

AGENDA
EFSEC STANDARDS DEVELOPMENT GROUP
February 28, 2002
11:00 a.m. – 4:00 p.m.
St. Placid's Priory, 500 College Street NE, Lacey, Washington
Phone 360/438-2595

1. Welcome and introductions
2. Review of last meeting's minutes
3. Chairman and council members' comments:
 - A. Whether or not to add "build window" (permit life), environmental justice and other topics?
 - B. Schedule for completing stakeholder process and work product development for rulemaking
4. Presentations
 - A. Energy policy—Liz Thomas
 - B. Air—Mike Lufkin
5. Next meeting and presentations

February 28, 2002

EFSEC Standards Development Group

Meeting Minutes

Lacey, Washington

Introductions and Background

Sister Billie introduced the meeting space. Stephany Watson summarized the minutes from the last meeting. Jim Luce thanked group members for their past contributions.

Mr. Luce asked whether “build window” or “life of the permit” should be discussed in this group. Since it is related to policy, Liz Thomas suggested that the group discuss the topic in today’s meeting.

Environmental Justice Discussion

Mr. Luce asked if the group would like to discuss environmental justice. He then asked if it was possible to write a standard for achieving environmental justice in siting energy facilities? Environmental justice is a term employed for the disproportionate siting of industrial facilities in low income or minority communities. A related concept is NIMBY-ism. Communities may have a responsibility for providing some of their own electricity supply. Environmental impact statements address disproportionate effects on minority communities. The concept can be captured in energy policy and socioeconomic analysis. Environmental justice is further complicated when siting energy facilities because siting decisions reflect a preference for existing infrastructure, especially gas and transmission lines. The group seemed to agree that writing a standard to address environmental justice may be difficult, but Brian Carpenter and others working on socioeconomic standards will think about it as they work on their portion of a proposed rule.

Work Completion Schedule

The group agreed upon June 30, 2002, as the deadline for completing draft proposed rules. Rusty Fallis will then work with the Council on a proposed rule. Mr. Luce hopes to transition to formal rulemaking by the second half of 2002. Chuck Lean agreed to chair the water quality sub-group, and hopes to set a meeting or conference call in the next few weeks.

Justin Long will confirm with Dave Bricklin, Bill Frymire and Chuck Blumenfeld that they will present at the next meeting on noise, fish and wildlife, and wetlands, respectively. (Please note that Mr. Frymire is unavailable on March 27, 2002, so Gary Sprague from Mr. Frymire’s office will be the actual presenter.)

Need and Policy for Siting Energy Facilities

Claire Jackson presented her paper summarizing federal and state laws regarding need and policy for siting energy facilities. Ken Canon explained the thinking behind Exhibit B(4)—Report to Jim Luce, Chair, Washington Energy Facility Site Evaluation Council

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eliminating a need standard in the Oregon statute. Earlier rules contained large build windows for nuclear and large coal plants. PURPA introduced new players into the energy market and EPAct opened a wholesale market. Today, investor-owned utilities are relying increasingly on the energy market, rather than building big resources. The concern of overbuilding is not really there anymore, and the demise of the concern led to eliminating the need standard in Oregon. Richard Lovely noted that PURPA also encouraged small water, gas, wind, and other fuel projects. Utilities are required to buy energy at the lowest “avoided” cost. PURPA’s policy was to move utilities to lower cost, smaller and more dispersed resources

Danielle Dixon observed that a presumption of need could discount important environmental and public interests. Removing the need standard from the Oregon statute was a political compromise. It was a trade for a CO2 emission standard.

Ms. Thomas asked whether EFSEC has the means to enforce a need analysis. At present, Bonneville and the Northwest Power Planning Council address the need for facilities. Is their responsibility sufficient? There was general discussion about whether or not current law that directs EFSEC to site plants to provide “abundant energy at reasonable cost” is a need standard, and whether this language gives EFSEC enough power to address cases of overbuilding.

Darrel Peebles read from the EFSEC statute that cited “the pressing need for increased energy facilities” (RCW 80.50.010), and Dan Seligman said that EFSEC did not have the legal authority to impose a need standard (by rule) in the face of this language. Mr. Seligman said the need for new power plants is assumed under the statute, and it is up to the state Legislature to change this standard.

