

MINUTES

ENERGY FACILITY SITE EVALUATION COUNCIL OF WASHINGTON

September 30, 2003 - Special Meeting
925 Plum Street S.E. Suite 308
Olympia, Washington 3:00 p.m.

ITEM 1: CALL TO ORDER

CHAIR LUCE: The special meeting of the Energy Facility Site Evaluation Council for September 30, 2003 will come to order. Would the clerk read the roll.

ITEM 2: ROLL CALL

EFSEC Council Members

Community, Trade & Economic Development

(via phone) Richard Fryhling

Department of Ecology

Charles Carelli

Department of Fish & Wildlife

Chris Smith Towne

Department of Natural Resources

Utilities and Transportation Commission

Tim Sweeney

Chair

Jim Luce

CHAIR LUCE: I would note that the representative from the Department of Natural Resources is excused. He had a prior commitment actually to deal with a CO2 issue in California and his presence will be missed.

OTHERS IN ATTENDANCE

EFSEC STAFF AND COUNSEL

Allen Fiksdal

Mike Mills

Mariah Laamb

Irina Makarow

Ann Essko - AAG

Shaun Linse - Court Reporter

EFSEC GUESTS

Karen McGaffey – Perkins Coie

Melissa McEachron – Ecology

Kristen Sawin – AWB

Dave Reich – Ecology

Collins Sprague – Avista

Cindy Custer – BPA

Bill LaBorde – NW Energy Coalition

Mike Lufkin – CFE

Darrel Peeples – Kittitas Valley Wind Project

Linda Ver Nooy – Global Warming Action

Dave Arbaugh – Dave Arbaugh & Associates

Bill Robinson – The Nature Conservancy

Mark Anderson – CTED
Donna Ewing – LWVW

Dave Sjoding – WSU Energy Program
Toni Potter – LWVW

ITEM NO. 3: RULES

CO2

Jim Luce, Chair

CHAIR LUCE: Rules discussion is the one and not the only but the first item on the agenda.

MR. FIKSDAL: Mr. Chair, I just want to add that we have an “Other” that we want to talk about at the end of the meeting today, so I ask that the Council add “Other” to the agenda.

CHAIR LUCE: Certainly. Any objection from Council Members?

MR. FIKSDAL: It has to do with the contract. It's an information item.

CHAIR LUCE: All right. The Chair will put on his glasses to make sure who's here. The first item on the agenda is the Draft CO2 rule. The Draft CO2 rule has been circulated prior to this before the Council Members, and we have had substantial discussion among the Council Members by e-mail on this rule. Are there any specific questions or comments by Council Members on the Draft CO2 rule?

MR. CARELLI: Mr. Chair, I would note Mr. Ifie has identified several concerns that he has with the content of the rule in several areas and had requested that we discuss his concerns. In particular I believe there are six points. And I don't know when you would want to do that, but I feel obligated to go through briefly his concerns so that they are at least before the Council. I think all of the Council Members did receive a copy of his concerns.

CHAIR LUCE: I think it would be an appropriate time to do that, Councilman Carelli, if you want to proceed at this time.

MR. CARELLI: Regrettably I don't have copies for everybody in the audience, but there are six points.

CHAIR LUCE: Yes.

MR. FIKSDAL: May I make an observation, Mr. Chair. Maybe it would be advantageous to kind of just go over and highlight what this rule is about, and it may make a little more sense to what Mr. Ifie has to say. So I suggest that for the members of the public and for the Council Members just kind of highlight what the rule says, and then we can talk about Mr. Ifie's questions.

CHAIR LUCE: All right. This rule establishes a carbon dioxide emissions mitigation standard for fossil fueled power plants under the Council's jurisdiction, and the rule has a standard for emissions mitigation and provides procedures to implement the requirement. Council has concluded that CO2 emissions contribute significantly to global warming, and that's no surprise. That's hardly old news.

The four projects that have come before the Council in the past have had included in their licensing agreements mitigation for CO2. I want to note that in many, perhaps all cases, it has been a significant part the willingness and cooperation of those project owners to accept the responsibility for providing that CO2 mitigation, so I don't want to leave the implication that the Council has required that. I think it has been a joint partnership between the Council and those applicants recognizing that this is a significant issue over the long term. We also have in one application pending before us now, which I don't want to get into detail, additional global warming or CO2 mitigation.

