

**AGENDA**  
**WASHINGTON EFSEC STANDARDS DEVELOPMENT GROUP**  
**Thursday, April 25 2002**  
**9:00 a.m. – 2:00 p.m.**  
**St. John's Episcopal Church, 114 20<sup>th</sup> Avenue SE, Olympia, WA 98501**  
**Phone (360) 352-8527**

1. Welcome and introductions
2. Review of last meeting's minutes
3. Presentations
  - A. Socioeconomics: Proposed Rule for Standard – Brian Carpenter
  - B. Air: Proposed Rule for Standard – Mike Lufkin & Dave Bricklin
  - C. Water Quantity: Modified Strawman Proposal Draft – Chuck Lean & Mike Lufkin
4. Next meeting and organization of remaining work

# **April 25, 2002 Minutes**

## **EFSEC Standards Development Group**

### **Meeting Minutes**

#### **Olympia, WA**

##### **Introduction**

Bud Krogh welcomed meeting participants. Participants introduced themselves. It was decided that a summary of the March 27, 2002, meeting minutes was unnecessary since most in attendance also attended the March 27 meeting. Rusty Fallis submitted a correction to the March 27 minutes. A redlined, final version of the March 27 minutes will be sent out with this correction noted.

##### **Socio-economics: Proposed Rule for Standard**

Brian Carpenter summarized the draft proposed rule for a socio-economics standard, which he prepared and distributed to the group. The goal of the proposed rule is to mitigate adverse socio-economic impacts and promote positive project-related impacts on the local community. The first section (first page), is a general overview of the proposed rule. The second section (next four pages) is designed to be specific.

Mr. Carpenter explained that there are five areas of socio-economic impact considered in the proposed rule. These include impacts on (1) local population; (2) local housing supply and vacancy rate; (3) environmental justice; (4) local government services; and (5) local workforce and economy. Applicants should estimate the impacts of the proposed facility in each of these five areas. If the facility has a moderate or major impact, mitigation is required to reduce the impact to a minor level.

Allen Fiksdal asked Mr. Carpenter how he settled on the term “project-related” impacts. Mr. Carpenter said he initially considered “facility-related,” but wanted to include more than just the facility itself. He felt “facility-related” was a little too narrow a term and it might leave out something.

Mr. Krogh asked how socio-economics are looked at today by EFSEC. Mr. Fiksdal answered that socio-economics are viewed as environmental impacts. Further concerns are brought to the adjudicative process. He noted that in the past, socio-economic impacts have *not* been at the forefront of turbine projects. However, in the 1980s, there was a time where socio-economic impacts were of large concern. Specifically, these involved housing issues as people moved into an area where a coal plant was being built. Through the adjudicative process, local governments raised concerns on how to mitigate the socio-economic impacts.

Mr. Krogh asked if socio-economics were adequately dealt with today.

Mr. Fiksdal said that concerns surrounding socio-economic impacts are determined by the magnitude of the project. Mr. Carpenter added that location also plays a part in influencing concerns.

Mr. Fiksdal said Chairman Luce had commented that if some sort of socio-economics standard could be developed so that applicants and others know what was expected of them, this would be helpful.

Karen McGaffey asked if this type of standard is necessary. Specifically, how much is within EFSEC's authority? She said it appeared to her that a lot of this is economic and taxation policy. Ms. McGaffey said she wondered if EFSEC is stepping on local shoes if it starts focusing on matters like housing and tax money contributions to a community.

Danielle Dixon asked Mr. Carpenter what was meant by costs in the proposed rule. Did it mean monetary costs? Or are there broader cost meanings such as health related issues (cost to local hospital districts)? Mr. Carpenter said it meant specific quantifiable things such as money and children in school. He said he did not include health costs because he was not sure how one would quantify those costs.

Ms. McGaffey said she felt some things go beyond what EFSEC should do, so the task should be to delimit EFSEC in regard to socio-economics. Mr. Krogh agreed, but asked what exactly should be delimited.

