

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

In re Application No. 94-2

of

CHEHALIS POWER

Certification of the
Chehalis Combustion
Turbine Project
.....)

COUNCIL ORDER No. 4

692

**ORDER DENYING MOTION TO
STRIKE OF THE CIC AND
ADMITTING PUBLIC PETITION
INTO RECORD**

This is an application for certification of a proposed site at Chehalis, Lewis County, Washington for construction and operation of a natural gas-fueled combustion turbine facility to generate electrical energy.

On October 16, 1995, the Critical Issues Council (CIC) moved to strike from the record two letters that had been submitted to the Council by members of the public. Specifically, the CIC has requested that the Council strike from the record letters from John Alexander, Jr. on the grounds that the letter appears to be part of an organized letter writing campaign. The motion also seeks to exclude the letter from John Doe that was telefaxed to the Council from Darigold on the grounds that it is not properly identified. Finally, the CIC requests that if the Council allows the two letters in question into evidence, a petition signed by 250 local residents that was filed with the Council earlier should also be admitted as illustrative of public opinion of individuals in the vicinity of the project.

The motion describes Mr. Alexander's letter to be part of an "orchestrated letter writing campaign" and contends that it is inappropriate for the Council to consider such communications in its deliberations about the Chehalis Generation Facility. In support of its contention that an orchestrated letter writing campaign motivated some of the letter writers to submit comments to the Council, the motion further notes that in addition to Mr. Alexander, at least three other letter writers are stockholders in the Chehalis Industrial Commission, Inc. According to the motion, Mr. Alexander, who is the President of Security State Bank, influenced two of his employees, Ms. Cheri Wilder and Mr. Norman Forsyth, to write letters supporting the project as bank representatives. Because both Ms. Wilder and Mr. Forsyth are supervised by Mr. Alexander, the motion contends that Mr. Alexander's opinion "...appears to be multiplied several times over." by the letters of his two employees.

The applicant, Chehalis Power, Inc., responded to the motion on November 28, 1995. According to the service list submitted with the CIC's motion, the CIC failed to serve the applicant when it filed its motion. Council staff sent a copy of the motion to the applicant on November 21, 1995. In its reply to the CIC's motion, the applicant argues that the Council should admit all of the letters CIC wants to exclude and to consider the petition submitted by the CIC in a limited context. The applicant also contends that the Council has grounds to deny the CIC's motion to strike because it was not served on all of the parties in the adjudication.

The Council denies the CIC's motion to strike in regards to the letters that were submitted by Messrs. Alexander and Doe, and grants the CIC's request to include the petition that it submitted at the outset of the proceeding. The latter document is hereby included with other public comment materials previously admitted as Exhibit No. 133.

1. Motion to Strike Letters - The Council's adjudicative hearings are governed by the Administrative Procedure Act, (APA), the Council's own rules, and when not in conflict with the APA, the Washington Rules of Evidence. RCW 34.05.452, which pertains to the admissibility of evidence in adjudicative hearings, provides that:

(1) Evidence, including hearing evidence, is admissible if in the judgment of the presiding officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. The presiding officer shall exclude evidence that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts of this state. The presiding officer may exclude evidence that is irrelevant, immaterial or repetitious.

The statute provides no grounds for excluding the material except, that the material may be repetitious. The Council is unaware of any statute or applicable case law that provides for the exclusion of material submitted by members of the public to show their opinions simply because an organized campaign arguably motivated the senders to submit the letters. One does not lose the ability to express one's views simply by virtue of membership in an organization or by virtue of the opinion's similarity to the views of others.

Chehalis Power's answer to the CIC's motion to strike states that the Council has no grounds to deny the admission of a letter into evidence on the basis that it was written as a result of an organized campaign. Past Council practice has been to incorporate public comment into the record of the Council's proceedings. The Council's statute, RCW 80.50.090 (3), (4), requires the Council to receive evidence from members of the public. The applicant notes that a large amount of duplicative testimony has been admitted from members of the public regarding this project and contends there is no basis to modify that practice at this time. As Chehalis Power notes, Messrs. Mudge and Spogen have submitted multiple letters and testimony to the Council -- and all have been admitted into the record.

Petitioner states that some of the letter writers are stockholders in the Chehalis Industrial Commission, Inc. According to the petitioner, the Chehalis Industrial Commission has already expressed its views about the proposed power plant to the Council, and Mr. Alexander's letter is

simply a reiteration of the Commission's views. The petitioner also notes that Mr. Alexander testified under oath on September 21, 1995, and his letter is largely redundant of that testimony. The Council notes that both Messrs. Mudge and Spogen have also given sworn testimony before the Council and submitted letters and other written material to EFSEC. The Council has not considered whether the written material submitted by either Messrs. Mudge or Spogen is duplicative of their sworn testimony - all has been considered by the Council.