To go on, I would say the policy of the Council is that to issue a site certificate agreement the Council will require fossil fueled thermal power plants to comply with the CO2 mitigation standard of the Council. We will in the event that federal CO2 legislation is adopted, compliance with the rule may entitle, and I emphasize may entitle, the certificate holder to receive credits made available pursuant to that legislation. The “may” will be dealt with later after we see exactly what it is if and when the federal legislation is adopted. I think we want to see exactly what it is that Congress passes, if in fact they do pass something.

The rule would be applicable to all fossil fueled thermal plants under our jurisdiction. That's 350 megawatts and above on or after July 1, 2004, that receive a new site certification and produce 350 megawatts or more of power or have an existing site certification agreement and increase the CO2 emissions 18,500 metric tons or more per year through changes or modifications in equipment or operations or come under Council jurisdiction because of reconstruction or enlargement of existing facilities under our statutory authorities for the net increase in generation resulting from construction or enlargement.

We have a section in this particular rule, draft rule concerning definitions, and I'm not going to go over the definitions in the rule right now. We will pass out the rule at the end of this meeting and leave that for you to look at. I don't think there will be anything particularly surprising in the definition section. We also have a formula that we have prepared for determining the amount of mitigation, and I'm not going to try to go through that formula right now. What is required by the draft rule is basically this: A developer shall mitigate for 20 percent of the calculated total carbon dioxide emissions of the plant during a 30-year period, assuming 100 percent capacity during that time. The developer can require relief from mitigation by paying 87 cents per metric ton to an independent qualifying organization that would in turn acquire offsets for a new 650-megawatt plant, which as you're aware, would be capable of serving about half of Seattle's load. The total greenhouse gas mitigation cost would be approximately 11 million dollars.

Now the question that everybody has in their mind is what's the bottom line? If a household received only power from the new plant, meaning the draft mitigation requirements, the average cost for a family using 12,000 kilowatt hours per year would be 81 cents.

A business requiring a megawatt of power and paying about \$350,000 annually would pay approximately an additional \$570 per year. EFSEC will verify those numbers in the course of our preparing an economic analysis on this proposed rule, and we're in the process of doing that right now, a small business impact statement. We've signed a contract with the Department of Ecology, and we are in the middle of doing that right now.

Administrative costs have been an issue. They cannot exceed 15 percent, and they are included in the proposed price per ton. They are not in addition to. They are included in.

What other mitigation issues are addressed by the draft EFSEC rule? The draft mitigation rule is only one component of the overall balanced package of proposed siting standards, and as you're aware the package works as an entire whole. Air quality, fish and wildlife, water quality, water quantity, fees. We have strived here to produce a package that overall provides abundant power at a reasonable cost while protecting the environment and the public interest.

You want to ask how it is that we arrived at 87 cents per metric ton. I think that we looked at a whole wide range of options. Some of those were, you should require the project owner to pay whatever the cost is for a metric ton on the free market. Others of those came in at I believe 40 percent at two dollars a ton. Others of those came in at, you have no authority to do anything, so don't do anything. In fact, we received a letter just today from a key legislator who in essence has told us that that was the case, and that was his opinion. It's not surprising. All right? And I bear no animosity to people who hold that point of view. We just respectfully disagree.

But what we did is try to balance everything together again with the statutory obligation of abundant power at a reasonable cost, protecting the interest of the environment and the public interest. There are a whole variety of costs that anyone siting a project must deal with. If CO2 were the only obligation of

a project developer, you might get a different result. But you don't deal with just CO2. You deal with fish and wildlife, wetlands, air, water quality, quantity, so you can't look at CO2 in a vacuum as much as some people might argue under different circumstances that you should. However, CO2 mitigation rates can be increased under our draft rule, and we will during the course of your public comment proceedings, which I can tell you now are scheduled for October 29 and October 30.