Liz Thomas said she works with a lot of local counties and authorities and she feels imposing some type of consultation component requirement between the applicant and local authorities may be helpful. Otherwise, she said, discussion and arguments over competing jurisdiction could go on indefinitely. For example, in building a power plant the maintenance of city sewer district levels is decided by the Department of Ecology. The Department of Health also is involved in water and air issues. If EFSEC enters these issues, inconsistent results and questions about jurisdiction will result.

Mr. Krogh asked if part of the application could be to require a consultation component. Perhaps this could formalize the process of applicants complying with local governments, but not go after local government jurisdiction.

Mark Anderson asked if that is not effectively required at present. Mr. Fiksdal said he did not think so. The applicant knows it is best if he or she consults with local authorities, but there are no specific guidelines or requirements for consultation.

Richard Lovely commented that it is important to ask what the ultimate population change will be after a power plant is built. He said that an increase in socio-economic requirements based merely on an increase in population change during the first 18 months of construction is not the way to do it. After construction, population will return to a low level while high socio-economic requirements will continue to exist.

Mike Lufkin said he is going back and forth on this issue. He sees Mr. Lovely's point that what we have now allows for individuals to intervene if they see a socio-economic impact and wish to deal with it. However, Mr. Lufkin said he asks himself whether local counties and cities have all the information they need to assess socio-economic issues. Essentially, is this an EFSEC (state) issue or local community issue? He said he liked the consultation idea suggested by Ms. Thomas that could allow for other individual groups to become involved as intervenors.

Dan Seligman said he would feel better if people from the Association of Washington Counties were present at the meeting saying the current process is not working. He suggested the group consult with them before talking further about government services.

Ms. McGaffey commented that in the area of environmental justice, it is important to distinguish two things. One is a process issue. For example, EFSEC may need to be bilingual in order to reach the Hispanic community, which currently has little involvement with EFSEC. The second is a standards issue. This involves determining whether specific projects are environmentally just.

Sandi Swarhout said, as a representative of fire districts, she takes particular objection to EFSEC telling the fire districts to take specific shortfall payments. She said many ways are better than giving the districts money up front. The fire districts feel consultation is already taking place, but formally requiring it would be fine.

Mr. Krogh said Ms. McGaffey's suggestion to distinguish between the process and actual substantive standards is good. He said he'd like some people to think about developing a process. He said this is getting at the basic approach of EFSEC. The group must find out if there is a need to have some kind of process requirement placed on this. In such a process, proponents of power plants would be obligated to talk to people directly engaged in their construction and operation.

Mr. Krogh said he was not sensing a lot of support for quantifiable, substantive standards (regarding socio-economics) that EFSEC would adopt from this group.

Ms. Dixon said she was not sure she would agree with that. She said the purpose of this meeting process was to formalize these kinds of things that lack substantive standards. She felt the group would be leaving things open to the adjudicative process without substantive standards.

Mr. Krogh said he was questioning if there was a need for quantifiable substantive standards on socio-economics. Mr. Anderson added that if a detailed checklist of standards is developed, one is bound to leave some things off the list. It would be a constrictive setup; consultation is less restrictive he said. Mr. Krogh suggested the group defer Ms. Dixon's question until cities and counties are contacted. If a need for substantive standards is found when speaking with them, the group will move forward from that point.

Donna Ewing commented that locals need to be informed of the things they do not know about. Communities are sometimes under the impression they are doing the best they can do in regard to health issues, but they not.

Mr. Krogh asked for volunteers to help move this forward and contact the Association of Washington Counties. Mr. Carpenter, Mr. Seligman, and Ms. Swarhout volunteered. Ms. Dixon said she will help if she can find time. Ms. Swarhout said she would be gone May 6, 2002, through May 13, 2002, but she knows many city and county people and can help contact them. Justin Long can follow up with an e-mail invitation.

### **Air Quality: Proposed Rule for Standard**

Mr. Lufkin prefaced the discussion by stating that the draft rule and accompanying analysis of policy objectives was his work; Dave Bricklin did not get a chance to help.

Mr. Lufkin noted that the group had not yet had an in-depth policy discussion on air quality. For this reason, he took a number of approaches in thinking how to construct a policy objective and the options available for accomplishing this objective.

