

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

**In re Matter of
Application No. 99-1
of
SUMAS ENERGY 2, INC.**

**POST-HEARING ORDER No. 1
COUNCIL ORDER NO. 750**

**SUMAS ENERGY 2 GENERATION
FACILITY**

**Post-hearing order on Notice of Hearing
to Receive Additional Evidence from
Members of the Public (September 27,
2000); Notice of Hearing on the Draft
Prevention of Significant Deterioration
(PSD) permit (September 28, 2000);
Order on Stipulations, Settlement
Agreements, and Stipulated
Withdrawal; Order on Briefing
Schedule, and Order on Surrebuttal**

Nature of the Proceeding: This matter involves an application to the Washington State Energy Facility Site Evaluation Council (EFSEC or Council) for certification to construct and operate the Sumas Energy 2 Generation Facility (SE2), a natural gas-fired electrical generation facility located in Sumas, Washington.

Procedural Setting: The Council convened the adjudicative hearings pursuant to an application for a Site Certification Agreement from SE2. The formal adjudicative hearings proceeded from July 24, through July 29, 2000, in Bellingham, Washington and from July 31 through August 4, 2000, in Olympia, Washington. The record remained open as described below.

The hearings were held before Nan Thomas, the Administrative Law Judge with the Office of Administrative Hearings, Council Chair Deborah Ross, and Council members Heather Ballash (Department of Community, Trade, and Economic Development), Charles Carelli (Department of Ecology), Ellen Haars (Department of Health), Daniel Jemelka (Department of Agriculture), Dan McShane (Whatcom County), Dennis Moss (Utilities and Transportation Commission), Gary Ray (Department of Transportation), Jenene Ratassepp (Department of Fish & Wildlife), Gerald Richmond (City of Sumas), and Gayle Rothrock (Department of Natural Resources). Richard Heath and Meredith Morton were also present for portions of the hearings as the assistant attorneys general for the Council.

Public hearings were held on the evenings of July 25 and July 27, 2000. The land use hearings required under WAC 463-26-050 and WAC 463-26-090 were reconvened

Sumas Energy 2, Application No. 99-1
Post-Hearing Order No. 1

Page 1 of 5

during those public meetings to allow the public and other interested parties to submit any additional evidence regarding the project's consistency and compliance with county or regional land use plans or zoning ordinances. The land use consistency hearings had commenced in March of 1999, but were continued for the receipt of any further evidence. Council Order No. 5 in this adjudication (Council Order No. 748) provided that the testimony that had already been received in the record at the previous land use consistency hearings would not need to be repeated, but that new information would be received during the July 2000 public hearings. Due and proper notice were given of both the public hearings and the reconvened land use consistency hearing. The public and parties were invited to submit any additional oral and/or written testimony regarding the land use consistency issue.

Further scheduled proceedings: Because there was not time to allow all of the public witnesses who signed up to testify at the public hearings on July 25 and 27, 2000, the Council announced that it would reconvene the public hearings at a later date. Public hearings will therefore be reconvened on September 27, 2000, beginning at 7:00 p.m., at the Nooksack Valley High School, 3326 East Badger Road, Everson, Washington. Those persons who signed up to give public testimony in July will be given the first opportunity to speak at that hearing.

The Council will take oral testimony on the Draft Prevention of Significant Deterioration (PSD) permit and fact sheet on September 28, 2000, beginning at 7:00 p.m., at the Nooksack Valley High School, 3326 East Badger Road, Everson, Washington. That date is also the deadline for written comments on the Draft PSD permit and Draft Fact Sheet. Because of their unique ability to comment on air emission impacts and standards under Canadian law, the Council will, if desired by the Province of British Columbia Ministry of Environment, Lands and Parks or any other non-party Canadian governmental entities take oral comments from them on the draft PSD permit and fact sheet during a special time set aside during the day of September 28, 2000. Any Canadian governmental entity that wishes to speak at this special time should contact Allen Fiksdal, EFSEC manager, no later than September 20 so that the Council can set aside adequate time to receive comments.

In addition to public comments on the draft PSD permit (which are not subject to cross examination), additional oral testimony (subject to cross examination) offered by the Applicant or other parties to the adjudicative proceeding will be allowed on new matters raised as a result of the draft PSD permit. For example, if the draft PSD permit recommends air standards that are either less stringent than any party has recommended before, or recommends mitigation measures that have not been recommended by any party, then additional testimony would be allowed. Testimony which merely supplements or reaffirms the original positions of any parties will not be allowed. Any party wishing to have a witness testify on such matters shall identify any

such witness by September 13, 2000, and shall identify any exhibits they intend to introduce by that same date.