October 29 in Spokane, October 30 in Seattle. We will look very hard at comments that the public offers to see whether our numbers are correct and see whether other parts of our package of rules are correct. And, again, I don't want people to focus overly intensively on just the CO2 issue. The CO2 issue, however, is also being dealt with on the parallel path by the Department of Ecology. The Department of Ecology will look at projects below 350 megawatts and a rule making process that will roughly parallel our own.

Earlier I mentioned that 18,500 metric tons per year would trigger an additional amount of CO2 mitigation, and some people might ask, what's the basis for that? The 18,500 ton mark we believe equates to about \$100,000 in mitigation costs which in our opinion appear to be a reasonable threshold to apply the mitigation requirement. Again, all of that is subject to public comment. Then there's a question some people have raised in good faith, why not apply CO2 mitigation to all power plants? It seems like a level playing field ought to be a level playing field. The reality is, first of all, from a practical perspective it probably ought to be a level playing field. However, we're dealing with a legal issue here as well. A license to operate a power plant, site certificate agreement which is what we call it, is a contract. We can't unilaterally change a contract without exposing ourselves to some very significant liability. If the other party agrees to change the contract, then certainly we would be more than willing to do so. But I haven't seen anyone volunteer to change their contract yet. So we're not proposing to try to require those parties who already have contracts to do so. The options are important in terms of how CO2 mitigation is done.

I mentioned independent qualifying organizations. That's something that's comparable to what's done in Oregon where I think those of you who are familiar with the Climate Trust probably know about that. But in the State of Washington what we have done is leave two options available.

One is the independent qualified organization, similar to the Climate Trust, and we in our rule, and you can read this, set out some very specific criteria that an independent qualifier organization would have to meet to ensure that they are able to do the job, and they will do the job in a responsible way and be accountable to the taxpayers and the public and to the State of Washington.

The second way is the developer itself can undertake this project of CO2 mitigation, if they want to do so. Not all developers want to do so. Some are set up to do so, and we are not going to try to dissuade them from doing so. I'll let the standards that they have to undertake speak for themselves in the rule.

I'm not going to go over them here. Again, I said the project mitigation must continue for 30 years. The mitigation is due -- assuming that the mitigation goes forward, it would be due in five years, over a period of five years. It would be due on annual payments over that period of five years, and the first mitigation payment would be due on the front end of the first year, and that would be due to allow an independent qualified organization to have funds to go out and get the project and get started. It's due 60 days prior to the commencement of construction and subsequent payments are due annually beginning at the end of the first year of operation for the next four years. I don't want to get into too

much of the independent qualified organizations' rules and responsibilities. Again, you can read the rule. I think it's fairly self-explanatory.

There is a preference and priority for mitigation being done in the State of Washington and particularly within the area of where the project is located. I think it's fairly clear in the rule how do we know that the mitigation funds will be well spent?

I guess I would only add that there is a provision for three ex officio state employees to sit with qualified organizations and monitor the projects on an ongoing basis, and that's not EFSEC employees necessarily. That could be State Energy Policy. That could be legislators. We want somebody there who will be able to sit and watch what's going on and hopefully validate what is going on in the manner that it was intended to go on. I don't want to get into the legal authority. I will leave that to the lawyers. I guess that basically is my summary of what the rule requires. I would try to explain the formula to you, but I went to Washington State University for a reason, and it wasn't to study mathematics. I can tell you the end result of the formula, but I will leave it to others to explain all of the numbers in the formula. Does that help, Allen?

MR. FIKSDAL: Yeah, I think that covers the basic gist of the thing. I think we can discuss Tony's or Mr. Councilman Ifie's concerns.

MR. CARELLI: Not that I would correct you, but –

CHAIR LUCE: Well, you've never stopped from doing so, but please go ahead.

MR. CARELLI: The ex officio members we ask to be appointed to the independent qualified organization that would do the investment for us do not have to be state employees. They're appointed by the State of Washington to that organization.

CHAIR LUCE: All right. I stand corrected.

MR. CARELLI: And we would take advice as to exactly that designation or how that appointment should be made.

CHAIR LUCE: I stand corrected.