Mr. Lufkin said one possible policy objective could be that EFSEC has no authority to impose standards beyond state and federal law. Another objective could hold that EFSEC has unlimited authority. Mr. Lufkin said he assumed there is a middle ground where EFSEC has some authority, but where confines to this authority exist as well. If EFSEC possesses this authority, he said the primary issue to address is how to limit this authority. One option for limiting this authority is to provide the Council with a list of criteria for it to use in considering air quality issues. Mr. Lufkin's draft rule attempts to integrate such criteria. However, he said his paper is just an example demonstrating how a policy objective might be integrated. He said he is not advocating the draft rule.

Jenene Fenton asked if Mr. Lufkin intended for carbon dioxide to be included in the scope of his draft. Mr. Lufkin said he did not.

Mr. Krogh asked the group if Mr. Lufkin properly framed the issue about EFSEC's ability to impose standards beyond state and federal law. Ms. McGaffey responded that before a policy decision is chosen, one must ask, "What's the point of developing a standard?" She said that if the point is to create certainty in the process, she does not feel Mr. Lufkin's draft gives more certainty.

Mr. Lufkin said his understanding was that this group is not in a position to actually change standards that are currently set. He said he thought the group was trying to look at making the process more effective.

Ms. Thomas said she found it hugely helpful to have the options for accomplishing policy objectives expressed as ranges as Mr. Lufkin did. However, she also questioned if the draft accomplished the purpose of creating certainty.

Mr. Carpenter asked if it was possible to agree that EFSEC has authority to go beyond federal and state standards. He asked if EFSEC has already gone beyond federal law. Ms. Thomas said she would argue that EFSEC has not gone beyond federal standards and it does not have the authority to do so. She noted that EFSEC's PSD authority is delegated from the EPA. Ms. McGaffey said she feels EFSEC currently operates closest to the policy objective that includes unlimited authority. Under this objective, she said there is no certainty in the process. She asked if certainty could be found in the middle approach.

Mr. Anderson said he felt differences between EFSEC and federal standards should not be dealt with in the application process. Mr. Lufkin asked where they should be dealt with. Mr. Anderson said the rulemaking process is a better place.

Mr. Krogh noted that because Ms. Thomas feels EFSEC does not have the authority to go beyond state and federal authority and some others feel EFSEC currently operates with an assumption of unlimited authority, the group needs clarity on EFSEC's authority. He asked if it would be useful to rework Mr. Lufkin's draft as a strawman proposal and try to get more information and clarity. It was agreed that it would be helpful to take this further. Mr. Lufkin agreed to draft a strawman proposal. Ms. McGaffey, Ms. Thomas, and Mr. Seligman agreed to collaborate in helping Mr. Lufkin.

### **Water Quantity: Modified Strawman Proposal Draft**

Mr. Lean began the discussion by acknowledging that the Department of Ecology and others have reservations about the proposal draft.

Exhibit B(6)—Report to Jim Luce, Chair, Washington Energy Facility Site Evaluation Council

April 25, 2002 EFSEC Standards Development Group Meeting Materials

Page 5 of 5

Mr. Lean summarized the procedure and substantive requirements of the outline of suggested EFSEC “standards” for water rights that he and Mr. Lufkin prepared

Mr. Lean said that today the Department of Ecology (“DOE”) is technically issuing new water rights; EFSEC’s are from past issuance. Also, he noted that for power plants, an applicant must come to the table with water at least equal to that used for the plant. In addition, he said EFSEC does not change other water rights.

Ms. McGaffey said she was confused about the terminology in the draft. She asked if the draft addresses an applicant who has not acquired a water right, but instead has contracted with others who have water. Thus, the applicant is *buying* water in most the cases she has seen. Mr. Lean said no change is required if an applicant is just buying water. Carol Jolly suggested Mr. Lean make explicit that his draft does not apply to such cases.

Sue Mauermann commented that if an applicant is acquiring water, EFSEC needs to make sure it is addressing the justification for that acquirement. Mr. Lean agreed with Ms. Mauermann and said he will address this by either redrafting the paper or adding another section to the paper.