For context, Mr. Lovely summarized the history of the Northwest’s hydro-thermal program. No major plants have been built since 1985. The Trojan nuclear plant has been de-commissioned. The Northwest’s inventory of power plants now has a 5% growth margin, when 15% used to be the industry standard for prudent planning. There is need for new plants now. Mr. Luce said that the group’s work is to help EFSEC adopt clear, quantitative standards that will allow plants to be built and sited expeditiously.

The group discussed whether EFSEC has tools (including staff and funding) to perform policy and need analyses. Clear, quantifiable standards are what developers want. If need becomes a criterion, should regional needs, or just those of Washington be analyzed?

Carol Jolly pointed out that from the late 1980s to early 1990s, plants were issued certificates that ultimately were not built because they were not needed. Developers made economic choices not to build based on demand for energy. If a permit has a reasonably long build window, projects can be shelved pending improved market conditions. In the resource acquisition program of the 1990s, the Northwest Power Planning Council endorsed shelving projects, in part, to prevent overbuilding and to allow quicker responses to changed market conditions.

There was some discussion about including an informational need standard, rather than a showing, in EFSEC applications. While this was a good idea for compromise purposes, the group ultimately believed it might lead to more confusion and litigation over the meaning of including need information, but no way or requirement for the Council to evaluate the information.

Independent power producers pose an interesting case for need. They have no elected boards and are not regulated by the state, yet they do have boards of directors, like any corporation, and are financially accountable to their shareholders and lenders. Obtaining financing, however, is a high hurdle, and banks will do their own version of a need analysis before lending on power projects. Bud Krogh suggested that those who draft proposed EFSEC needs standards may like to prepare different proposed standards for IPPs, regulated utilities, and locally or commission regulated PUDs. Ms. Dixon, Ms. Thomas, Mr. Peeples, Mr. Seligman, Mr. Lovely and Mark Anderson agreed to work on this issue and proposed language. Mr. Luce asked the group to specifically consider whether or not adding need standards improves environmental analysis, since the analysis is done anyway.

Clean Air Standards Discussion

Mike Lufkin presented a paper on air quality. The Federal Clean Air Act forms the basis of regulatory authority, and primary responsibility for enforcement lies with state and local authorities. Both EFSEC and the Washington Department of Ecology have adopted some federal standards. There is some duplication in SEPA and EFSEC proceedings. Greater efficiency may result from allowing duplicate issues to be evaluated when an applicant obtains a Prevention of Significant Deterioration (PSD) permit and from having the EFSEC process flesh out additional issues (such as unregulated air quality matters it wishes to address).

There was some discussion about whether the PSD (and other regulations that are part of the State Implementation Plan) are a ceiling or a floor for an EFSEC applicant. The group agreed that EFSEC should strive for known standards and should not duplicate the work of other agencies.

Ms. Thomas made a straw proposal as follows: "Compliance with applicable federal standards for regulated pollutants under the PSD program is compliance for EFSEC purposes." The group had some interest in the proposal, but suggested discussing it at the next meeting, when Mr. Bricklin will be present. He has experience with the PSD program and its overlap with the EFSEC process and would be valuable to further discussion. Many believed that a presumption, like the straw proposal, would still need to incorporate public cross-examination rights

Mr. Lufkin, Mr. Bricklin, and Allen Fiksdal will work together on the proposed air quality standards, with the objective of eliminating duplication in the PSD, EFSEC and SEPA process.

Build Window Discussion

Since the build window issue is before the Council, its members excused themselves from the remainder of the meeting. The same group who will work on the policy and need proposed rule will write a paper on the build window issue.

Next Meeting

The group's next meeting will take place on Wednesday, March 27, 2002, from 11 a.m. to 4 p.m. at St. Placid's Priory.

