

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

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

**PREHEARING ORDER No. 5
COUNCIL ORDER NO. 748**

SUMAS ENERGY 2, INC.

**Order on Hearing Guidelines,
Format, and Procedure**

**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 pre-hearing conference on July 17, 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) and Dan McShane (Whatcom County). 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 Guidelines: The Council announced that any exhibits being brought before the Council during the hearings be submitted with 25 copies, rather than the 15 copies required by the Hearing Guidelines. No objections were offered and the Hearing Guidelines were modified to reflect this change.

Hearing Schedule: All parties were provided with a copy of the schedule of hearings to commence on Monday, July 24, 2000 at 9:00 a.m. at the Best Western Heritage Inn Conference Room, 151 E. McLeod in Bellingham, Washington. It is presently anticipated that a brief prehearing conference will be held on that day prior to the commencement of the adjudicative hearing. A copy of the schedule for hearings is attached to this order as Appendix A.

Parties were reminded that land use hearings required under WAC 463-26-050 and WAC 463-26-090 will be reconvened during the public meetings scheduled for July 25 and 27, 2000, to allow the public and other interested parties to submit additional evidence regarding the project's consistency and compliance with county or regional land use plans or zoning ordinances. The land use hearings commenced earlier, but were continued for the receipt of further evidence. The testimony that has already been received in the record at the previous hearings will not need to be repeated, but parties may submit new information.

Hearing Format and Procedure: The Applicant and the Counsel for the Environment submitted a revised preliminary Issue and Witness Order list which was distributed to all parties at the prehearing. For the convenience of the parties who were present telephonically, it is also appended to this order as Appendix B. Parties agreed to discuss any conflicts that their witnesses might have so that the order of witnesses can be adjusted as necessary. The Council expresses its appreciation of the effort of the parties.

The Council recognizes that the parties have reserved the right to object to cross-examination that is "friendly" or outside the scope of a party's intervention. In response to a question from a party, all parties were reminded that cross-examination must be within the scope of the intervention of the party conducting the cross-examination.

Parties were reminded that it is imperative that time in Whatcom County be used efficiently and toward that goal, all parties agreed to have scheduled witnesses available promptly, and to have subsequently scheduled witnesses available ahead of time to the extent possible in case the testimony proceeds more quickly than has been estimated.

All parties agreed that the portion of the hearing on the issue regarding noise generated from the project would be heard in Whatcom County. It is presently anticipated, but subject to revision, that the portion of the hearing to be held in Whatcom County will involve issues regarding the following subject matters: description of the project, water supply/quantity, wetlands, flood impacts, view/visibility/property values, noise, and air quality. It is anticipated that the portion of the hearing to be held in Olympia will involve issues regarding the following subject matters: pipeline, fire safety, transmission lines and constraints, greenhouse gases, energy policy, wastewater, water quality/stormwater, and decommissioning. While the Council prefers that the general structure of the hearings proceed by issue, this format may need to be abandoned occasionally in the interest of efficient use of time and resources. In addition, the department of Ecology requested that time be set aside for a hearing on a possible stipulation between the applicant and the department on the morning of Wednesday, July 26.

Following a discussion, and difference of opinions, on whether opening statements are useful and should be allowed, the Council held that any party who wishes to make an opening statement will be allowed to do so with a maximum time limit of five minutes per party, which will be strictly adhered to.

Closing arguments will be submitted in writing in post-hearing briefs on a schedule to be set at a later date pursuant to Pre-hearing Order No. 4, Council Order No. 747.

Danielle Dixon requested permission to represent the Northwest Energy Coalition and the Washington Environmental Council during the first day of hearings since their attorney was unavailable on that day. Pursuant to WAC 463-30-100(1)(c), the Council granted that request and will allow Ms. Dixon to represent those parties.

Pursuant to the Council's Policy Statement 101, adopted February 16, 1999, the Council anticipates that, subject to objections of any party at the time they are offered, both the Draft Environmental Impact Statement (DEIS) and the comments received regarding the DEIS will be made a part of the record of this proceeding.

In response to inquiry regarding surrebuttal evidence, the Council explained that the taking of surrebuttal will be allowed only as necessary. It is anticipated that on the last day of hearings, parties will be allowed to make an offer of proof indicating what would be presented as surrebuttal evidence. Surrebuttal will be limited to new matters addressed in the applicant's rebuttal testimony. The Council will then decide if a surrebuttal hearing will be necessary, and it will be scheduled at a future date if needed.

Exhibits: EFSEC staff provided a Preliminary Exhibit List complete through July 14, 2000. If the parties have any questions regarding exhibits, they may contact Irina Makarow at the EFSEC office.

Any exhibits which have not been provided to the Council prior to the commencement of the hearings should be given to Council staff two days before it is anticipated that they will be offered into evidence at the hearing. If necessary, parties may provide exhibits one day before the hearing. Upon a showing of good cause, the Council may accept exhibits on the day that they will be offered at the hearing. Parties are strongly encouraged to comply with this procedure as the Council members will then have an opportunity to read exhibits prior to their introduction into evidence and time will be more efficiently used during the hearings.

Discovery: Constance Hoag indicated that she had submitted discovery requests on June 9, 2000 which were promptly, but, she believes, inadequately answered. Ms. Hoag supplied the undersigned with a copy of a letter which she has sent to the Applicant's attorney, Karen McGaffey, requesting further information regarding previously requested information and asking for additional discovery. The parties

agreed to discuss their dispute about the discovery requests and seek a telephone conference with the undersigned if unable to resolve their conflict.

With the exception of the dispute between the Applicant and Ms. Hoag, discovery is proceeding with the cooperation of the parties.

Motions to Strike: The Applicant has filed a Motion to Strike Testimony regarding portions of the prefiled testimony of Constance Hoag and Peter Sagert which were filed by the City of Abbotsford and the Abbotsford Chamber of Commerce. Counsel for Abbotsford agreed to transmit an electronic version of its response to this motion to the EFSEC staff by noon on Wednesday, July 19, 2000 and to file it with the Council by the following day.

The Northwest Energy Coalition and the Washington Environmental Council have filed a motion to strike portions of the testimony of the Applicant's rebuttal witnesses, Charles Martin and Darrell Jones. The Applicant's counsel has agreed to file a response by noon on Friday, July 21, 2000.

Next Prehearing Conference: The Council and parties tentatively agreed that another prehearing conference may 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 _20 th day of July, 2000.

WASHINGTON STATE ENERGY FACILITY SITE EVALUATION COUNCIL

_____/s/_____
Nan Thomas, Administrative Law Judge