Ms. Thomas said she draws from the draft no contemplation about a possibility of the DOE ever issuing a new water right. She said it appears the concept is that there needs to be full mitigation if there are new water rights. She said she will try to think about some minor tinkering to broaden the language.

The group discussed the 10% requirement in section (III), part (C). Mr. Lean said the idea is basically to have an enhancement that would meet the DOE’s regulations and give priority processing. EFSEC would give it a report of examination only if the DOE did not accept it. He said the problem is that 10% may not always work and some say it is not an enhancement. 10% may not be the right number. Maybe, he asked, there should not even be a number if it is simply to get to the front of the line.

Toni Potter asked Mr. Lean if he was saying that DOE is not the agency to issue water rights. Mr. Lean said in the 1970s a version of this question was posed to the Attorney General. The AG said EFSEC had the authorization to use water as part of its site certification. Essentially, the AG decided that RCW 80.50 superseded the water rights code provisions for energy facilities. Mr. Lean said it follows that EFSEC is free of water rights law. He said the DOE does not agree, and thinks the law can apply. Kathleen Collins suggested Mr. Lean include this thought as policy in his paper.

Ms. Thomas raised another point in asking if the group was comfortable with water rights expiring with the project. She asked if the rights should remain available.

Mike Harris said that from what he is hearing, the group has a very ambitious schedule to try to get something out. He said the DOE is not prepared to agree with the draft at this point. He thought the DOE would need several months to talk with people about this. He suggested the next draft be taken back to the DOE where the department can discuss it. Mr. Krogh suggested Mr. Lean prepare the next draft and he (Mr. Krogh) talk with some people at the DOE and see if there is any way to expedite the process.

Ms. Mauermann clarified that the priority processing issue and the 10% figure are the primary points of concern. Since these issues are in the present draft, it was decided that the draft could be sent in its current form to the DOE and dialogue could begin.

Mr. Lean asked if his draft should include the possibility for EFSEC to issue new water rights. Mr. Krogh said maybe that should be included as an alternative in the paper. Ms. Jolly agreed with Mr. Krogh. She said laying that out as a possible path for a larger audience to debate is a good idea because it has to happen at some point.

### **Conclusion**

Ms. Potter asked if people could come to these meetings who have not come before. Mr. Krogh said they could, but that it must be understood that this is not a final decision-making group. Disagreement may remain while the general consensus moves forward. The group's work product will be presented to EFSEC. Ms. Jolly added that this is just a starting place. When these issues make it to EFSEC and the public enters the picture, issues could diverge greatly.

Mr. Krogh said Chuck Blumenfeld will present on wetlands on May 23, 2002. Dave Bricklin will present on noise either May 9, 2002, or May 23, 2002.

The next meeting is Thursday, May 9, 2002, at the General Administration Building auditorium in Olympia.

**April 25, 2002**  
**EFSEC Standards Development Group**  
**Meeting**  
**Attendance**

Lee Faulconer	lfaulconer@agr.wa.gov
Jenene Fenton	fentojmf@dfw.wa.gov
Liz Thomas	ethomas@prestongates.com
Karen McGaffey	mcgak@perkinscoie.com
Donna Ewing	suedonoly@aol.com
Danielle Dixon	danielle@nwenergy.org
Mark Anderson	marka@cp.cted.wa.gov
Dick Fryhling	dickf@cted.wa.gov
Rick Lovely	rlovely@ghpud.org
Sandi Swarthout	sswarthout@attbi.com
Collins Sprague	csprague@hctc.com
Terry Oxley	toxley@puget.com
Allen Fiksdal	allenf@ep.cted.wa.gov
Brian Carpenter	briancarpenter@rebound-bctc.org
Rusty Fallis	rustyf@atg.wa.gov
Gary Sprague	spraggrs@dfw.wa.gov
Mike Lufkin	michaell@atg.wa.gov
Chuck Lean	lean@attbi.com
Dan Seligman	seligman@teleport.com
Charles Carelli	ccar461@ecy.wa.gov
Mike Harris	jhar461@ecy.wa.gov
Sue Mauermann	smau461@ecy.wa.gov
Bud Krogh	ekrogh@serv.net
Justin Long	justin443long@hotmail.com
Carol Jolly	carol.jolly@ofm.wa.gov
Kathleen Collins	kcollins126@attbi.com
Toni Potter	antoniapotter@attbi.com

# Draft proposed rule for socio-economics standard for energy facilities

by Brian Carpenter

## Section 1:

### A. Statement of Intent

The Council's goal is to avoid or mitigate adverse project-related socio-economic impacts on the local community and promote positive project-related socio-economic impacts on the local community.

