

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

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

**PREHEARING ORDER No. 6
COUNCIL ORDER NO. 749**

SUMAS ENERGY 2, INC.

Order on Stipulations

**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 hearing on stipulations 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.

The purpose of the hearing was for the Council to hear testimony and argument on two settlement agreements entitled (1) "Partial Stipulation Agreement Between City of Sumas and Sumas Energy 2" (marked and admitted as Exhibit 4), and (2) "Supplemental Settlement Agreement Between Washington Department of Fish & Wildlife and Sumas Energy 2 Regarding Wetlands" (marked and admitted as Exhibit 5).

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

Discussion and Decision:

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 or 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. To the extent that the stipulation and settlement are approved, as discussed below, the approvals are subject to the following conditions:

1. The Council is not foreclosed from adopting requirements more stringent than stated in the settlement agreements;
2. 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.

Settlement Agreement Between Washington Department of Fish & Wildlife and the Applicant

The Council conditionally approves Applicant's settlement agreement with Fish & Wildlife provided that evidence is presented that the improvements to the north and east boundary drainage ditch do not result in increased flows through this ditch at the risk of reducing water levels in adjacent or upstream wetland areas unless these impacts are also mitigated by this proposal. The Council reserves the right to withdraw this conditional acceptance if it is shown that there will be a negative impact to offsite wetlands.

Partial Stipulation Agreement Between City of Sumas and the Applicant

The Council approves the agreements numbered two through seven of this stipulation agreement subject to the above stated conditions. The Council is not, however, bound by the stipulating parties' interpretations of city or state law. The Council also notes that the agreement contained in agreement number three regarding "water supply" deals with water used for industrial use and not with water for human consumption.

The Council does not approve agreement number one in this stipulation regarding increasing exhaust stack height at this time. The Council wishes to hear evidence regarding the air quality modeling which has been performed based upon a higher stack height. The Council will agree to reconsider this stipulation when substantial evidence has been introduced regarding regional impacts to air quality, visibility and haze.

DATED and effective at Olympia, Washington, the _20th day of July, 2000.

WASHINGTON STATE ENERGY FACILITY SITE EVALUATION COUNCIL

_____/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.