EFSEC Standards Development Group Meeting February 28, 2002 Attendance

Brian Carpenter	briancarpenter@rebound-bctc.org
Grant Bailey	gbailey@jsanet.com
Gary Sprague	spraggrs@dfw.wa.gov
Chuck Lean	lean@attbi.com
Mike Lufkin	michaell@atg.wa.gov
Mark Anderson	marka@ep.cted.wa.gov
Claire Jackson	clairej@prestongates.com
Liz Thomas	ethomas@prestongates.com
Richard Fryhling	dickf@cted.wa.gov
Allen Fiksdal	allenf@ep.cted.wa.gov
Charles Carelli	ccar461@ecy.wa.gov
Jenene Fenton	fentojmf@dfw.wa.gov
Toni Potter	antoniapotter@attbi.com
Danielle Dixon	danielle@nwenergy.org
Donna Ewing	suedonoly@aol.com
Karen McGaffey	mcgak@perkinscoie.com
Rick Lovely	rlovely@ghpud.org
Rusty Fallis	rustyf@atg.wa.gov
Tony Ifie	tonyifie@cs.com
Darrel Peeples	dpeeples@newportnorthwest.com
Dan Seligman	seligman@teleport.com
Ken Canon	kcanon@icnu.org
Sue Mauermann	smau461@ecy.wa.gov
Carol Jolly	carol.jolly@ofm.wa.gov
Jeffrey Showman	jshowman@wutc.wa.gov
Cindy Custe	cjcuster@bpa.gov
Phyllis Baas	pbaa461@ecy.wa.gov
Justin Long	justin443long@hotmail.com
Stephany Watson	swatson@sagelake.net
Bud Krogh	ekrogh@serv.net
Jim Luce	luceconsulting@attbi.com or jiml@ep.cted.wa.gov

Background Paper on Energy Policy
Prepared for the 2/28/02 EFSEC Standards Committee Meeting
by Liz Thomas and Claire Jackson¹

Sources of Law on Energy Policy

What laws establish energy policy?

Federal Laws

- ~~///~~ Federal Power Act (FPA)
- ~~///~~ Public Utility Holding Company Act of 1935 (PUHCA)
- ~~///~~ Public Utility Regulatory Policy Act (PURPA)
- ~~///~~ Energy Policy Act of 1992 (EPACT)
- ~~///~~ NW Electric Power Planning and Conservation Act of 1980
- ~~///~~ Bonneville Project Act

State Laws

?? EFSEC Statute: Chapter 80.50 RCW

RCW 80.50.010 Legislative finding -- Policy -- Intent.

The legislature finds that the present and predicted growth in energy demands in the state of Washington requires the development of a procedure for the selection and utilization of sites for energy facilities and the identification of a state position with respect to each proposed site. The legislature recognizes that the selection of sites will have a significant impact upon the welfare of the population, the location and growth of industry and the use of the natural resources of the state.

It is the policy of the state of Washington to recognize the pressing need for increased energy facilities, and to ensure through available and reasonable methods, that the location and operation of such facilities will produce minimal adverse effects on the environment, ecology of the land and its wildlife, and the ecology of state waters and their aquatic life.

¹ Attorneys at Preston Gates and Ellis, 701 Fifth Avenue, Suite 5000 Seattle, WA 98104-7078 Tel: (206) 623-7580 Fax: (206) 623-7022. This paper represents the views of the authors alone. We appreciate the input and assistance of a number of members of the EFSEC Standards Committee. We have attempted here only to address key issues, and we apologize for any omission of issues that others feel are important. Exhibit B(4)—Report to Jim Luce, Chair, Washington Energy Facility Site Evaluation Council
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It is the intent to seek courses of action that will balance the increasing demands for energy facility location and operation in conjunction with the broad interests of the public. Such action will be based on these premises:

(1) To assure Washington state citizens that, where applicable, operational safeguards are at least as stringent as the criteria established by the federal government and are technically sufficient for their welfare and protection.

(2) To preserve and protect the quality of the environment; to enhance the public's opportunity to enjoy the esthetic and recreational benefits of the air, water and land resources; to promote air cleanliness; and to pursue beneficial changes in the environment.

(3) To provide abundant energy at reasonable cost.

(4) To avoid costs of complete site restoration and demolition of improvements and infrastructure at unfinished nuclear energy sites, and to use unfinished nuclear energy facilities for public uses, including economic development, under the regulatory and management control of local governments and port districts.