### B. The following areas of impact are considered "socio-economic impacts" for purposes of this section.

- i. Impacts on the local population;
- ii. Impacts on the local housing supply and vacancy rate;
- iii. Impacts on environmental justice;
- iv. Impacts on local government services, both in terms of revenues and demands;
- v. Impacts on the local workforce and economy;

### C. Standards:

Population changes related to a project should be used as one factor in determining the impact of a project in the other socio-economic impact areas.

? Adverse impacts on the local housing supply shall be avoided or mitigated.

? Environmental justice impacts shall be avoided or mitigated

? Impacts on local government services shall be avoided or mitigated if it is found that project-generated expenses are greater than project-generated revenues.

? Positive impacts on the local workforce and economy shall be promoted whenever possible. Negative impacts shall be avoided or mitigated whenever possible.

## Section 2. Procedure

### A. Applicants shall estimate the impacts of the proposed facility in the areas listed in section 1(B)(i-v). For each area of impact:

Exhibit B(6)—Report to Jim Luce, Chair, Washington Energy Facility Site Evaluation Council

April 25, 2002 EFSEC Standards Development Group Meeting Materials

Page 9 of 9

- i. If the facility is found to have a minor impact, no mitigation is required for that particular impact;
- ii. If the facility is found to have a moderate impact, mitigation is required to reduce that impact to a minor level;
- iii. If the facility is found to have a major impact, mitigation is required to reduce that impact to a minor level;

Applicants shall estimate the impacts of 1(B)(i) first.

B. Population

- i. Most recent census data plus any more relevant and recent information shall be reviewed to determine the local population. In-migration caused by the facility shall be estimated and compared to the existing population and expected background population trends.
- ii. If the facility shall cause population to increase by 0-10% over ten years beginning with the first year of construction of the facility, the impact shall be found to be minor;
- iii. If the facility shall cause population to increase by 11-30% over ten years beginning with the first year of construction of the facility, the impact shall be found to be moderate;
- iv. If the facility shall cause population to increase by greater than 30% over ten years beginning with the first year of construction of the facility, the impact shall be found to be major;

C. Housing

- i. The existing housing vacancy rate and the existing housing supply, both quantity and quality, shall be determined for the local vicinity of the facility.
- ii. Population in-migration caused by the facility, both during construction and operation, shall be compared to the existing housing vacancy rate and supply to determine impacts on local housing
- iii. If the existing vacancy rate is between zero and five percent and the number of vacant units is less than or equal to the predicted immigration caused by the facility, the facility will be found to have a major impact upon housing.
  - a. If the existing vacancy rate is between zero and five percent and the number of vacant units is greater than the predicted immigration caused by the facility, the facility will be found to have a moderate impact upon housing.
- iv. If the existing vacancy rate is between six and eleven percent and the number of vacant units is less than or equal to the predicted immigration caused by the facility, the facility will be found to have a moderate impact upon housing
  - a. If the existing vacancy rate is between six and eleven percent and the number of vacant units is greater than the predicted immigration

caused by the facility, the facility will be found to have a minor impact upon housing.

- v. If the existing vacancy rate is greater than twelve percent and the number of vacant units is less than or equal to the predicted immigration caused by the facility, the facility will be found to have a moderate impact upon housing
  - a. If the existing vacancy rate is greater than twelve percent and the number of vacant units is greater than the predicted immigration caused by the facility, the facility will be found to have a minor impact upon housing.

