

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

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

**PREHEARING ORDER No. 4  
In consideration of Second Revised  
Application**

**Second Revised Application  
of**

**COUNCIL ORDER NO. 763**

**SUMAS ENERGY 2, INC.**

**SUMAS ENERGY 2 GENERATION  
FACILITY**

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**Nature of the Proceeding**

This matter involves an application by Sumas Energy 2, Inc. (SE2 or Applicant) to the Washington State Energy Facility Site Evaluation Council (EFSEC or Council) for certification to construct and operate the Sumas Energy 2 Generation Facility (SE2GF), a 660-megawatt combustion turbine natural gas-fired electrical generation facility in Sumas, Washington.

**Procedural Setting**

Pursuant to due and proper notice, the Council conducted a prehearing conference on October 18, 2001. The hearing was held before, Council Chair James Luce, and Council members Charles Carelli (Department of Ecology), Ellen Haars (Department of Health), Tony Ifie (Department of Natural Resources), Gerald Richmond (City of Sumas), Jenene Fenton (Department of Fish and Wildlife), Linda Crerar (Department of Agriculture), Gary Ray (Department of Transportation), Maillian Uphaus (Military Department), Heather Ballash (Department of Community, Trade, and Economic Development), Dennis Moss (Utilities and Transportation Commission), and Dan McShane (Whatcom County). Also present was Nan Thomas, Senior Administrative Law Judge with the Office of Administrative Hearings, who has been retained by the Council to facilitate and conduct hearings. Appearances of the parties were taken and made part of the record.

## **Motions to Strike Prefiled Testimony**

During the hearing on September 24, 2001, the Applicant informed the Council that it believed that some of the witnesses identified by other parties intended to present evidence beyond the scope of the remaining adjudicative hearings. The Council requested that the Applicant submit, by October 9, 2001, to the Council and to other parties a list of witnesses that the Applicant believed would be presenting testimony outside of the scope of the adjudication, as described in Council Order No. 759, and the Applicant's explanation of why identified testimony exceeded the scope of the adjudication.

The Council received motions from the Applicant to strike portions of the prefiled testimony of: Counsel for the Environment's witnesses, Jim Lazar and Richard Gammon; the Northwest Energy Coalition/Washington Environmental Council's witness, Peter West; and the Province of British Columbia's witnesses, R. Allan Dakin and Yaroslav Shumuk.

On October 11, 2001, the Counsel for the Environment filed a motion to strike a portion of the prefiled testimony of the Applicant's witness, Richard Keefe. Northwest Energy Coalition and Washington Environmental Council also filed a motion on October 16, 2001 to strike portions of Mr. Keefe's testimony.

On October 12, 2001, the Province of British Columbia filed a motion to strike portions of the prefiled testimony of Applicant's witnesses: Sandra Petrovic; Eric Hansen; and Charles Martin.

Parties submitted written motions, written responses to the motions, and the Council heard oral argument regarding all of the motions to strike. After deliberations, the Council verbally announced its decisions on these motions so that parties could effectively continue to prepare for the upcoming hearings. Those decisions and brief rationale are included in the transcripts of the October 18, 2001 prehearing conference. For ease of reference in the future, the Council's decisions are also included in this Order as follows:

**The Applicant's motion to strike testimony of Jim Lazar is denied.** The change from a dual fuel plant to a solely gas-powered plant could have an impact on the natural gas supplies. This evidence also addressed changes in the power market and implications on this present market's reliance on natural gas. Changes in the power market have previously been allowed as an issue in the remaining hearings.

**The Applicant's motion to strike testimony of Jim Lazar regarding the build window (or the term of the permit) is granted.** There is nothing in the revisions to

the project concerning the length of time of the “build window” and the Council has already received extensive evidence on this issue in previous hearings. The testimony from Page 18, line 11 through page 20, line 12 is stricken.

**The Applicant’s motions to strike testimony of Richard Gammon and Peter West are denied.** The Applicant has offered a new greenhouse gas mitigation plan in its revised application. There is a need to understand the problem of global warming to decide if the mitigation offered is adequate and appropriate. Additionally, Dr. Gammon’s testimony is in response to Dr. Montgomery’s opinions that have been offered by the Applicant.

**The Applicant’s motion to strike testimony of R. Allan Dakin is denied.** The Applicant’s well monitoring program is new with the second revised application. This testimony is a response to the proposed monitoring program and is therefore within the scope of the hearings.

**The Applicant’s motion to strike testimony of Yaroslav Shumuk is denied.** Flooding continues to be an issue for these reconvened hearings. The second revised application envisions new modeling to determine the scope of the possible problem and the potential mitigation.

