

MINUTES

STATE OF WASHINGTON

ENERGY FACILITY SITE EVALUATION COUNCIL

November 13, 2000 – Regular Meeting

Rowe Six Conference Center – Building 1
4224 6th Avenue SE
Lacey, Washington

Item 1: Call to Order

Chair Deborah Ross called the meeting to order at 1:30 p.m. A quorum was present.

Item 2: Roll Call

Chair	Deborah Ross
Department of Agriculture	Daniel Jemelka
Department of Community, Trade & Economic Development	Heather Ballash
Department of Ecology	Charles Carelli
Department of Fish & Wildlife	Jenene Fenton
Department of Health	Ellen Haars
Department of Natural Resources	Gayle Rothrock
Department of Transportation	Gary Ray
Utilities and Transportation Commission	Dick Byers and Bob Wallis
City of Chehalis	Fred Rider
Lewis County	Ken Sabin

Others in Attendance

EFSEC Staff and Counsel

Allen Fiksdal	Irina Makarow
Mike Mills	Mariah Laamb
Robert Fallis, AAG, EFSEC	

Guests

Laura Schinnell, Energy Northwest-Satsop	Darrel Peeples, Newport Northwest
Rose and David Spogen, Critical Issues Council	John Mudge, Critical Issues Council
Grant Bailey, Jones and Stokes Associates, Inc.	Beth Spelsberg, Golder & Associates
David Broadfoot, Jones and Stokes Associates, Inc.	Paul Margaritis, Tractebel
Wayne White, Tractebel	Katy Chaney, URS
Liz Thomas, Preston, Gates & Ellis	Kirk Lilley, Preston, Gates & Ellis
Karen McGaffey, Preston, Gates & Ellis	Bill Frymire, AAG

Tony Usibelli, OTED-Energy
Melissa Burke-Cain, AAG, CFE

Marc DeFreyn, AAG
Jeff Soth, Rebound

Item 3: Approval of Minutes

The minutes of the October 9, 2000 meeting were approved with 2 typos and a clarification from Heather Ballash on page 2, Item 6: Chehalis Generation Facility, paragraph 4, second sentence. Add after the word deliberations “with the due consideration that the complex procedural and substantive issues in this case require, and”.

Item 4: Adoption of Proposed Agenda

The Council approved the agenda as presented.

Item 5: Chehalis Generation Facility

<i>Site Certification Agreement Amendment Request Draft Order on Amendment Request</i>	<i>Heather Ballash, EFSEC member reporting</i>
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Ms. Ballash made the following announcement: “Late this morning the Council was apprised of certain communications involving a Council member and a witness in the Chehalis proceeding which appear to constitute impermissible ex-parte communication under the Administrative Procedure Act (APA). The Council will cause the subject communications to be placed on the record as required by the APA and will so notify all of the parties”.

Ms. Ballash provided a report summarizing the Council’s review of Chehalis Power’s request to amend the Chehalis Generation Facility project. “The Council has concluded the adjudicated hearing and its deliberations in the matter of Amendment No. 1 to the Site Certification Agreement between the State of Washington and Chehalis Power Generating, Limited Partnership, for the Chehalis Generation Facility located in Chehalis, Washington”.

“It is my understanding that the Council members who participated in the adjudicative proceedings on this amendment are prepared to vote today on the proposed amendment to the Site Certification Agreement (SCA). The written order and draft Amended SCA will be entered subsequently upon further clarification of procedural matters and it will be the written order, not the vote today, that formally expresses the Council’s decision”.

“At this time, I would like to summarize the proposed decision that is before the Council for a vote today”.

“The order that will be entered will address all of the amendments and contested issues in this proceeding except the Prevention of Significant Deterioration (PSD) air emissions permit. As will be noted in the order, the United States Environmental Protection Agency (EPA) must co-sign the PSD permit. The Council is currently awaiting concurrence from the EPA regarding two issues. First, whether Chehalis Power has commenced construction for purposes of the PSD permit according to EPA guidelines. Second, whether additional analysis will be required addressing PSD air requirements, specifically Best Available Control Technology”.

“The Council does not deem it appropriate to send an incomplete recommendation to the Governor on the proposed amendments. The Council also understands that completion of the PSD air permit may require additional time after the EPA has made a determination for additional public notice and/or hearings. Therefore, the Council does not anticipate that the order that is entered as a result of the vote today will address the PSD permit issues until we receive concurrence from the EPA, unless the EPA announces its decision in time for consideration and conclusion”.