(5) To avoid costly duplication in the siting process and ensure that decisions are made timely and without unnecessary delay.

?? CTED Statute: Chapter 43.21F RCW

RCW 43.21F.015. State policy.

It is the policy of the state of Washington that:

(1) The development and use of a diverse array of energy resources with emphasis on renewable energy resources shall be encouraged;

(2) The supply of energy shall be sufficient to insure the health and economic welfare of its citizens;

(3) The development and use of energy resources shall be consistent with the statutory environmental policies of the state;

(4) Energy conservation and elimination of wasteful and uneconomic uses of energy and materials shall be encouraged, and this conservation should include, but is not limited to, resource recovery and materials recycling;

(5) In energy emergency shortage situations, energy requirements to maintain the public health, safety, and welfare shall be given priority in the allocation of energy resources, and citizens and industry shall be assisted in adjusting to the limited availability of energy in order to minimize adverse impacts on their physical, social, and economic well being;

(6) State government shall provide a source of impartial and objective information in order that this energy policy may be enhanced; and

(7) The state energy strategy shall provide primary guidance for implementation of the state's energy policy.

?? Proposed Washington Legislation: SHB 2637 (proposing amendments to RCW 43.21F and a process to revise the state energy strategy)

{+ NEW SECTION. +} Sec. 1. (1) The legislature finds that passage of the energy policy act (P.L. 102-486) by congress in 1992 has had a profound impact on the electricity industry in the northwest. The electricity market in the state has transformed from transactions between utilities and seasonal exchanges among utilities in the northwest and the southwest to an active wholesale electricity market that involves independent marketers and developers of merchant power plants. Uncertainty about changes occurring in the market and the industry has discouraged investment in additional generation and transmission capacity and conservation. Recent experience with extreme price fluctuations in the wholesale markets continues to have a significant impact on the electric industry. (2) The legislature declares that state energy strategy should be revised to consider the implications of wholesale market volatility upon the electric industry. To the extent that actions can be undertaken to encourage investment in additional generation resources, new technologies, and conservation, they should be pursued to minimize the impacts of wholesale market volatility on consumers, utilities, and independent power producers. ...

?? Other Washington State Statues

RCW 19.29A.005 - Findings -- Intent.

(1) The legislature finds that:

(a) Electricity is a basic and fundamental need of all residents; and

(b) Currently Washington's consumer-owned and investor-owned utilities offer consumers a high degree of reliability and service quality while providing some of the lowest rates in the country.

(2) The legislature intends to:

(a) Preserve the benefits of consumer and environmental protection, system reliability, high service quality, and low-cost rates;

(b) Ensure that all retail electrical customers have the same level of rights and protections; and

(c) Require the adequate disclosure of the rights afforded to retail electric customers.

[1998 c 300 § 1.]

Chapter 19.29A RCW also contains recently-promulgated provisions for use of renewable energy.²

?? RCW TITLES 35/35A and 54

RCW Titles 35/35A and 54 contain various provisions vesting city councils (in the case of municipal utilities) and boards of commissioners (in the case of public utility districts) with authority and discretion to make determinations of policy with respect to their utilities.

Implementation of Energy Policy

Who is responsible for implementing energy policy?

Departments, Agencies, and Non-Governmental Organizations Implementing Federal Energy Policy

- ?? **United States Department of Energy** (responsible for implementing and enforcing corporate average fuel economy [CAFE] standards)
- ?? **Federal Energy Regulatory Commission** (all wholesale sales; interstate transmission of electricity and gas)³
- ?? **Securities and Exchange Commission** (administration of PUHCA)

² Washington legislation passed in May 2001 provides that as of January 1, 2002, all electric utilities except “small” utilities must offer their retail customers the option to purchase qualified alternative energy resources. Ch. 19, Laws 1991 (ESB 2247) (codified at RCW 19.29A.090). These programs must be both voluntary and self-supporting. Avista satisfies its “green power” requirement by purchasing a minimum of 1 MW from PacifiCorp’s State Line wind project. PSE purchases Green Tags from BEF, which obtains its green power from a number of regional sources. Pacific Power contracts with BPA for 3 MW from the Wyoming Wind Project. Several PUDs and co-ops also offer “green power” programs.

