BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In re Application No. 94-2 Chehalis Power Generating, Limited Partnership Chehalis Generation Facility	COUNCIL ORDER NO. 706 COUNCIL ORDER DENYING MOTION FOR RECONSIDERATION

On December 20, 1996, the Energy Facility Site Evaluation Council (Council) entered Order No. 705, amending Order No. 698 and recommending that the Governor of Washington State approve siting of the Chehalis Generation Facility and sign the proposed Site Certification Agreement (SCA). The Council received one motion for reconsideration from the Critical Issues Council (CIC). This Order denies the CIC's request for reconsideration.

The Council has carefully considered the CIC's motion. The matters raised on reconsideration were raised and discussed during the hearing, and adequately addressed in Order No. 698 as amended.

Technical Feasibility. The CIC argues that there is no evidence in the record that the individual turbines of the CGF can operate at all when only a percentage of the cooling water required for 100% operation is available.

The Council finds no reason to reopen the hearings to take further evidence on technical feasibility. The evidence of record amply demonstrates that the plant is technically feasible using the available cooling water to operate.

Commercial Feasibility. The CIC argues that if sufficient cooling water is unavailable, thereby preventing the operation of a turbine, the Applicant may not be able to meet the demand for power. This would affect the economic feasibility of the entire project. CIC argues that if the plant does not prove to be economically feasible, the Applicant will likely attempt to protect its investment by pressuring EFSEC to allow the use of raw municipal water. EFSEC must assure itself that the facility is commercially feasible by reopening the hearings.

Any future request for the use of raw municipal water will be evaluated according to statutory standards. The Council finds that the Applicant's assessment of commercial feasibility is credible. Market forces will deter the Applicant from pursuing a project that is commercially unsound.

Wastewater. The CIC appears to argue that the CGF's use of wastewater may impede solutions to the regional wastewater problems. This merely repeats a prior argument. As the Council stated in Order No. 705, regional solutions to this problem are beyond its jurisdiction.[1]

Concurring Opinion. The CIC argues that the Concurring Opinion should not be submitted to the Governor because (1) it was not authorized by the Council, and (2) it contains unsupported speculations, which are outside of the proper scope of an administrative order.

Inclusion of the Concurring Opinion is proper for the purposes stated by its author.[2] The expression of support based on public policy is entirely appropriate, given that the Council's order also addresses the legal issues raised during the adjudication. The Council may not--and has no desire to--prevent Council members from stating their views.

Procedural Errors. The CIC argues that the City of Chehalis should not have had a voting member on the Council because the "energy plant" was not within the corporate limits of the city of Chehalis. The Council found that the energy plant is located within the corporate limits of Chehalis. It is entirely appropriate that the city have a voting member on the Council.[3]

The CIC again argues that Mr. Wallis was not sufficiently appointed as facilitator for the adjudicative hearing, and therefore lacked authority to set the schedule for the Council's consideration of the Governor's remand. Mr. Wallis was sufficiently designated as the Council's facilitator to make procedural decisions, and the Council has ratified all such actions.

Stipulation with Department of Ecology. The CIC argues that the Stipulation Agreement between the Department of Ecology and the Applicant was not subject to review by other parties to the adjudication, and therefore is prejudicial to those parties. The Council finds that a stipulation under WAC 463-30-250 is binding only on the parties thereto and does not require review by other parties to the proceeding.

ORDER

[1] Council Order No. 705, p. 9.

[2] "The following Concurring Opinion is not intended to question the majority decision, but is rather intended to amplify my reasons for supporting it." Concurring Opinion of Council's Order on Remand, Modifying Order No. 698, p. 1.

[3] RCW 80.50.030(5) states "[t]he city legislative authority of every city within whose corporate limits an energy plant is proposed to be located shall appoint a member or designee as a voting member to the council." RCW 80.50.020 makes clear that an energy plant includes its "associated facilities." If either the primary facility or the "associated facility" is located within a city, that city may appoint an EFSEC member.

The Council enters the following Order:

1. The motion for reconsideration is denied.
2. Order No. 705, with Attachments showing amendments to Order No. 698, the Concurring Opinion of Mark Scheibmeir, the Minority Opinion of John Nacht, Order No. 698, and the Site Certification Agreement shall be forwarded to the Governor forthwith.

DATED at Olympia, Washington and effective this _____ day of January, 1997.

THE WASHINGTON STATE ENERGY FACILITY
SITE EVALUATION COUNCIL

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Frederick S. Adair, Chair

/s/ C. Robert Wallis, Utilities and Transportation Commission	/s/ Walter Swenson, Department of Agriculture
/s/ David McCraney, Department of Community, Trade and Economic Development	/s/ Ron Skinnarland, Department of Ecology
/s/ Jo Roller, Department of Fish and Wildlife	/s/ Ellen Haars, Department of Health
/s/ Nancy Joseph, Department of Natural Resources	/s/ Gary Ray, Department of Transportation
/s/ Mark C. Scheibmeir, City of Chehalis	John J. Nacht, Lewis County

Note to Parties: No further administrative review is available. Judicial review may be requested under pertinent provisions of the Administrative Procedure Act, Chapter 34.05