“As to the other proposed revisions, the Council will recommend to the Governor that the amendment to the SCA be granted, with a number of conditions”.

“In the course of its deliberations, the Council determined that ‘need and consistency’ is a single concept that is not just a demonstration of the need to produce power based on the current supply and demand. The need and consistency issue poses a broader question of whether an energy facility at a particular site will produce a net benefit after balancing the availability and costs of energy to consumers and the impact to the environment”.

“The balancing of the state’s need for energy at a reasonable cost and the need to minimize environmental impacts need not be a strict cost accounting. However, unless an applicant can demonstrate a commitment to provide energy at a reasonable cost that will either directly or indirectly benefit consumers, a determination of net benefit will include consideration of whether the applicant will: (1) procure preferred energy resources; (2) further minimize the facility’s impacts to the environment; and/or (3) provide offsets that further mitigate the impacts of the facility on the environment and citizens”.

“In this case, the Applicant has proposed to eliminate requirements that the Council had found adequately addressed the issues of need and consistency, and to operate as a merchant plant. Therefore, if the Council is to recommend the amendments be granted, it must consider what other factors should apply to achieve a net benefit to citizens. Accordingly, the Council concludes that the elimination of Attachment 7 from the SCA should be contingent upon the inclusion of certain conditions in the draft Amended SCA”.

“On this basis, the Council will recommend approval of the amendments with the following conditions:

- (1) The Applicant should be allowed to operate as a merchant plant;
- (2) The increase in generation capacity from 460 to 520 megawatts (MW) should be granted;
- (3) Given the loss of public benefit from pretreatment of wastewater to the City of Chehalis, the change from water to air-cooling technology should be granted under the following conditions (in addition to those already agreed to in the stipulation with the Department of Fish and Wildlife and Ecology):
 - Chehalis Power must acquire and retire at least 102 acre feet of water rights by December 31, 2002, and
 - Chehalis Power must meter and record all water purchased and discharged, compile a daily record and report to the Council monthly;

- (4) As stated previously, the proposed revisions to the PSD air permit to allow an increase in short term, but not annual nitrogen oxides (NOx) emission limits to accommodate the increased capacity, are subject to completion of the PSD permit process;

The Council noted two additional amendments that were not discussed during the hearing, but I want to indicate at this time how they will be deciding on those proposed amendments.

- (5) The proposed change to a sentence in Article IV. C, which states, ‘The steam turbine ~~will~~ may be provided with a steam extraction system to supply steam for a future steam host’, should be denied.
- (6) The proposed increase in the size of each of the back up fuel oil tanks from 1.6 to 1.7 million gallons to support the larger turbines should be granted.

The Council believes that, because the recommended SCA amendments will result in elimination of the requirements in Attachment 7 and in increased greenhouse gas emissions, mitigation should be required. The Council believes that the Oregon ‘monetary path’ is a reasonable approach and will direct Chehalis Power to develop a plan and recommended strategies to offset greenhouse gas emission from the Chehalis Generation Facility. Chehalis Power will also calculate and make mitigation payments based on the Oregon formula to be spent to implement the greenhouse gas mitigation plan”.

“I believe that this summarizes the major points in the Council’s decision to recommend approval of proposed changes to the Chehalis Generation Facility SCA”.

Motion: At this point, Ms. Ballash asked the Council if there was a motion to direct the preparation and completion of an order and draft amended SCA consistent with this summary for transmittal to the Governor upon completion of the PSD air permit process. It was so moved and seconded.

On a role call vote, the Council voted as follows:

Dept. of Agriculture – Dan Jemelka – Yes
Community, Trade and Economic Development – Heather Ballash – Yes
Dept. of Ecology – Chuck Carelli – Yes
Dept. of Fish and Wildlife – Jenene Fenton – Yes
Dept. of Natural Resources – Gayle Rothrock – Yes
Dept. of Health – Ellen Haars – Yes
Dept. of Transportation – Gary Ray – Yes
Utilities and Transportation Commission – Bob Wallis – Yes
Military Dept. – not present
Lewis County – Ken Sabin – Yes
City of Chehalis – Fred Rider – Yes
Council Chair – Deborah Ross – Abstain

Action: The motion carried.