³ [from the FERC website] “The Commission approves rates for wholesale electric sales of electricity and transmission in interstate commerce for private utilities, power marketers, power pools, power exchanges and independent system operators. The Commission acts under the legal authority of the Federal Power Act ([FPA](#)) of 1935, the Public Utility Regulatory Policies Act ([PURPA](#)), and the Energy Policy Act (EPA). The Commission oversees the issuance of certain stock and debt securities, assumption of obligations and liabilities, and mergers. The Commission reviews the holding of officer and director positions between top officials in utilities and certain other firms they do business with. Finally, the Commission reviews rates set by the federal power marketing administrations, such as the Bonneville Power Administration, confers exempt wholesale generator status under the EPA, and certifies qualifying small power production and cogeneration facilities.”

- ?? **Commodities Future Trading Commission** (derivatives oversight role proposed in legislation recently introduced by Sen. Feinstein)
- ?? **Northwest Power Planning Council**
- ?? **Bonneville Power Administration**
- ?? **Non-governmental entities** involved in monitoring or other limited regulatory roles (such as alternate dispute resolution or establishment of reliability standards) with respect to wholesale power and electric transmission markets (e.g., regional transmission groups such as Northwest Regional Transmission Association and Western Regional Transmission Association; Regional Transmission Organizations such as the proposed RTO West, the California ISO and WestConnect RTO, L.L.C.; the North America Electric Reliability Council [NERC]; the Western Systems Coordinating Council [WSCC] [and its proposed successor, the Western Electricity Coordinating Council]; the Northwest Power Pool; Pacific Northwest Security Coordinator)

Agencies and Offices Implementing Washington State Energy Policy

- ?? **Office of the Governor** (through issuance of emergency orders, etc.)
- ?? **EFSEC** (as to thermal projects of 350MW or greater [if on barge, 100MW or greater], renewable generation facilities at their option, and certain linear facilities)
- ?? **Washington Utilities and Transportation Commission** (“WUTC”) (as to investor-owned electric utilities making sales at retail, and investor-owned gas utilities involved in intrastate commerce: WUTC has authority to regulate "rates, services, facilities, and practices" of energy suppliers [*see* RCW 80.01.04], and to order limited retail access to the electric markets; WUTC issues white papers and orders resulting from investigations into a broad range of energy policy matters)
- ?? Public utility district boards of commissioners for Washington public utility districts; city councils and utility boards for municipal utilities; and cooperative boards of directors or other governing bodies for cooperative utilities
- ?? **Department of Community, Trade and Economic Development** (CTED)

Who determines whether there is a need for new generating resources?

Assessments of need are performed by a variety of agencies and organizations for a variety of purposes. These assessments include, but are not limited to:

- ?? **BPA’s Pacific Northwest Loads and Resources Study (or “White Book”)** is a planning document that assesses loads and resources available to meet those loads
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throughout the Pacific Northwest. The White Book uses economic planning models to predict the loads that will be placed on electric utilities in the region. The study incorporates information on contract obligations and contract resources, combined with the resource capabilities obtained from public utility and investor-owned utility (IOU) customers. The 2000 White Book (the most recent available, based on 1999 data) presents a projection for the 10-year study horizon OY 2001 through 2010. BPA also presents periodic evaluations of demands and resources (e.g., studies triggered by California situation).