MR. CARELLI: Mr. Ifie, Tony, started out with 15 issues he took with the proposed rule, and over the past several weeks we have worked through those, and I believe we are down to just a couple, but he has six points that he wanted to bring up, and he shared those points with the Council Members. Point one I think has already taken place in that there have been a couple of legislative hearings on the subject of CO₂, carbon dioxide emissions mitigation, and Tony encourages that there be a legislative look at this issue as well. He would like to have more legislative hearings on the matter and feels that that is one way to deal with the question that is occurring, and I think Tony is reasonably satisfied with that particular aspect.

He and I talked at length over the degree or the amount of justification that should be included in the proposed rule as to why we're doing this. I argued that the rule is not the place to provide the justification; that the justification needs to be in the background material. The rule should speak to what the rule is going to accomplish, and I think in the background material that we have been putting together - the Q and A and the talking points - the news releases do provide that background as to what is prompting us to do this at this time.

Tony also had a problem in understanding exactly how the formula worked. We have as you will see a T30 in the formula. T is time, 30, 30 years, and we also are talking about so many hours. Tony wanted it made clear that T30 represents the amount of time that the plant is operating and not the fact that this would go into effect after 30 years. We have changed that T30 represents 262,800 hours. We revised

the formula to address that concern. It's obvious that with a gas turbine generator the heat rate that one uses, the heat rate at which that turbine operates is very critical. If we use a low heat rate, we'll get a certain amount of CO2 resulting from that calculation. If we use a higher heat rate, we'll get another calculation. Tony's concern is that we look at the heat rate that we use, so as to make sure that we are not creating a standard or a mitigation requirement that is inequitable and something that is not consistent with what the State of Oregon has.

He was concerned that we not have a 25, 30 percent higher mitigation rate than Oregon and would like to see that we try and maintain as level a playing field between the states as we can. We finally come down to Tony's Point No. 6, and I think is maybe the only issue that he and I continue to have about the proposed rule, and that is he would like to see a target set for a minimum of 15 percent of the mitigation to take place close to the plant site. He's not entirely sure that he wants to create a quota that so much must take place at that location, but he would like to encourage that 15 percent or thereabouts take place near the target, near the proposed plant site.

I will take this opportunity to say that in my discussions with him and after listening to testimony that's come before the Council, that trying to mitigate locally may not give you the greatest value for your dollar based on the amount that it would cost to mitigate a ton locally as opposed to a more global scale, at least in North America and/or world wide. You get different returns on your dollar.

So those are the six points, and I trust that I have represented Tony's interests adequately. If there are any questions, this should be a good opportunity to discuss them.

CHAIR LUCE: Questions, Council Members? And, you know, you corrected me, and I will not correct you, but I will say that I probably err strongly on the favor of doing the mitigation within the state and the local areas, and I would err on that side irrespective of whether there were potentially greater benefits to mitigation on the global sense. If we do mitigation globally, I want to make sure that the mitigation that we do is done in an area globally where I am highly, highly confident that the results will actually be measurable over the longer term.

I think there have been some circumstances where that's been less than certain. But other than that, I think we're all of accord. We had the rule. We've had the rule discussed. Is there a call for the question on the rule?

MR. FIKSDAL: I think what we need to do -- essentially what you're doing now is saying that what you have developed is sufficient to put it on our website. That's the whole purpose of the meeting.

CHAIR LUCE: Is there a call for the question to put the rule on the website is what I mean. Obviously we are not adopting the rule.

MR. FIKSDAL: I just want to make it clear.

CHAIR LUCE: Look, I'm not a process guy. Quite frankly for those of you who have come to know me, and Cindy knows me from Bonneville process. I mean process? But I've learned. Okay. I've learned. Okay. We started this process in December of 2001, so if I wasn't a process guy by now, I'm never going to be a process guy. So all I'm doing is calling for the question to put the rule onto the website.

MR. SWEENEY: Thank you, Mr. Chair. I propose we put the rule on the website, the draft rule.

MS. TOWNE: I second the motion.

CHAIR LUCE: All right. Allen knows me too well also. All in favor of putting the draft rule on the website, signify by saying aye.

COUNCIL MEMBERS: Aye.

CHAIR LUCE: You've got to leave by 3:30.

MR. SWEENEY: I'm going to leave now.

CHAIR LUCE: It's 3:25. You can't leave now.

MR. SWEENEY: That's a good break time.