The record was also held open for the submission of further evidence regarding the Canadian governments' positions on environmental issues not subject to the PSD permitting process. The Council anticipates that the Applicant or other parties may wish to provide further evidence on the Canadian position. The Council will permit representatives from Canadian governmental entities to appear before the Council as witnesses for any party (within the scope of the party's intervention) to address the issue of the status of the Canadian government's position regarding air quality impacts in Canada. Witnesses and evidence to be presented by any party on additional Canadian environmental issues should be identified by September 13.

Post-hearing Briefing: As previously ordered in Pre-hearing Order No. 4 (Council Order No. 747) and Pre-hearing Order No. 5 (Council Order No. 748), closing arguments are to be submitted in writing in the post-hearing briefs. The agreed upon briefing schedule is as follows: the Applicant's brief is due September 5, 2000; all other parties briefs are due on September 26, 2000; and the Applicant's Reply brief is due on October 9, 2000. The Applicant has agreed to submit with its first brief a proposed order and proposed Site Certification Agreement to be considered by the Council in the event that the Council decides to recommend certification to the Governor. Other parties may respond to those proposed documents in their responsive briefs. The parties have reserved the right to submit supplemental briefing on new issues which may arise during the hearings scheduled for September of 2000. It is, however, the Council's expectation that any such supplemental briefing will not delay the overall briefing schedule.

Stipulations and Settlements: During the course of the adjudicative proceeding, the following documents were submitted to EFSEC:

- (1) Supplemental Settlement Agreement between Washington Department of Fish & Wildlife and Sumas Energy 2 Regarding Wetlands (Exhibit 5);
- (2) Settlement Agreement between Washington Department of Ecology and Sumas Energy 2 (Exhibit 6); and
- (3) Stipulation and Settlement Agreement between Washington Utilities and Transportation Commission and Sumas Energy 2 (Exhibit 10).

The Council has considered the text of the settlements and the testimony presented at the hearings. To the extent that settlements are approved in an EFSEC adjudicative proceeding, any stipulations or settlements must be stated on the record or submitted in writing and are subject to approval by the Council. WAC 463-30-250(2). The Council's approval of a stipulation or settlement means that the Council accepts it as binding

between the stipulating or settling parties and as setting an appropriate minimum standard if the project is approved. No stipulation or settlement binds the Council either to approve or deny the project.

Further, no stipulation or settlement is binding on parties other than the stipulating and settling parties. Non-stipulating/settling parties are allowed to present relevant evidence during the adjudicative proceeding to support a different standard.

The Council has considered the text of the settlements and stipulations and the testimony presented at the hearings. To the extent that the settlements are approved, as discussed below, the approvals are subject to the following conditions:

1. The Council is not foreclosed from adopting requirements more stringent than stated in the settlement agreements;
2. The Council also reserves the right to determine specific standards and detailed plans for monitoring, reporting, and enforcement without submissions from the stipulating parties, if it deems doing so to be a significant element in its resolution of the issues in the proceeding.

Supplemental Settlement Agreement between Washington Department of Fish & Wildlife and Sumas Energy 2 Regarding Wetlands: At the adjudicative hearings, the Council announced that it would conditionally approve the supplemental settlement agreement between the Applicant and the Department of Fish & Wildlife provided that evidence was presented that showed that the improvements to the north and east boundary drainage ditch will not result in increased flows through this ditch at the risk of reducing water levels in adjacent or upstream wetland areas unless these impacts are also mitigated by the proposal. The Council notes that evidence concerning this issue was presented at the hearing.

Settlement Agreement between Department of Ecology and Sumas Energy 2: By a divided vote of the Council, it was decided to accept the settlement agreement between the Department of Ecology and the Applicant.

Stipulation and Settlement Agreement between Washington Utilities and Transportation Commission and Sumas Energy 2: The Council has decided to defer any decision on the Utility and Transportation Commission stipulation and settlement agreement until it concludes its deliberations and issues a recommendation to the Governor.

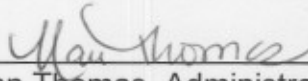
Stipulated Withdrawal of Bonneville Power Administration: The Council notes the submission into evidence of the stipulated withdrawal of the Bonneville Power Administration and notes that no action from EFSEC is sought by this withdrawal.

Surrebuttal: The Council has decided that a surrebuttal hearing is not required on the issue of heat rate or other issues, but that evidence will be allowed, as described above, regarding the Canadian governments' positions on the impacts of the project in Canada as well as limited additional testimony relating to the draft PSD permit.

Notice to Participants: Any objection to the provisions of this order must be filed within ten days after the date of service of this order, pursuant to WAC 463-30-270(3). Unless modified, this order will control the future course of the proceedings.

DATED and effective at Olympia, Washington, the 28th day of August, 2000.

WASHINGTON STATE ENERGY FACILITY SITE EVALUATION COUNCIL



Nan Thomas, Administrative Law Judge