- ?? **The Northwest Power Planning Council (NWPPC)** prepares a number of documents examining the sufficiency of resources to meet anticipated needs, including the Northwest Conservation and Electric Power Plan (or “regional power plan”). In light of the energy shortfall projected by BPA, and at BPA’s request, the NWPPC prepared the Northwest Power Supply Adequacy/Reliability Study, Phase 1 Report (Paper Number 2000-4) (March 6, 2000). Among other things, this report discusses the emergence of the independent power producer (IPP); and notes that while energy from California and the Southwest is available during peak Northwest season (September through March), transmission capacity may be insufficient.
- ?? **CTED and the WUTC prepared a Joint Agency Study of the Electricity System** at the behest of the Washington state legislature. In light of the national trend toward deregulation and competition, the Study recognized the important role of IPPs. Some of the Study’s conclusions are reflected in the **SHB 2637**, referenced above. The Study addresses Washington utilities’ uncertainty regarding retail market structure, particularly in light of California’s and other states’ activities. The Study notes that recent restructuring may be perceived as restricting a utility’s “duty to serve,” and may discourage utilities from acquiring resources needed to serve load.
- ?? Investor-owned electric utilities prepare “least cost plans” evaluating their anticipated loads together with existing and potential resources; and submit these plans to the WUTC for approval. *See* WAC 480-107.
- ?? Applicable board of commissioners has authority to make determinations for each public utility district (although certain large generating projects may require voter approval before a public utility district can proceed).
- ?? Applicable city council or utilities board has authority to make determinations for each municipal utility.
- ?? Applicable governing board has authority to make determination for each cooperative utility.

How have state energy facility siting councils responded to the “need” question?

- ?? **Washington.** There is debate as to whether EFSEC's statute requires it to evaluate the need for a project. *See* Ch. 80.50 RCW. Some EFSEC-certified projects have stipulated that they will have commitments to sell a portion of their output prior to construction, while others have not.
- ?? **Oregon.** Prior to 1997, the Oregon Energy Facility Siting Council's (EFSC) governing statute contained a detailed "need" analysis. With HB 3283, the Oregon state legislature amended the statute to eliminate any need test. *See* 1997 Ore. Laws 428 (HB 3283). The statute now provides that "...the need for new generating facilities...is sufficiently addressed by reliance on competition in the market rather than by consideration of cost-effectiveness and shall not be a matter requiring determination by the Energy Facility Siting Council..." ORS 469.310. *See* ORS 469.501(1).

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APPENDIX: DEREGULATION

[from the WUTC website]

ELECTRICITY RESTRUCTURING IN WASHINGTON STATE AND ABROAD

Have you ever wondered what all the talk and various newspaper articles about electricity deregulation could mean to you? Dramatic changes underway may soon allow customers to choose their electricity supplier through direct access to an energy marketplace. As opportunities emerge for customers to make more choices about the energy services they buy, both suppliers of electricity and the customers who use it will have much to learn.

Regulatory actions at the federal level are propelling these changes. Some anticipate that one day all utilities may be required to offer a menu of energy services, each priced separately. This unbundling of electric products would result in separate prices for the various components such as the electric energy itself and delivery of that energy to your home. While the energy supply, and perhaps other services, may be available from any number of alternative suppliers, delivery of that energy is expected to continue to be provided by the current local utility using its existing system of wires.

What kind of electric services might you purchase in the future? Just as telecommunications deregulation brought us a sudden flurry of new products and services from telephone companies, such as call forwarding, voice messaging, and Caller ID, electricity deregulation is expected to bring about a whole new range of things never imagined. Energy firms may offer things such as time-of-day rates, combined billing for businesses with multiple locations, or electricity produced from environmentally friendly sources.

In Washington there are currently 63 retail utilities. Three of these utilities are investor-owned and they account for roughly a third of retail electricity sales. The Commission has jurisdiction over investor-owned utilities. In the electric industry the Commission regulates Puget Sound Energy, Avista Corp. (Formerly Washington Water Power Company), and Pacific Power and Light Company.

The remaining two-thirds of electricity sales are transacted by a number of consumer or government-owned utilities--municipals, county-wide public utility districts, coops, irrigation districts, the Bonneville Power Administration (BPA), and port districts. The Commission does not have jurisdiction over these non-private utility companies. If you are interested in information about these other public power agencies, contact [Northwest Public Power Association](#) (NWPPA) at 360-254-0109 or 503-289-9411

Today, Washington and the Northwest are home to the largest coordinated hydroelectric system in the country, and probably the world. More than a third of the country's total hydroelectric capacity is located in the Snake and Columbia River Basins. The power marketed by BPA, from federal facilities, accounts for more than half of all the electric

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generation in the region. In addition, BPA owns and operates about 80 percent of the bulk transmission serving the region.