The Council will not exclude from evidence any of the material requested by the petitioner. The fact that one or more letters may be duplicative of other submissions from members of the public does not provide a grounds for excluding the material. When one considers the language of RCW 80.50.090(3), (4), it is evident that the legislature expected the Council to be informed about public opinion, therefore we decline to reject the letters and they remain in the record.

The failure to properly identify or sign the letter from John Doe that was telefaxed from Darigold is not sufficient grounds to exclude this letter.

2. Motion to Admit CIC Petition - If the Council declines to reject the letters, petitioner asks that the earlier petition be considered as illustrative of public sentiment in the vicinity of the proposed Chehalis Generation Facility. In response, the applicant argues that the Council should only consider the petition in question in the context of when it was initially filed. Chehalis Power notes that the petition was prepared over a year ago when the project was still proposing to use groundwater as a cooling medium; and before the public had an opportunity to become fully informed about the project.

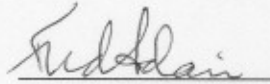
To the extent that the petition represents an expression of public sentiment about the project as it was originally proposed, the Council may consider its contents. Because the project no longer plans to use ground water as a cooling medium, some of the concerns addressed in the petition are no longer germane. The Council will admit the CIC's petition with other public comment material in Exhibit 133. In that regard, the Council will consider the CIC's petition as a reflection of public sentiment at the time it was submitted.

3. Service Issues - Chehalis Power's answer to the motion to strike asks to Council to deny the petition on the grounds of improper service. The service list attached to the motion is incomplete in that it does not include the applicant nor its counsel. Because the applicant had not been served with a copy of this motion until staff sent them a copy via facsimile on November 21, 1995, it did not respond to the motion until November 28, 1995. The Council has similarly been tardy in responding to the motion because of a lack of response from the applicant. Under Washington Court Rule 12 (b)(5), improper service may serve as a defense to a pleading. The Council denies the CIC's motion to strike because of improper service. It will, however admit the petition as previously discussed. It observes that all parties in Council proceedings are expected to be cognizant of, and to comply with, applicable procedural requirements in adjudicative hearings. Proper service of all pleadings on all parties - particularly the proponent of the project - is a fundamental requirement. The Council expects all parties to

comply with applicable procedural rules including WAC 463-30-120 (2)(a), regardless of whether they are represented by counsel.

Order. It is hereby ordered that the letters from Messrs. John Alexander, Jr. and John Doe (sent from Darigold) will remain in the record of the proceeding and will be accorded the same status as other comparable letters from members of the public as part of Exhibit 133. The petition from the CIC will similarly be admitted into Exhibit No. 133 and will be given the appropriate weight in Council deliberations.

DATED and effective this 18th day of December, 1995



Fred Adair, Chair

Appendix C

CHEHALIS GENERATION FACILITY

AMENDED SERVICE LIST

EFSEC

FREDERICK S. ADAIR, CHAIR
ENERGY FACILITY SITE EVALUATION
COUNCIL

925 PLUM STREET SE, BUILDING 4
PO BOX 43172
OLYMPIA, WA 98504-3172

(360) 956-2150 FAX (360) 956-2158

C. ROBERT WALLIS, EFSEC VICE CHAIR
UTILITIES & TRANSPORTATION
COMMISSION

PO BOX 47250
OLYMPIA, WA 98504-7250

(360) 753-6404 FAX (360) 586-1150

MEREDITH MORTON, ASSISTANT
ATTORNEY GENERAL
HIGHWAYS-LICENSES BUILDING
PO BOX 40100
OLYMPIA, WA 98504-0100

(360) 664-3241 FAX (360) 664-0229

COUNCIL MEMBERS

WALTER SWENSON
DEPARTMENT OF AGRICULTURE
PO BOX 42560
OLYMPIA WA 98504-2560

FAX (360) 902-2089

DAVID McCRAVEY
COMMUNITY, TRADE & ECONOMIC
DEVELOPMENT
2001 6TH AVE STE 2600
SEATTLE WA 98121

FAX (206) 464-7222

RON SKINNARLAND
DEPARTMENT OF ECOLOGY
PO BOX 47600
OLYMPIA WA 98504-7600

FAX (360) 407-6902

DOUG KILPATRICK
ENERGY OFFICE
PO BOX 43165
OLYMPIA WA 98504-3165

FAX (360)

