

BE IT FURTHER RESOLVED that any position or comment from the full Council will be affirmed by a majority vote of all Council members and our legal counsel will be our sole spokesperson throughout the EFSEC process.

Identification of parties and rulings on specific petitions for intervention:

The Council has considered all of the petitions for intervention, the answer of the Applicant to the petitions for intervention, and the responsive briefs of all of the petitioners for party status. The Council decided that no oral argument was necessary on the intervention issues. In light of those materials and with consideration of the statutes and rules on intervention and the above described principles of intervention, the Council makes the following decisions regarding parties to the adjudicative proceedings:

Applicant, Sumas Energy 2, Inc.: under WAC 463-30-060 and RCW 80.50.020, the Applicant, who applies for a site certification, is a party as of right to the adjudicative proceedings.

Counsel for the Environment: the Counsel for the Environment is an assistant attorney general appointed by the Attorney General and represents the public and its interest in protecting the quality of the environment. Mary Barrett has been duly appointed by the Attorney General and is a party as of right pursuant to WAC 463-30-060.

Washington State agencies: including the Departments of Ecology; Fish and Wildlife, Community, Trade, and Economic Development, and the Utilities and Transportation Commission: State agencies which have representatives on EFSEC are entitled to party status in the Council's adjudicative proceedings as a matter of right. WAC 463-30-050. These four agencies have representation on EFSEC pursuant to RCW 80.50.030(3) and are therefore parties.

Whatcom County: the Council finds that the county in which the proposed plant is located has shown all of the legal criteria for intervention and is granted party status pursuant to WAC 463-30-060(4). Like all other parties, the County is prohibited from submitting evidence on the alternative transmission lines since that subject is beyond the scope of this adjudication.

City of Sumas: the Council finds that the city in which the proposed plant is located has shown all of the legal criteria for intervention and is granted party status pursuant to WAC 463-30-060(4).

City of Abbotsford and the Abbotsford Chamber of Commerce: in its brief in support of its petition for intervention, Abbotsford and the Chamber of Commerce have agreed to coordinate their presentations and be represented by a single lead counsel and a Washington attorney has submitted a notice of appearance on behalf of Abbotsford and its Chamber of Commerce. Representation is proper under WAC 463-30-100. In light of the failure of any party to object to the intervention of the City and the Chamber and in light of the above cited laws, the Council finds that intervention and consolidation is proper and the City of Abbotsford and the Chamber of Commerce are allowed party status as intervenors.

The Council notes that it has no jurisdiction over any permits or approvals of transmission lines or acceptance of wastewater outside of the borders of the United States. The environmental impacts of a *Canadian* decision to accept wastewater or to allow the construction and operation of power transmission lines within its own borders is beyond the jurisdiction of the Council and therefore beyond the scope of the adjudicative hearing. However, the availability of adequate wastewater treatment facilities and the transmission of power within the parameters of the application are relevant to the Council's decision whether to recommend approval of the project and hence within the scope of this adjudicative proceeding. Further, environmental and other impacts of the Washington-based facilities included in this application are relevant to the Council's decision through the on-going SEPA process, whether or not these impacts occur in Washington state or in Canada.

Bonneville Power Administration: the Council has determined that Bonneville does satisfy the criteria for intervention under WAC 463-30-400 and notes that the Applicant does not object to such intervention. Bonneville is granted intervention status to address the issue of impacts on electrical transmission due to the construction and operation of the proposed facility.

Northwest Energy Coalition and the Washington Environmental Council: The Council has concluded that these public interest groups have special expertise in issues relevant to these hearing that would provide the Council with guidance that might not otherwise be available through the participation of the other parties. That these organizations have shown that their members have an interest in amenities that would be affected by the construction of the power plant. These groups have demonstrated to the Council that their members have specific interests which are different from the general public and that the groups have a demonstrated expertise and broad perspective. They have offered to produce highly knowledgeable, well-credentialed witnesses to testify. The Council concludes that the consolidation of these two entities and the fact that the two entities represent over 3000 individual members and over 135 different organizations allows the Council to receive information and broad perspective with a minimum disruption or duplication in the hearing process. The Council will require these public interest intervenors to coordinate proposed testimony and

cross-examination with other parties with parallel interest to avoid unnecessary duplication during the hearings.