CHAIR LUCE: No. No, no, no, no, no.

MR. FIKSDAL: I guess for the audience that may want to leave you said that we would pass out copies.

CHAIR LUCE: We will.

MR. FIKSDAL: Do you want to do it after the whole meeting or now? Take a break.

CHAIR LUCE: We've got two other rules.

MS. TOWNE: No one will pay any attention to the next two rules.

CHAIR LUCE: Okay. Does anybody want to leave now? See, they're spellbound.

MR. FIKSDAL: I'm sorry. I just suggested it.

<i>Need for Power</i>	<i>Jim Luce, Chair</i>
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CHAIR LUCE: The next draft rule I'm going to take a little bit out of order is need for power. Council Members have had a chance to review the need for power rule, and if I can find the need for power rule.

MR. SWEENEY: It's the salmon one.

CHAIR LUCE: Salmon. The need for power rule states specifically that applicants for site certification for thermal generating facilities complying with the standards set forth in this chapter, emphasis complying, are not required to demonstrate a need for power, and the Council shall not consider the question of need for power in site certification proceedings. Now, there's an explanation that goes along with that, and those of you who've attended the public meetings probably are familiar with that explanation.

The need standard has been raised periodically in EFSEC adjudicatory proceedings and has been raised occasionally by the Council, and we've entertained testimony on that, not consistently but occasionally. The need issue has at least in my opinion and in some other people's opinion been resolved in RCW 80.50 where the statute says there's a pressing need for power and need for abundant power at a reasonable cost. So this is not something everybody has bought into. I'd be the first to acknowledge this is one of those issues that we didn't reach consensus on. It is one of those issues that if you look at the Oregon situation and you talk about yin and yang, Oregon's position was CO2, yes, need for power, yes, so those two work in harmony. The need for power standard applies only to project developers who comply with all standards set forth in this chapter, and I'm proposing that we post that on the website, not that we adopt it here today. And I would like to entertain any discussion that Council Members may have among themselves.

MR. SWEENEY: Well, not to correct you –

CHAIR LUCE: Why not? Carelli does it. I'm used to being corrected.

MR. SWEENEY: My understanding is Oregon does not have a need for power requirement.

CHAIR LUCE: They did before.

MR. SWEENEY: And they did before. So that's what you were saying when you said yes; that in trade for the CO2 mitigation to drop the need for power.

CHAIR LUCE: That's what I very awkwardly tried to say.

MR. SWEENEY: And in this case we've made it clear that in essence we have the same kind of trade-off as Oregon has.

CHAIR LUCE: Right.

MR. SWEENEY: I move the question or whatever.

MR. CARELLI: Second that.

MS. TOWNE: And a comment.

CHAIR LUCE: Comment.

MS. TOWNE: Because we're doing a lot of rules in the same time frame, and our desire is for consistency so that people are not misled thinking the use of different terms means different things, I noted that the CO2 rule we just posted says fossil fueled thermal power plants. This one says thermal generating facilities. I recommend that we make it consistent.

CHAIR LUCE: Done.

MS. TOWNE: It's Line 1, Sub 1.

CHAIR LUCE: Do you want to amend the motion?

MS. TOWNE: I move that Sub 1 of need for power draft rule be amended to read: Applicants for site certification for fossil fueled thermal power plants and delete generating facilities.

CHAIR LUCE: Does the maker of the motion accept the amendment to the motion?

MR. SWEENEY: Yes, I do.

CHAIR LUCE: There's been a call for the question. What do we vote first on, on the amendment?

MR. SWEENEY: Yes.

CHAIR LUCE: All right. Is there a vote on the amendment to the motion? All in favor aye.

COUNCIL MEMBERS: Aye.

CHAIR LUCE: The vote is now on the motion itself. All in favor say aye.

COUNCIL MEMBERS: Aye.

CHAIR LUCE: All right. The need for power standard is adopted to be placed on the website. I see the severability clause. That's already taken place; hasn't it?

MR. FIKSDAL: I think we did it last time.

NPDES	<i>Jim Luce, Chair</i>
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CHAIR LUCE: NPDES.

MR. SWEENEY: Bye. I will see you guys tomorrow.