GERRY O'KEEFE
OFFICE OF FINANCIAL MANAGEMENT
PO BOX 43113
OLYMPIA WA 98504-3113

FAX (360) 586-4837

JO ROLLER
FISH AND WILDLIFE
PO BOX 41091
OLYMPIA WA 98504-1091

FAX (360) 902-2947

NANCY JOSEPH
NATURAL RESOURCES
PO BOX 47014
OLYMPIA WA 98504-7014

FAX (360) 902-1789

JUDY McNICKLE
PARKS AND RECREATION
PO BOX 42650
OLYMPIA WA 98504-2650

FAX (360) 753-1594

TERRY STRONG
DEPARTMENT OF HEALTH
PO BOX 47821
OLYMPIA WA 98504-7821

FAX (360) 753-1496

GARY RAY
DEPARTMENT OF TRANSPORTATION
PO BOX 47300
OLYMPIA WA 98504-7300

FAX (360) 705-6911

JOHN NACHT
LEWIS COUNTY RISK MANAGER
360 NW NORTH STREET, MS: RIS01
CHEHALIS WA 98532-1900

FAX (260) 740-1475

MARK SCHEIBMEIR
CITY OF CHEHALIS
299 NW CENTER STREET
CHEHALIS WA 98532

FAX (206) 748-9533

PARTIES

APPLICANT

PAUL J. MARGARITIS, PROJECT
DIRECTOR
CHEHALIS POWER, INC.
1177 WEST LOOP SOUTH, SUTIE 900
HOUSTON, TX 77027-9006

(713) 599-2656 FAX (713) 552-2020

ELIZABETH THOMAS, ATTORNEY
PRESTON GATES & ELLIS
5000 COLUMBIA CENTER
701 FIFTH AVENUE
SEATTLE, WA 98104-7078

(206) 623-7580 FAX (206) 623-7022

COUNSEL FOR THE ENVIRONMENT

THOMAS YOUNG, ASSISTANT ATTORNEY
GENERAL
COUNSEL FOR THE ENVIRONMENT
PO BOX 40116
OLYMPIA, WA 98504-0116

(360) 586-1445 FAX (360) 586-1319

STATE AGENCIES

ROBERT TURNER, DIRECTOR
DEPARTMENT OF FISH AND WILDLIFE
PO BOX 43135
OLYMPIA, WA 98504-3135

WILLIAM C. FRYMIRE, ASSISTANT
ATTORNEY GENERAL
DEPARTMENT OF FISH AND WILDLIFE
PO BOX 40100
OLYMPIA, WA 98504-0100

(360) 586-2428 FAX (360) 586-2756

JUDITH MERCHANT, DIRECTOR
WASHINGTON STATE ENERGY OFFICE
PO BOX 43165
OLYMPIA, WA 98504-3165

TOMMY PRUD'HOMME, ASSISTANT
ATTORNEY GENERAL
URBAN & AGRICULTURAL RESOURCES
DIVISION
OFFICE OF THE ATTORNEY GENERAL
PO BOX 40109
OLYMPIA, WA 98504-0109

(360) 753-5060 FAX (360) 664-8856

MARY RIVELAND, DIRECTOR
DEPARTMENT OF ECOLOGY
PO BOX 47600
OLYMPIA, WA 98504-7600

RONALD L. LAVIGNE, ASSISTANT
ATTORNEY GENERAL
DEPARTMENT OF ECOLOGY
PO BOX 40117
OLYMPIA, WA 98504-0117

(360) 459-6683 FAX (360) 438-7743

MARY SUE WILSON, ASSISTANT
ATTORNEY GENERAL
DEPARTMENT OF ECOLOGY
PO BOX 40117
OLYMPIA, WA 98504-0117

(360) 459-6057 FAX (360) 438-7743

OTHERS

DENNIS M. OSTER
BONNEVILLE POWER ADMINISTRATION-
MPF
905 NE 11TH AVENUE
PORTLAND, OR 97208-3621

(503) 230-5871 FAX (503) 230-4973

PRESTON D. MICHIE
BONNEVILLE POWER ADMINISTRATION -
LF
905 NE 11TH AVENUE
PORTLAND, OR 97208-3621

(503) 230-4201 FAX (503) 230-7405

ALLEN T. MILLER, ATTORNEY
CONNOLLY, HOLM, TACON, & MESERVE
HERITAGE BUILDING
201 W 5TH, SUITE 301
OLYMPIA, WA 98501-1114

(360) 943-6747 FAX (360) 943-9651

JOHN T. MUDGE, PRESIDENT
CRITICAL ISSUES COUNCIL, INC.
190 SANDERSON ROAD
CHEHALIS, WA 98532

(360) 748-1962 FAX (XXX) XXX-XXXX

KLIMBLE R. BROWN, VICE PRESIDENT
CRITICAL ISSUES COUNCIL, INC.
251, YATES ROAD
CHEHALIS, WA 98532

(360) 748-0791 FAX (XXX) XXX-XXXX

BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of
Application No. 94-2

CHEHALIS POWER, INC.

CHEHALIS GENERATION FACILITY

APPLICATION NO. 94-2

CERTIFICATE OF SERVICE

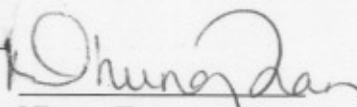
The undersigned certifies that on December 19, 1995, she served the enclosed:

COUNCIL ORDER NO. 4

ORDER DENYING MOTION TO STRIKE OF THE CIC AND
ADMITTING PUBLIC PETITION INTO RECORD

by depositing copies thereof in the United States mail, properly stamped and addressed, as
indicated on the Chehalis Generation Facility Service List.

DATED: December 19, 1995


Nhung Tran
EFSEC Staff