At 4.1 cents per kilowatt hour, Washington is fortunate to have the second lowest average power rates in the country; just a bit higher than our neighbors of Idaho. If the average rate in Washington were equal to the national average rate of about 6.8 cents/kwh, Washington's statewide annual electricity expenditures would be nearly two and one-half billion dollars higher than what we pay today --about \$500 a person. With that example it should not come as a surprise that Washington views the claims that a nationally competitive open retail market for electricity will lower everyone's prices with some skepticism. As a low-cost state, we share many of the challenges and concerns faced by other low cost states -- but the Northwest also has BPA which is unique to the state.

PILOT PROGRAMS IN WASHINGTON

The Washington State Legislature has not passed bills mandating retail access, nor has the Washington Utilities and Transportation Commission established time lines for a phase-in period for implementing direct access for all customers. Regulated investor-owned electric utilities are encouraged to develop pilot programs that would enable all parties to gain experience and obtain practical operational information related to retail choice of alternate power supply providers. There are three such pilot programs currently being offered by Washington investor-owned utilities.

ELECTRICITY DEREGULATION IN OTHER STATES

The pace of deregulation has been fastest in states where electricity rates are the highest, but it remains to be seen how much relief ratepayers will actually get in most of the states where competition is scheduled to begin over the coming year. All ratepayers will pick up the deregulated utilities' stranded investments, but large industrial and commercial power users can expect to reap the bulk of the savings.

For more information regarding this issue, please see the Energy Information Administration's (EIA) [Status of State Electric Utility Deregulation Activity](#) at the EIA website.

Air Quality Regulation

I. Federal Clean Air Act (CAA) forms the foundation for air quality regulation.

- A. Central goal of the CAA is to “protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and productive capacity of the population.” 42 U.S.C. § 7401(b)(1).

II. Clean Air Act is a federal law but the states do much of the work to carry out the Act.

- A. CAA delegates to the states the primary responsibility for enforcing the NAAQS.
- B. Each state must promulgate a State Implementation Plan (SIP) for enforcing NAAQS.
- C. States are free to promulgate requirements that are more stringent than those required under the CAA.

III. EPA has approved of Washington’s CAA Implementation Plan (SIP) and thus delegated responsibility for compliance with CAA to the state.

- A. RCW 70.94 establishes the basic state structure for implementing the Federal Clean Air Act.
 - 1. The statute divides responsibility for CAA compliance between the Washington State Department of Ecology, Local Air Pollution Control Authorities, and several other agencies including the Energy Facility Site Evaluation Council.
 - 2. The primary components of the state implementation plan consist of state and local regulations that ensure compliance with requirements of the Federal Clean Air Act. Listed below are Ecology’s, EPA approved, air quality regulations.

Ecology’s Air Quality Regulations:

Chapter 173-400 WAC – General Regulations For Air Pollution Sources

Chapter 173-401 WAC – Operating Permits

Chapter 173-405 WAC – Kraft Pulping Mills

Chapter 173-406 WAC – Acid Rain Regulation

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Chapter 173-410 WAC – Sulfite Pulping Mills
Chapter 173-415 WAC – Primary Aluminum Plants
Chapter 173-420 WAC – Clean Air Act Conformity
Chapter 173-421 WAC - Motor Vehicle Emissions Control Systems
Chapter 173-422 WAC - Motor Vehicle Emission Inspection
Chapter 173-425 WAC - Outdoor Burning
Chapter 173-430 WAC - Agricultural Burning
Chapter 173-433 WAC - Solid Fuel Burning Devices
Chapter 173-434 WAC - Solid Waste Incineration Facilities
Chapter 173-435 WAC - Emergency Episode Plan
Chapter 173-460 WAC – New Sources of Toxic Air Pollution
Chapter 173-470 WAC - Ambient Air Quality Standards for Particulate Matter
Chapter 173-474 WAC – Ambient Air Quality Standards for Sulfur Oxides
Chapter 173-475 WAC - Ambient Air Quality Standards for Carbon Monoxide, Ozone, and Nitrogen Dioxide
Chapter 173-480 WAC – Ambient Air Quality Standards and Emission Limits for Radionuclides
Chapter 173-481 WAC – Ambient Air Quality and Environmental Standards for Fluorides
Chapter 173-490 WAC – Emission Standards and Controls for Sources Emitting Volatile Organic Compounds (VOC)
Chapter 173-491 WAC - Emission Standards and Controls for Sources Emitting Gasoline Vapors