CHAIR LUCE: NPDES. Chuck, you want to cover that? You've handled this issue ably.

MR. CARELLI: The existing EFSEC rules pertaining to NPDES permit issuance have not been updated for several years. During that time period there have been a number of changes to the NPDES program and to the manner in which the Department of Ecology administers their NPDES permit. The rule that we're proposing to adopt to replace the existing NPDES rule would bring EFSEC up current with the manner in which the Department of Ecology currently administers their NPDES program, again, the level playing field, very similar requirements for the same types of activities.

There's been a group that has worked on it quite extensively. Some of you will remember Michelle Elling who did a lot of work on this. Irina has done a good deal of anguishing over the content and how it fits together, and I believe that at this point we are ready to move this particular rule to the website and to seek further public comment on it. And that being the case, I would so move we put the NPDES rule on the website.

MS. TOWNE: Second.
 CHAIR LUCE: Before I could say discussion?
 MS. TOWNE: Well, after the second, then we'll discuss.
 CHAIR LUCE: Discussion, motion.
 MR. CARELLI: Moved.
 MS. TOWNE: I second it.
 MR. CARELLI: Any discussion?
 CHAIR LUCE: Call for the question.
 MR. CARELLI: Question.
 CHAIR LUCE: All in favor?
 COUNCIL MEMBERS: Aye.
 CHAIR LUCE: It's moved to the website.
 MR. CARELLI: I think that creates the entire rule package now out on the website for public comment.

<i>Public Comment Meetings</i>	<i>Allen Fiksdal, Manager</i>
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MS. TOWNE: What's the air rules status?
 MR. FIKSDAL: Oh, we'll let Irina talk about that.
 MS. MAKAROW: Well, I guess we're on to the next agenda item.
 CHAIR LUCE: We are.
 MR. FIKSDAL: Well, I think there's two issues there. One is, are we going to -- we do have some rules already on the website that talks about I think about clean air. The one that we're going to talk about today is adopting emergency adoption of the rule.
 MS. TOWNE: But it's a separate issue.
 MR. FIKSDAL: It's a separate issue.
 MS. TOWNE: Okay. Sorry.
 MR. FIKSDAL: The next thing is the public comment meetings. Jim did mention that. The Council has or wants to hear some public comments, when they're in public comment if you want to call them, before they actually go out as a CR 102 which is Code Reviser Form 102, which is the notice of formal adoption or intent to adopt. Those public meetings again are October 29 in Spokane and October 30 in Seattle, and we'll get a notice out exactly where and what time. They're going to be in the evening of those two days. And the whole group package is the package we encourage anybody to comment on, and I think anybody can send us letters in the meantime and afterwards. We're always looking for comments on these rules.
 CHAIR LUCE: I guess I would like to say something along those lines, and we started this process -- let's see. Basically, let's see, I came onto this job in September 2001 --
 MR. FIKSDAL: Oh, happy anniversary.
 CHAIR LUCE: -- with every belief that I could accomplish this mission in six months --
 MR. FIKSDAL: Told you so.
 CHAIR LUCE: You did. You did. And so I went all around the state government preaching let's get this done, and for some of the football fans, come on, move the chains. What are we talking about here? Let's get it done. And people sort of looked at me and a few smiles, and then I went up to the AWB conference and had some cornball saying like six days on the job, and I'm going to get it home

tonight. It was really pretty stupid. But the point was I had a very low tolerance for process, and Allen and a number of others, particularly Allen, helped me, educate me, and other Council Members like Chuck and Jenene who is not here now helped educate me on the reality of how state government works. It's not so much different than Bonneville really. In fact, it takes a little longer than Bonneville, you know, now that I look back on the good old days, good old Code of Federal Register. Anyway, we've come a long way. Now, everything that we've got in this package is not going to make everybody happy. I agree with that. Some of my friends have said that's probably good. If some people were really happy and others were really upset, then you wouldn't have probably done a very good job. And the Council has done the best job it can, and it's been a year and a half, and it will be another year -- hopefully not another year.

MR. CARELLI: Hopefully not.