Michael Kaufman: the Council is interested in hearing from Mr. Kaufman on the subject of the proposed project's compliance with the Whatcom County Comprehensive Plan of which he appears to have special knowledge. Mr. Kaufman has not shown an interest different from the general public in the subject matter or how lack of party status would impair such an interest and therefore intervention would be inappropriate in the adjudicative part of the proceeding. However, the Council encourages Mr. Kaufman to participate in the upcoming land use consistency hearings to assist the Council in determining whether the proposed facility is consistent and in compliance with county or regional land use plans.

Robert Loch: while the DEIS did consider the so-called "alternative transmission lines", and therefore confusion on this subject was understandable, the Applicant has not applied to build them nor has it presented evidence in its prefiled testimony about such lines. Hence, as explained above, these lines will not be considered. A site certification agreement, if any, issued pursuant to this application would include only the transmission lines directly to Canada described in the application. Therefore, since the alternative transmission lines appear to be Mr. Loch's only direct interest in these proceedings, he is denied intervenor status. As noted above, if the transmission lines become an issue in the proceeding, then Mr. Loch's petition to intervene will be reconsidered. Mr. Loch is encouraged to participate at the public hearings in Whatcom County if he has other issues he would like to address to the Council.

Barbara Brenner: The Council has determined that Whatcom County Council member Brenner has not demonstrated an interest in the potential detrimental impacts of the project different from that shared by the general public that would qualify her as an intervenor in her personal capacity. As explained above, it would be contrary to the agency rules to allow her to appear in a representative capacity. Her acting in a representative status is prohibited by WAC 463-30-100. While she is an elected official, she is a part of the Whatcom County Council which has intervened and which has specifically stated that its only representation is through their attorney of record and not through individual council members. Therefore, Councilmember Brenner is denied intervenor status. However, the Council encourages Councilmember Brenner to participate either as a witness for another party such as the Counsel for the Environment or as a witness at the public hearings to be held in Whatcom County during the week of June 4, 2000, or at the land use consistency hearings.

The Council appreciates Ms. Brenner's efforts to educate citizens of Whatcom county concerning this application and how they can effectively participate in the EFSEC process.

Constance Hoag: County Councilmember Hoag seeks intervention both as a citizen whose personal legal interests could be adversely affected by the proposed project and as a representative of other citizens based on her elected status to the Whatcom County Council. She is granted intervenor status in her personal capacity but denied it in her representative capacity.

As explained above, representative status is prohibited by rule, WAC 463-30-100, and the Whatcom County Council is represented and a party to this proceeding. However, in her personal capacity, she has shown that she does have an interest in the subject matter which is different than that of the public at large and which is specific to her property. She contends that her residential property will be specifically and directly adversely affected in a number of ways by the building of the power plant which is within sight of her home.

The Council has identified three areas in which she should be allowed to participate as a party intervenor. First, the impact on her property by the change in her view insofar as it affects her direct views from her property is within the scope of her intervention; however, the generalized impact of air pollution or haze is not a direct impact to her which is different from that shared by the general public. The latter issue is more adequately addressed by other parties, such as the Whatcom County Council, the Counsel for the Environment or a State agency. Secondly, the increased noise levels that may affect her enjoyment of her home is also within her scope of intervention. Thirdly, the potential negative effects on her residential well is also within the scope of her intervention. Ms. Hoag is granted intervenor status, to address in testimony and to cross-examine other witnesses, on the subjects of her view from her home, the increased noise levels at her home, and the potential impact on her well water.

The Council denies Ms. Hoag's participation as a formally intervening party with respect to the other issues she raises. However, the Council notes that there are several avenues available to her and other members of the public to raise these issues before the Council. These include the possibility that another party could call her as a witness; the opportunity to address such issues at the public hearings in Whatcom County; and the opportunity to participate in the reconvened land use consistency hearings. Finally, as with Councilmember Brenner, the Council is appreciative of Councilmember Hoag's efforts to educate and inform the citizenry of Whatcom County concerning the proposed facility.