In response to several questions from Chehalis Power regarding details of the recommended Carbon Dioxide (CO₂) mitigation, Ms. Ballash replied that it applies to the total CO₂ emissions from the plant, not just the incremental increase from 460 to 520 megawatts; that the payment process would be worked out later; and that any specific plan submittals from the company should come in after the order is issued. Ms. Ballash reiterated that the Council's decision would be forwarded to the Governor when the PSD process is completed.

Noting that more work remains to be done, Chair Ross thanked the Council members and staff for their efforts in processing this significant amendment request.

<i>Plan Review Contracts</i>	<i>Mike Mills, EFSEC staff</i>
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Chehalis Power has announced a start of construction date of June 13, 2001, for the Chehalis Generation Facility (CGF) and that date triggers **plan submittal** requirements of the Site Certification Agreement (SCA) issued by the state for the project. The Compliance Plan submitted by Chehalis Power identifies 23 plans that will need to be submitted to the Council for review and approval prior to the start of construction. A number of those plans are due six months prior to construction beginning next summer. In anticipation of those initial plans being submitted on or before December 13, 2000, staff is developing a Compliance Monitoring program for the Council to secure the services of the appropriate agencies to conduct the required reviews of design plans and specifications and onsite inspections.

EFSEC statutes and rules direct the Council to contract with state and local agencies to provide compliance monitoring services, preserving the right of compliance determination to the Council. Staff has identified several agencies that are authorized and have the capability to perform plan review and inspection services to assist the Council determine that CGF facilities are designed and built to be consistent with the applicable building and safety codes and the terms of the SCA. Staff is currently negotiating with the following state agencies and local governments to enter into agreements for those services.

- Lewis County Department of Community Development - Building and Fire Safety Review and onsite inspections
- City of Chehalis Public Works - Water, Stormwater, Transportation Services
- State Department of Ecology - Water, Environmental Protection
- State Department of Fish & Wildlife - Mitigation Commitments
- State Labor & Industries - Construction Inspections, including electrical factory assembled structures and boilers
- State Archaeology & Historic Preservation - Cultural Resources

Motion: It was moved and seconded to approve staff's recommendation that the Council authorize the Chair, in consultation with the Executive Committee, to execute agreements with those state agencies or local governments that can provide plans review and construction inspections in support of the Council's regulatory responsibilities for overseeing the construction of the Chehalis Generation Facility.

Discussion on the motion indicated that the Council expects to be involved in the plan review and will work with the agencies to develop an overall process that is acceptable for each of the individual agencies.

Action: Motion passed.

Mr. Paul Margaritis, Chehalis Power, provided copies of some of the design and construction plans for the Council to begin reviewing. He stated that the initial site restoration plan should be a priority; and that each plan submitted will have its own timeline.

Item 6: Sumas 2 Generation Facility, Application No. 99-1

<i>Status</i>	<i>Allen Fiksdal, EFSEC manager reporting</i>
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The Council continues working on the project, focusing on the completion by Jones and Stokes, Associates, Inc. (JSA), of a final EIS.

JSA sent a letter to Mr. Fiksdal, EFSEC manager, regarding budget issues and the cost needs to complete the project. Mr. Broadfoot, JSA, outlined the company's request for an increase of \$75,000 to complete the work left to submit a final EIS to the Council. This increase would bring the total contract amount from \$340,000 to \$415,000. Mr. Broadfoot explained that the scope of public interest and the project impacts have increased considerably since the original budget was developed in 1999. The final EIS is being prepared in two volumes: with the first estimated at over 450 pages; and the second over 750 pages. This is due to the large number of public comments and the required responses.

Issues regarding spending funds within contract limits are being researched and will be further discussed at the next Council meeting in December. The Council requested that JSA determine the amount of funds spent for the month of November, 2000. The Council will then consider what actions may be necessary to resolve the funding issues.

Grant Bailey, JSA, assured Chair Ross that a final EIS, completed to the Council's satisfaction, would be delivered to comply with the existing contract.

Item 7: Cogentrix – Mercer Ranch Generation Facility

<i>Request for Potential Site Study</i>	<i>Allen Fiksdal, EFSEC manager reporting</i>
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The Council received a letter from Cogentrix requesting a Potential Site Study (PSS). In discussions with the Executive Committee, Mr. Fiksdal was asked to respond to Cogentrix suggesting the Council's desire to conduct a potential site study modeled after the Starbuck PSS. Mr. Fiksdal will send a letter out this week encouraging the proponent to follow the process and schedule outlined for the Starbuck PSS, with the appropriate schedule and budget recommendations.