**The Council for the Environment’s motion to strike testimony of Richard Keefe is denied.** One of the implications of the greenhouse gas mitigation proposal is the effect it will have on the financing of the proposed project. In light of other party’s proposal to require “full offset” of greenhouse gas emissions, the Applicant may demonstrate the effect of mitigation on the viability of the project. The witnesses’s more general explanation of financing simply puts the greenhouse discussion in clearer context.

**The Province of British Columbia’s motion to strike testimony of Sonya Petrovic is denied.** The project proposes a different fuel use and consequently different air emissions; it also proposes a different offset mitigation strategy. The effect of the project on the health of residents will be a factor to be considered in the Council’s determination about this revised project. The Council has not held that present witnesses may not make any reference at all to facts previously established in the record of this case; such a strict holding would lead to confusion and serve no purpose.

**The Province of British Columbia’s motion to strike testimony of Eric Hansen is denied.** The Council is aware that the testimony in the prior hearings did not completely conform to the first revised application with regard to changes offered after the application was submitted, such as the change in expected emissions of NOx. While this is not a change which occurred subsequent to the issuance of the Council’s final order No. 754, it is helpful for the clarity of the record to have this information in the current record with other emissions changes that have been offered after the final

order. The fact that in preparing the new second revised application, the Applicant performed new modeling to reflect all of the changes to the project since the prior application also contributes to the clarity of the record. Similarly, the change in proposed exhaust stack height from 150 feet to 180 feet shows a change from the first application to the second application; the Council is aware that this was a topic of discussion in the previous hearings, but it is helpful to have current testimony on all of the changes that are reflected in the current modeling. Mr. Hansen's explanation of his conclusion that "SE2's emissions will have a very small effect on ozone episodes" is within the scope of the hearing on the second revised application. Mr. Hansen's explanation of his opinions regarding "health reference levels" in relation to the revised project is within the scope of the hearings given changes to the project. When read in its totality, the testimony addresses the question of the change in emissions under the new application.

**The Province of British Columbia's motion to strike testimony of Charles Martin is denied.** With regard to testimony regarding the Applicant's "offset" offer, the Council finds that the more recent offer does differ from the prior offset offer. Therefore, testimony on that subject is within the scope of the upcoming adjudication. With regard to testimony regarding the potential temporary shut-down of the plant on poor air quality days, and with regard to potential sale of power to B.C. Hydro, such evidence could have come in during the rebuttal stage and does concern implications of changes to the project. In light of the Council's directions to the Applicant to be as complete as possible in its direct prefiled so as to allow other parties a chance to respond, the Council declines to strike this testimony.

### **Status of Stipulations and Settlement Agreements**

The Applicant reported that its consultant and Whatcom County's consultant continue to meet regarding flooding issues, but that no settlement agreement is proposed at this time.

### **Adjudicative Hearings**

Adjudicative hearings will convene in Bellingham, Washington at the conference room of the Best Western Heritage Inn, 151 East McLeod Road, Bellingham, WA, 98226 on October 29, 2001 beginning at 9:00 a.m. and are projected to continue through November 2, 2001. If another prehearing conference is necessary, it will be held at the commencement of proceedings on October 29, 2001. Hearings will reconvene in Fife, Washington at the conference room of the at Best Western Executive Inn, 5700 Pacific Hwy E, Fife, WA 98424 on November 13, 2001, at 9:00 a.m. and are scheduled to continue through November 16, 2001.

## **Schedule for Witness Appearance**

Pursuant to a request by the Council, Ms. McGaffey, representing the Applicant, and Ms. Barrett, Counsel for the Environment, have coordinated with other parties to present the Council with a draft of a schedule showing the order and anticipated approximate times for witnesses for the adjudicative hearings. The Applicant provided Council and parties with that schedule for the hearings set to commence on October 29, 2001. That schedule is attached to this Order for the convenience of parties who appeared by telephone at the prehearing conference.

## **Status of Flood Modeling**

The Applicant and Whatcom County are working toward resolution of issues regarding new flood modeling. The Applicant reported that it has been determined that unsteady state modeling could be accomplished for the site. However, the Applicant reported that it does not currently anticipate that the flood modeling can be completed prior to the commencement of adjudicative hearings. The Applicant proposed that after the modeling was complete, it evaluate the results and evaluate the issue with the County.

If mitigation was appropriate, the Applicant would provide a detailed proposed mitigation plan to the Council with the anticipation that other interested parties would have an opportunity to present their positions to the Council on the adequacy of mitigation before any Council decision on the issue. David Grant, for Whatcom County, expressed the opinion that it would be preferable for the Council to have information on the flooding issue and any mitigation plan prior to making any final decision on site certification. The Council will defer any decision on this issue pending further report of the progress of the modeling.

**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 \_\_\_\_\_ day of October, 2001.

WASHINGTON STATE ENERGY FACILITY SITE EVALUATION COUNCIL

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Nan Thomas  
Senior Administrative Law Judge