IV. EFSEC Authority

- A. RCW 70.94.422(2) grants to the Energy Facility Site Evaluation Council the authority to issue permits, administer programs, and conduct enforcement consistent with the state implementation plan. Permits for energy facilities subject to chapter 80.50 RCW shall be issued by the energy facility site evaluation council. However, the permits become effective only if the governor approves an application for certification and executes a certification agreement under chapter 80.50 RCW. The council shall have all powers necessary to administer an operating permits program pertaining to such facilities, consistent with applicable air quality standards established by the department or local air pollution control authorities, or both, and to obtain the approval of the United States environmental protection agency. The council's powers include, but are not limited to, all of the enforcement powers provided in RCW 70.94.332, 70.94.425, 70.94.430, 70.94.431 (1) through (7), and 70.94.435 with respect to permit program sources required to obtain certification from the council under chapter 80.50 RCW. To

the extent not covered under RCW 80.50.071, the council may collect fees as granted to delegated local air authorities under RCW 70.94.152, 70.04.161 (14) and (15), 70.94.162, and 70.94.154(7) with respect to permit program sources required to obtain certification from the council under chapter 80.50 RCW. The council and the department shall each establish procedures that provide maximum coordination and avoid duplication between the two agencies in carrying out the requirements of this chapter. RCW 70.94.422(2).

- B. RCW 80.50.040(12) and 40 CFR Part 52 empowers EFSEC to issue permits for energy facilities in compliance with the applicable provisions of the federally approved state implementation plan (SIP) adopted in accordance with the CAA.
- C. By regulation (WAC 463-39-005), EFSEC has specifically adopted by reference Ecology's air quality regulations that are applicable to energy facilities. Relevant portions of the following Ecology air quality regulations have been adopted:

Chapter 173-400 WAC - Air Pollution Sources (includes emission standards and new source review requirements (PSD))

Chapter 173-401 WAC - Operating Permit Regulation

Chapter 173-406 WAC - Acid Rain Regulation

Chapter 173-460 WAC - Controls for New Sources of Toxic Pollutants

- D. WAC 463-39-115 specifically adopts federal standards of performance for new stationary sources set forth in Title 40, CFR part 60.

V. Questions/Discussion:

- ?? Is adoption by reference of Ecology's air regulations the appropriate manner/mechanism by which EFSEC should set out its air quality standards?
- ?? If so, has EFSEC adopted all of the appropriate regulations relevant to energy facility siting?
- ?? It is my understanding that in many instances PSD permitting and the EFSEC adjudication occur on parallel, but not integrated tracks. The result is a duplication of effort.

- ?? The purpose of establishing standards is to streamline the process, reduce duplication, but not sacrifice appropriate consideration and weighing of environmental concerns.
- ?? Thus far the discussion has focused on whether existing legal requirements, such as PSD permitting standards, should serve as the “floor” or the “ceiling” of EFSEC consideration.
- ?? An alternative approach could be to uncouple the PSD process from the EFSEC adjudication. Under this approach intervenors wishing to raise air quality issues expressly related to criteria pollutants, and/or PSD modeling would be required to do so in the PSD permitting process. These issues would be precluded from the EFSEC adjudication.
- ?? Air quality issues not related to criteria pollutants (e.g. unregulated pollutants), or that would not be properly raised in the PSD process could continue to be raised in the EFSEC adjudication. In addition, air quality issue related to the macro question of EFSEC’s balancing requirement under RCW 80.50.010 could continue to be raised.
- ?? If there were an attempt to uncouple the PSD process from the adjudication, there would need to be clarification of the PSD review process. As it stands now the timing and avenue of PSD review under EFSEC is not clear. Therefore, intervenors likely feel compelled to raise PSD issues during the EFSEC adjudication.