At the last Council meeting, Cogentrix stated they may not want to proceed with the project unless EFSEC could grant water rights as part of the SCA. The Council may wish to seek clarification from the proponent regarding the timing of any decision on EFSEC's authority to issue water rights. The Council would like to know if the proponent wants a determination before they submit an application.

Mr. Fiksdal will communicate to Cogentrix the importance of getting this information prior to any further steps involving project review by the Council.

Item 8: Northwest Power Enterprises - Starbuck Power Project

<i>Public Meetings-Dec. 5&6</i>	<i>Irina Makarow, EFSEC staff reporting</i>
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Public information meetings have been scheduled for December 5th in Dayton, and December 6th in Starbuck. A meeting notice flyer is being sent to the residents of Starbuck and those close to the proposed site. The notice includes meeting dates and places, proposed general agenda for each meeting and duration. The notice also includes a brief description of the project, open house discussion, and EFSEC's role.

The Agency meeting set for the day of December 6th, will allow representatives from tribes, federal agencies, and state agencies, who may have an interest in the project, to bring their issues and concerns forward and for EFSEC staff to explain how they can participate in the process. A site tour will take place after this meeting.

Ms. Laamb provided transportation and hotel accommodation information for the Council members attending the public meetings.

Item 9: Newport Northwest – Wallula Project

<i>Status</i>	<i>Allen Fiksdal, EFSEC manager reporting</i>
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Public meetings were held in Wallula and Walla Walla in October. JSA will proceed with the preparation of an environmental assessment as soon as information requested from the project proponent is provided to them. The Council is concerned that the failure to receive information in a timely manner will cause delays in the study schedule.

Mr. Fiksdal reported that he met with the Umatilla Tribe the week of October 30, 2000, to discuss both the proposed Wallula and Starbuck projects. The Umatillas are very concerned about both projects and requested to be involved in both projects. They have cultural resource and archeological experts in their tribe that are available to assist during the cultural research portions of the projects. They are hopeful that the project proponents will strongly consider using their expertise in this area.

The Umatilla Tribe wants to keep communication lines open with the Council, recognizing that they will also be dealing at the federal level with BPA. They would encourage the Council to continue to meet with the Tribe, as they have significant interests in both sites that are within the

ceded land area of the Tribe. The Umatillas feels it is also important to include the Nez Perce in talks as this region encompasses some of their tribal boundaries as well.

Item 10: Energy Northwest Columbia Generating Station, WNP-1/4, and Satsop Combustion Turbine (CT) Project

<i>Columbia Operations</i>	<i>Laura Schinnell, Energy Northwest reporting</i>
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Columbia Generating Station is operating under normal conditions; has been online for 53 consecutive days; and is currently generating 1151 megawatts net of power.

<i>WNP-1/4 Lease/Building Removal</i>	<i>Mike Mills, EFSEC staff reporting</i>
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Energy Northwest has requested Council approval of two separate activities at the WNP-1/4 site: the removal or disposal of four (4) non-reusable buildings as part of initial site restoration activities; and to enter into a lease of building No. 250, to store material on a short-term basis.

Motion: After clarifying questions from the Council were answered by EFSEC and Energy Northwest staff, a motion was entered to approve removal of the four buildings referred to in Energy Northwest's letter of October 10, 2000, subject to compliance with health, safety, and environmental protection procedures.

Action: The motion was approved unanimously.

Motion: A motion was entered to approve the lease of Building No. 250 to Lampson Inc./Academy Metal Products Co. to store materials until they can be removed from the site, as described in a letter from Energy Northwest dated November 3, 2000.

Action: The motion was approved unanimously.

<i>Rattlesnake Slope Rehabilitation</i>	<i>Mike Mills, EFSEC staff reporting</i>
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Mr. Mills presented draft Resolution No. 296, requesting authorization for implementation of the Hanford Wildlife Mitigation Project - Rattlesnake Slope Rehabilitation Plan. Attached to the resolution is a letter from the Dept. of Fish and Wildlife (WDFW) dated September 8, 2000, outlining the details of the rehabilitation plan and activities that the department is carrying out at the project site.