CHAIR LUCE: Hopefully not before the process is finished, but we've made significant progress and now we're going out to public comment. And we really will listen to public comment. We really will. And then we will take the public comment we've heard, and we will make adjustments as appropriate to the rules. And then we will go onto the 102 process, and from there we will move forward. And I think in the end we will end up with clear, quantifiable rules that will address most but not perhaps all standards involved in siting, licensing, involved in siting and licensing power plants.

So when people see a plant coming down the road, they will know with a high degree of certainty, what's expected and that's good for project developers. That's good for citizens. That's good for the community as a whole, at least I hope it is.

So most of you have been involved to one extent or another in public process and will continue to be involved in this process, and what we've done here so far would not have been possible without you. If you all had said, "Stakeholder process. We ain't coming, too bad," what we've done here so far wouldn't have worked, you know. So I really want to thank you particularly for all of the hard work that you've put into this so far, and all the hard work that you will put into it in the future. And on the Council, particularly with respect to CO2 rule, the man to my left, Mr. Carelli, has really carried the ball. And I can't tell you how many times he has stepped forward when other people either didn't have the skills or the time, and this is from a guy who said when we asked him the first time to be involved, I got too many other things to do, and I don't want to do that. And eventually he saw the light. And once he, Chuck Carelli, sees the light, you know, he's the kind of guy who just breaks down walls to get it done. So, Chuck, thank you so much. You really have stepped forward in an extraordinary way to make that happen.

MR. CARELLI: Why are you doing this?

CHAIR LUCE: Well, I figured you might want to get a job with some of these development communities or these utilities, and I wanted to make sure you had a great vacation in your retirement, Chuck. But, on the other hand, the environmental community they will be looking at you. I'm doing this because it's time to tell the truth. So anyway thank you all for coming, and we do have copies of the rules available. They will be on the website soon, but for those of you who want them now, we can have them now.

MR. FIKSDAL: Well, one more thing.

ITEM NO. 4: APPROVAL OF EXPEDITED PROCESSING FOR AIR RULES

CHAIR LUCE: Oh, yes. I forgot. We have one other matter on the agenda or two. The expedited process of the air rules.

MR. FIKSDAL: And I guess my name is on here. I'll turn it over to Irina. What we essentially are going to do, and I'll have Irina describe it, is have the Council approve the issuance of the CR 102 which is the emergency rule.

MS. MAKAROW: Expedited.

MR. FIKSDAL: Expedited, excuse me. Irina, do you want to describe what that means?

MS. MAKAROW: Well, many months ago we initiated a process to update our general and operating permit regulations for air pollution sources to make sure that our incorporation by reference of Ecology's WACs for air permitting review and standards is up to date, and along with that we also had the desire to clarify some of the language with regards to appeals and permit issuance procedures.

As time has gone by we have not had all the time and resources we need to perform those clarifications, so right now we are recommending that the Council allow staff to proceed with expedited rule making and just revise the rules to incorporate by reference Ecology WACs in effect on July 1, 2003 and also with respect to EPA's new source performance standards do the same and with few other small clarifications to match our language of that with Ecology.

MR. FIKSDAL: So it's just adoption of other people's rules.

MS. MAKAROW: Existing rules.

MR. FIKSDAL: State and federal.

MS. MAKAROW: State and federal.

CHAIR LUCE: Discussion? Question?

MS. TOWNE: Move that we direct staff to undertake rule making on an expedited basis for air pollution and source regulations.

MR. FIKSDAL: That would be Chapter 463-39 of our rules.

CHAIR LUCE: 463-39.

MR. CARELLI: I will second that.

CHAIR LUCE: All right. We've had a motion, and we've had a second. Any discussion among Council Members?

MR. FRYHLING: Question.

CHAIR LUCE: The question has been called for. All in favor say aye.

COUNCIL MEMBERS: Aye.

CHAIR LUCE: The matter was passed.

MR. FIKSDAL: Thank you.

CHAIR LUCE: Irina, go for it.

ITEM NO. 5: OTHER

CHAIR LUCE: The last item to be dealt with here today is authorization for Allen to sign Task Order 6, Amendment A to the Ecology contract to proceed with the benefit cost analysis for the entire EFSEC rules package, minimal cost of \$37,000 to prepare the small business environmental impact statement. I'd asked Council's permission just to direct Allen to proceed along those lines. Am I authorized to ask Allen to proceed along those lines?