The Council considered the Applicant's suggestion that Ms. Hoag is prohibited from participating in these proceedings because she was a former member of EFSEC. The Council decided that because Ms. Hoag was not involved in any substantive or procedural decisions regarding this proceeding, and left the Council because of a potential conflict of interest due to her personal impact from the development, it would be inappropriate to prohibit her involvement.

A revised service list is attached to this order as Appendix B.

Issue Identification:

The Council has requested that an issue list be developed to clarify what would be adjudicated. The Applicant has submitted a preliminary list which was distributed to everyone at the prehearing conference on April 24, 2000. That list is also attached to this order as Appendix C. The parties were encouraged to meet and come to agreement on an issues list prior to the next prehearing conference scheduled for May 15, 2000. The Counsel for the Environment agreed to coordinate the effort to develop the issues list. All intervening parties were advised to communicate with Ms. Barrett regarding the issues which they would like to see addressed in the adjudicative proceeding. This matter will be discussed at that next prehearing conference and hopefully finalized.

Stipulations:

The Applicant informed the Council that it had been meeting with other parties for months on the subject of stipulations and that some stipulations would hopefully be reached soon. The date of May 12, 2000 was set for the filing of any stipulations which are to be offered at the next prehearing conference on May 15, 2000. The meeting on May 15, 2000 will include the taking of testimony on any stipulations which have been reached. As in past practice, the Council will consider approving stipulations between two or more parties as to agreed upon facts or minimum levels or measures for mitigation, provided the stipulating parties provide substantial evidence supporting the stipulation. Approved stipulations are binding only upon stipulating parties.

Prefiled Testimony:

All parties and intervenors were informed that all direct testimony in the hearings will be prefiled. The Council will decide at a later time whether or not rebuttal testimony will be prefiled. The Applicant was given until May 3, 2000 to submit its supplemental prefiled direct testimony. The other parties' and intervenors' direct prefiled testimony is due by May 25, 2000.

Discovery:

The parties agreed to conduct informal discovery. The Council will hear progress reports on the status of discovery at its prehearing conference on May 15.

Scheduling:

The Council set a schedule for this proceeding to include two more prehearing conferences to take place on May 15, 2000 and June 7, 2000. May 2, 2000 was set as the deadline for comments on the draft EIS. May 3, 2000 was set for the

submission of supplemental prefiled direct testimony from the Applicant. May 4, 2000 was the deadline for briefs from the petitioners for intervention on their right to intervene. The Council committed to having its order on intervention out by May 10, 2000. May 12, 2000 was set as the date for submission of any stipulations for anyone who wanted to be heard on stipulations at the prehearing conference on May 15th. During the conference on May 15, 2000, witnesses may appear before the Council to testify on the stipulations which have been reached. At the prehearing conference on the 15th of May, 2000, all of the intervenors and other parties should be prepared to designate their witnesses. By May 25, 2000, the intervenors shall file their direct prefiled testimony. Hearings are to be conducted in Whatcom County on June 8, June 9, and June 10, 2000 and to be reconvened in Olympia as needed on June 12, 13, and 14, 2000. The locations will be announced at a later date. Hearing briefs are scheduled to be filed by July 17, 2000. The Council currently anticipates holding public witness hearings on the evenings of June 8 and June 9, in Whatcom County. Exact dates, times and places will be announced at a later date.

Next scheduled prehearing conference:

The next prehearing conference will be held at 1:00 p.m. on May 15, 2000 at the Attorney General's Conference Room at Washington Building, Room 209, 1019 Pacific Avenue, Tacoma, Washington. Items to be discussed will include progress on stipulation discussions reached, the issues list, any discovery issues, any request for changes or refinements to the hearing schedule. Further, there will be an opportunity for evidentiary hearings on any stipulations that were submitted for Council's approval by the May 12 deadline.

Notice to parties:

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

DATED at Olympia, Washington and effective this 10th day of May, 2000.

WASHINGTON STATE ENERGY FACILITY SITE EVALUATION COUNCIL

By

/s/
Nan Thomas

Administrative Law Judge