This resolution would formally approve the rehabilitation strategy for establishing a shrub steppe habitat as a restoration priority for the site, in place of the former mitigation plan. The resolution would direct Energy Northwest to work with WDFW to implement the following conditions:

- 1) Energy Northwest will provide funds for the development, operation, maintenance and replacement costs to carry out the Rattlesnake Slope Rehabilitation Plan for the life of the Energy Northwest projects. WDFW will not be held liable for maintenance and operation costs for mitigation of these projects.

- 2) In the event that any of the projects are sold, transferred, or otherwise unable to provide the specified amounts of funding, the Council retains the right to consider and pursue alternative funding methods for the life of the projects.
- 3) The rehabilitation project will be implemented in a timely manner, generally following the implementation schedule set out in Attachment 1.
- 4) Implementation of the rehabilitation plan will satisfy wildlife mitigation requirements; however, if there are unanticipated circumstances that prevent the plan from being completed and/or satisfactorily implemented, the Council may require Energy Northwest to undertake appropriate remedies to ensure wildlife mitigation.

Staff recommended that the Council approve Resolution No. 296 as proposed.

Motion: It was moved and seconded to approve Resolution No. 296 with the following changes: 1) Page 3 Item No. 2 add the words “WNP-1/4” just prior to the word projects. 2) On Page 3, the paragraph after Item No. 3, be made Item No. 4.

Action: The motion was approved unanimously.

<i>Satsop Combustion Turbine Project</i>	<i>Laura Schinnell, Energy Northwest reporting</i>
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Ms. Schinnell reported on a press release that indicated Duke Energy of North America had made an offer to Energy Northwest to purchase the Satsop Combustion Turbine Project. Energy Northwest is in the process of considering the offer and expects to conclude their review by the end of the year. The Council will be notified if they plan to proceed with the sale of the project and any licensing actions that may be necessary.

Ms. Schinnell added that Boise Cascade, a proposed tenant of the Satsop Development Park, who plans to put in a small manufacturing facility that would turn recycled plastic and/or wood products into a wood siding-product, may require a two-inch natural gas pipeline. Boise Cascade is hoping to have this facility operating by the summer of 2002.

Discussion followed on the Council’s process for transferring Site Certification Agreements. In considering a transfer, EFSEC would determine if it is either a technical or significant amendment. If technical, the Council can approve with a resolution. If it is a significant amendment, the Council would conduct an adjudicative process to review the proposed changes.

Item 11: Siting Task Force

<i>Update</i>	<i>Deborah Ross, EFSEC Chair reporting</i>
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The Task Force is expected to follow-up on the recommendation of the work group, but the next steps are not clearly defined at this time.

<i>Rulemaking 2001</i>	<i>Deborah Ross, EFSEC Chair reporting</i>
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The Council is considering undertaking rulemaking to address some of the difficulties that members and the Task Force have identified. It was noted that the Council's workload makes rulemaking difficult at this time.

The Executive Committee, with input from Council members, will look into how some of the issues might be addressed through rulemaking. One suggestion is to use an emergency rulemaking to codify the review process the Council has adopted for the Wallula and Starbuck projects. The committee will explore the timelines for rulemaking before bringing it to the Council for approval. Chair Ross will categorize the issues and prioritize technical and policy issues to help the Council determine areas that they may want to initially focus on.

Item 12: Native American Heritage Month

<i>Native American Heritage Report</i>	<i>Allen Fiksdal, EFSEC manager reporting</i>
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November is Native American Heritage Month and several educational opportunities are being presented throughout the month to educate individuals on Native American Heritage. Mr. Fiksdal stated that he found the training very informative. He encouraged others to attend to gain a better understanding of the heritage and cultures of the Native Americans.

Item 13: 2001 Meeting Schedule

<i>Code Reviser Register</i>	<i>Mariah Laamb, EFSEC staff reporting</i>
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Ms. Laamb presented the meeting schedule for the 2001 Regular Council and Executive Committee Meetings. The meeting schedule is published by the Code Reviser's Office in their Register. The regular council meetings are all scheduled at the Attorney General's Conference Room, at Rowe Six, for the year 2001. The first regular council meeting of the year is scheduled for January 8, 2001.

Item 14: Other

Bob Wallis, who served as a Council member for many years, will be honored at a luncheon of his peers on Monday, November 27, 2000, at Genoa's Restaurant at 11:30 am. All Council members have been invited.

Item 15: Adjourn

The meeting is adjourned at 3:30 p.m.