MR. CARELLI: I think that's appropriate. If I could, I would like to introduce David Reich. David, will you stand up for just a moment. David is the person that's going to be doing the small business economic impact statement for EFSEC under contract to the Department of Ecology, who is also going to be doing the same thing for the Department of Ecology, and he will be doing the benefits cost analysis for both agencies on the entire EFSEC rules package and on the Ecology CO2 mitigation rule. In putting together a scope of work for this, it would appear that it will be probably in the early part of March when a small business economic impact statement and the benefits cost analysis will be completed.

MR. REICH: That is correct.

CHAIR LUCE: Thank you, David.

MR. CARELLI: For the Council Members' benefit, David is going to attend the next Council meeting and will go over the scope of work in more detail.

CHAIR LUCE: We'll be looking forward to hearing from you, David. Any Council Members have any specific questions they would like to ask David, so he could anticipate those before the next Council meeting? I always like to know in advance if somebody is going to ask me a question. All right. Well, thank you.

MR. REICH: Thank you.

CHAIR LUCE: All right. Does that conclude the business before us?

MR. FIKSDAL: I believe so.

CHAIR LUCE: The meeting is adjourned. I was asked if I would take any questions. I'll undo that. The meeting is still on. Any questions? Sure.

MR. ROBINSON: I'm sharing your intolerance for the process.

CHAIR LUCE: We have a court reporter here. Could you identify yourself, please.

MR. ROBINSON: Sure. My name is Bill Robinson. I'm with the Nature Conservancy. You had solicited and actually welcomed comments from people on the CO2 rules. I'm referring to your draft rules and working discussions. Are those comments still on file or should they have to be resubmitted to comment specifically on the new regulations that you're suggesting, the rules?

CHAIR LUCE: Let me understand that. The comments that we had during our working groups?

MR. ROBINSON: Yes.

CHAIR LUCE: They're definitely on file. We had a reporter, and all of the comments, all of the notes and minutes are on file, and it is a great big book and they're all there.

MR. ROBINSON: So there is no need to resubmit them.

CHAIR LUCE: No, there's not.

MS. TOWNE: Except to the extent that we have done something outside the range of the discussion earlier, and you want to supplement your comments. I could see that we may have taken a course that was not anticipated when you commented, and we certainly would like to see what you have to say.

CHAIR LUCE: Any comments that you made at the stakeholder group were collected, organized, and are on file and will be part of the record when we complete our work on the overall rules package.

MR. ROBINSON: Okay.

MS. POTTER: Are those open to the public?

CHAIR LUCE: Absolutely.

MS. POTTER: How do you see them? For instance, the legislator that said that you didn't have any right to do this. I would like to know who it was.

CHAIR LUCE: Well, it's no big secret. I'll give you a copy of the letter today. It's public information.

MS. MAKAROW: If anybody is interested in copies of those documents just give me a call, and we can arrange for you either to inspect them or we can provide you copies, and my number is (360) 956-2047.

MS. POTTER: Again.

MS. MAKAROW: (360) 956-2047.

CHAIR LUCE: The name of the legislator, no big secret, is Senator Morton who is very complimentary of us with respect to the overall rules package. He simply has a legitimate, understandable difference of opinion with respect to our authority to adopt a CO2 rule absent expressed legislative authorities. So I mean I'm not acting as a lawyer here. I don't want to get into that sort of issue. Senator is a very learned man, and I respect his opinion, and I know that he respects our opinion. We just happen to disagree on this particular issue. He particularly stated that he appreciates the direction EFSEC is taking related to streamlining permit processing and providing certainty for permit applicants. I want to make that clear.

Other questions? This is an opportunity. The court reporter is over there.

MS. SAWIN: We have plenty of opportunities to make our comments on the record.

CHAIR LUCE: That concerns me, Kristen. I know your ways that you make your opportunities and your friend sitting there. You know, that's great. We'll look forward to all those opportunities. I enjoy them. Okay. Thank you very much for coming. We do have copies of the rules if you would like to see them.

ITEM NO. 5: ADJOURN

The Special meeting adjourned at 3:50 p.m.