D. Environmental Justice

- i. The applicant shall examine census tract data for the area in a five mile radius of the facility and for those areas predicted to experience the maximum nitrate and sulfur deposition from the facility
- ii. If a census tract in either or both of the areas described in Section 2(d)(i) are found to have a supermajority (two-thirds) of residents who are classified as low-income and/or minorities, the applicant shall be required to complete the following:
  - a. Hold public meetings targeting the affected community or communities, taking into account the need for translating information into appropriate languages and providing translation service during the public meeting;
  - b. Further analyze the existing conditions of the community in question, in particular, existing background health issues;
  - c. Distribute project information, focusing on air quality issues, to the effected area, with a special emphasis on providing such information to residents in appropriate languages.
  - d. Determine if it is feasible to reduce or avoid impacts on the identified communities. If impacts cannot be avoided, they shall be mitigated.

E. Government Services

- i. Applicants shall estimate the impact of the proposed facility on all government services in the vicinity of the project area. Government services shall include, but are not limited to: school districts, cities, counties, emergency services, sewer districts, water districts, irrigation districts, other special purpose districts, the state and others.
- ii. In all cases, projected revenues from the facility to a particular service provider shall be compared with projected costs to the same service provider
  - e. If the difference between the two is negative, then the project is found to have a negative impact on the service provider and mitigation is required.

- f. If the difference between the two is equal or greater, then the project is found to have a positive impact on the service provider and no mitigation is required.
- iii. Mitigation shall take the form of shortfall payments until such a time that the revenue generated by the facility is equal to or greater than the cost to the service provider for services related to the facility.
  - a. Service providers shall create separate accounts for the facility in question. Services provided to the facility shall be charged to the account and revenue generated from the facility shall be charged to the account. Any negative balance will be made up in the form of a shortfall payment by the facility owner/operator.
  - b. A mediation system shall be set up between the facility owner/operator and the service provider to settle disputes between the two parties over whether or not a credit or debit to the account is related to the facility.

F. Local Economy and Workforce

- i. Construction and operational staffing levels shall be determined for the facility.
- ii. Construction and operational payrolls shall be determined for the facility.
- iii. Construction and operational expenditures for goods and services shall be determined for the facility.
- iv. The applicant shall estimate the percentage of employees under 2(e)(i) that will be hired locally. (Within 100-mile radius)
- v. The applicant shall estimate the percentage of expenses incurred under 2(e)(ii-iii) that will be expended locally. (Within 100 mi radius)
- vi. The applicant shall provide the percentages derived from 2(e)(iv) and 2(e)(v) above as part of the application for site certification.
- vi. Impacts shall be determined as follows:
  - a. If less than or equal to twenty percent of the total construction and operational workforce is non-local, then the impact shall be considered minor
  - b. If between twenty-one and thirty-nine percent of the total construction and operational workforce is non-local, then the impact shall be considered moderate.
  - c. If greater than forty percent of the total construction and operational workforce is non-local, then the impact shall be considered major.
  - d. If less than or equal to twenty percent of the total construction and operational spending is non-local, then the impact shall be considered minor

- e. If between twenty-one and thirty-nine percent of the total construction and operational spending is non-local, then the impact shall be considered moderate.
  - f. If greater than forty percent of the total construction and operational spending is non-local, then the impact shall be considered major.
- vii. Mitigation for impacts considered moderate or major in 2(e)(vi) shall be required and shall include some or all, but are not limited to the following:
- a. Good faith efforts to work with local employment security offices, state-approved apprenticeship training programs, union halls and other employment and training programs in the area to promote the hiring of local residents for construction and operation of the facility.
  - b. Good faith efforts to work with local chambers of commerce to identify potential local suppliers of goods and services
  - c. Good faith efforts to work with local economic development and business development organizations to maximize local spending

# Air Quality Standard Discussion

Mike Lufkin

**I. Preliminary issues:**

- 1) Do we have consensus on the policy objective of an air quality standard?
- 2) If so, what exactly is that policy objective? If not, what are the issues or points of debate between the stakeholders?

