

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

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

COUNCIL ORDER NO. 744

SUMAS ENERGY 2, INC.

ORDER ON STIPULATIONS

**SUMAS ENERGY 2 GENERATION
FACILITY**

PREHEARING ORDER No. 2

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 hearing on stipulations on May 15, 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), Jenene Ratassepp (Department of Fish and Wildlife), C. Robert Wallis (Washington Utilities and Transportation Commission), and Bob Hilpert (Port of Bellingham).

One of the purposes of the conference was for the Council to hear testimony and argument on any stipulations and settlements between the parties to the adjudication in this matter filed on or before May 12, 2000. The Council received two stipulations captioned: "Partial Settlement Agreement Between Washington Utilities and Transportation Commission and Sumas Energy 2 Concerning Natural Gas Pipeline Issues" (signed May 10 and 11, 2000 and filed May 12, 2000 and marked as Exhibit 1) and "Settlement Agreement Between Washington Department of Fish & Wildlife and Sumas Energy 2" (signed and filed May 12, 2000 and marked as Exhibit 3).

This order sets forth the Council's decision regarding these stipulations.

Discussion and Decision:

The Council appreciates the efforts undertaken by the stipulating parties to narrow and frame the issues before it in this adjudicative proceeding.

In an EFSEC adjudicative proceeding, any stipulation or settlement must be stated on the record or submitted in writing and is subject to approval by the Council. WAC 463-30-250(2). The Council's approval of a stipulation or settlement means that the Council accepts it as binding between the stipulating and settling parties and as setting an appropriate minimum standard if the project is approved. No stipulation or settlement binds the Council either to approve or deny the project.

Further, no stipulation or settlement is binding on parties other than the stipulating and settling parties. Non-stipulating/settling parties may present relevant evidence during the adjudicative proceeding to support a different standard.

The Council has considered the text of the settlements and the testimony presented at the hearing. The Council notes that the settling parties all acknowledged that the agreements offered did not purport to override the Council's jurisdiction in any way nor was it the intent of any of those parties to do so. If the project is approved, the Council accepts the stipulations and settlements contained in Exhibits 1 and 3, subject to the following conditions:

1. The Council is not foreclosed from adopting requirements more stringent than stated in the settlement agreements; and
2. Approval of these settlement agreements does not constitute any ceding of the Council's jurisdiction to other agencies. The Council is not foreclosed from determining that it has jurisdiction to monitor and enforce the terms of the stipulations. The Council may work with the stipulating agencies to determine plans and appropriate responsibilities for effective monitoring and enforcement of all stipulation requirements associated with construction and operation of the project.

The Council notes that each of the two stipulations lacks the specificity that will ultimately be necessary to define the conduct needed to assure compliance. The Council reserves the right to require increased specificity regarding any aspect of these settlements from the settling parties, particularly with respect to plans for monitoring, reporting, and enforcement. The Council may require this information at any time throughout, and after, this proceeding.

The Council also reserves the right to determine specific standards and detailed plans for monitoring and enforcement without submissions from the stipulating parties, if it deems doing so to be a significant element in its resolution of the issues in the proceeding.

DATED and effective at Olympia, Washington, the 17 day of May, 2000.

_____/s/_____
Nan Thomas, Administrative Law Judge

Notice to Participants: Unless modified, this prehearing order will control the course of the hearing. Objections to this order may be stated only by filing them in writing with the Council within ten days after the date of this order.