I have made an assumption that the primary issue confronting EFSEC in developing an air quality standard concerns the questions of 1) EFSEC’s authority to impose standards and conditions that exceed state and federal law; and 2) Assuming this authority exists what limits, if any should be placed on that authority. Are there other major policy objectives that that have not been considered?

### Range of Possible Policy Objectives

EFSEC has no authority to impose standards or conditions beyond existing state and federal requirements	EFSEC has authority to impose conditions that exceed existing law, but confines need to be placed on the breadth and scope of additional issues.	EFSEC has unlimited authority to impose standards and/or conditions that exceed state and federal law and no limits ought to be placed on this authority
---	--	--

For the sake of argument only, I will assume that we have consensus that the middle approach is the policy objective that we would like to achieve. Given this policy objective what is the range of options/alternatives available to accomplish this objective. (The table below is not intended to be comprehensive)

### Range of Alternatives

Must be an adequate showing that there is a need to supplement or exceed existing law. Burden is on intervenor to make showing.	Provide Council with a list of criteria that it must utilize when deciding whether to entertain supplemental air quality issues.	SEPA authority should define the outer limits of air quality issues that can be addressed in the adjudicative hearing. Burden is on applicant to demonstrate that issue is outside SEPA authority.	No confines should be placed on introduction of air quality issues. Rather the Council should use its existing discretion to determine appropriateness of issue.
---	--	--	--

For the sake of argument only, I will assume that we have consensus that we would like to provide the Council with a list of criteria that it will utilize in determining whether to allow a supplemental air quality issue. Set forth below are some of the issues associated with integration of this alternative.

### Integration of Alternative

What are the criteria that the Council should be required to consider? E.g. impact on human health, unique topographic attributes of the airshed, transboundary issues involved, etc.	What is the role of the intervenor vis-à-vis these criteria? The applicant?	At what point in the adjudicatory process should the council make its decision. E.g. initial notice of intervention, special prehearing conference, or at hearing.	Does existing EFSEC procedure allow for integration of this alternative or are there procedural changes that could be made to better effectuate this alternative. E.g., moving back the preparation of the DEIS.
---	---	--	--

#### Draft Rule Integrating Policy Objective

THIS DRAFT IS INTENDED FOR DEMONSTRATION PUPOSES ONLY

**WAC 463-39-010 Purpose.** 1) The energy facility site evaluation council, under the authority vested in it by chapter 80.50 and 40 C.F.R. Part 52 is charged with responsibilities for the conduct of a statewide program of air pollution prevention and control for energy facilities. This regulation provides the basic framework for carrying out the council's responsibilities for such a program through the establishment of standards for maximum permissible emissions, the implementation of registration and

Exhibit B(6)—Report to Jim Luce, Chair, Washington Energy Facility Site Evaluation Council

April 25, 2002 EFSEC Standards Development Group Meeting Materials

Page 15 of 15

notice requirements, provision for monitoring and reporting, and the identification of regulatory actions which may be taken to enforce standards.

*2) In implementing an air pollution and control program for energy facilities, the Council's emphasis shall be on determining compliance with existing federal and state air quality standards as adopted in this chapter. However, in recognition of the Council's mandate under Chapter 80.50 RCW to balance the demand for energy facility location with the broad interests of the public, and the need to determine that operational safeguards are technically sufficient to protect the public welfare, the Council may, in its discretion, consider air quality issues that are not specifically covered under the existing regulatory framework or that seek to have the Council impose numerical air quality standards or conditions greater than that required under state and federal law*

*A) In deciding whether to exercise its discretion, the Council shall consider:*

- 1) The extent to which the intervenor has identified specific human health impacts associated with the projects emissions.*
- 2) The extent to which the intervenor has identified specific environmental/natural resource impacts associated with the projects emissions.*
- 3) The extent to which the intervenor has identified unique attributes of the airshed into which the project will emit, including topographic and meteorological features.*
- 4) The extent to which the project emissions impact an airshed not within the jurisdiction of state and federal law, and the extent to which the impacted jurisdictions air quality regulations differ from state and federal law.*

*B) The Council shall exercise this discretion at a prehearing conference designed to narrow the issues presented by the parties. In no event, however, shall this prehearing conference be conducted prior to the issuance and adequate time for assessment of the draft environmental impact statement.*

*C) Prior to making a determination on the appropriateness of a supplemental air quality issue, the Council shall provide both the intervenor and the applicant an opportunity to address the issue in relation to the criteria set forth in section (A) above.*

MGL/ljp

# OUTLINE OF SUGGESTED EFSEC “STANDARD” FOR WATER RIGHTS

**Chuck Lean and Mike Lufkin<sup>1</sup>**

**Draft April 24, 2002**

- I. Policy.
  - A. Water is a finite and valuable natural resource and its prudent management is necessary to promote the health and welfare of all citizens.
  - B. Water conservation measures should be encouraged in conjunction with other state policies for all energy facilities.
- II. Procedure.
  - A. Applicants proposing to use water for an energy facility must either (1) acquire a water right suitable for use by the proposed energy facility or (2) acquire a water right which can be changed to meet the point(s) of withdrawal, place of use and purpose of use identified in the application. In either event, the water rights should be identified in the application. In no event will EFSEC authorize the use of a larger quantity of water than authorized by the water rights provided by the applicant and identified in the application.
  - B. Water rights acquired by the applicant and identified in the application shall have been beneficially used and not subject to relinquishment for nonuse.
  - C. If the applicant acquires a water right which is suitable for use without change, then the only requirement is to identify that water right in the application.
  - D. If changes are required, then the applicant must provide to EFSEC a report of examination identifying the changes to be made and the quantities of water (both in gallons per minute and acre feet per year) which are eligible to be changed, together with any limitations on time of use.
  - E. The report of examination normally shall be prepared by Ecology and submitted to EFSEC prior to the hearing on the application.

---

<sup>1</sup> DISCLAIMER: Neither of the authors is completely comfortable with this suggested language, particularly section III C, including the concept, the amount, how it would relate to other mitigation, or even whether it is an enhancement or mitigation. This draft has been discussed with a Department of Ecology representative, but we have had no official feedback. The feedback we have received has not been positive.

- F. If, despite the environmental enhancement required by section III C below, Ecology notifies the applicant that it will be unable to prepare a report of examination prior to the hearing, the report of examination may be prepared by a consultant retained by the applicant and submitted to EFSEC.
  - G. Regardless of who prepares the report of examination, EFSEC shall determine whether to authorize water use in the site certification agreement based upon the standards of this regulation, together with chapters 80.50 and 43.21C RCW.
  - H. If EFSEC authorizes water use in the site certification agreement, it may specify the terms and conditions of water use. EFSEC will not change the water rights acquired by the applicant. Rather, those water rights will be identified in the site certification agreement and form the basis for the water use authorized by EFSEC. No other use shall be made of those water rights during the life of the site certification agreement.
- III. Substantive Requirements.
- A. Water use authorizations issued by EFSEC shall: (1) result in no net loss to any surface water body when compared to use of the water rights provided by the applicant; (2) meet all applicable minimum flow requirements established by regulation; and (3) not impair any other water right.
  - B. The “no net loss” and minimum flow requirements in III. A. above may be varied in the event that EFSEC determines that such variance is necessary due to overriding considerations of public interest. In no event shall EFSEC authorize use of water which will impair any other water right (except the right inherent in a minimum flow requirement).
  - C. Applicants shall restore an amount of water equal to 10% of the annual requirement of the energy facility to the surface or ground water body from which water is to be withdrawn for operation of the facility. Applicants, therefore, shall acquire, and identify in their application, water rights equal to 110% of the annual operating needs of the facility. Such water rights shall meet the requirements of section II B of this regulation. The purpose of this requirement is to enhance surface water instream flows and ground water quantity within the vicinity of new energy facilities. EFSEC shall consider, and encourages its member agencies to consider this water quantity restoration as an environmental enhancement and a portion of the environmental mitigation or offset which may be otherwise required of the facility.

- D. Nothing herein shall prevent EFSEC from requiring any condition to site certification which it determines is necessary to meet the requirements of chapter 80.50 RCW or of chapter 43.21C RCW.