

BEFORE THE STATE OF WASHINGTON

ENERGY FACILITY SITE EVALUATION COUNCIL

In the matter of:)
) Public Hearing
 PROPOSED RULE MAKING CR-102)
 (Implements RCW 34.05.320)) Pages 1 - 13
 _____)

A public hearing in the above matter was held in the presence of a court reporter on June 12, 2007, at 3:00 p.m., at 925 Plum Street S.E., in Olympia, Washington before Energy Facility Site Evaluation Councilmembers.

* * * * *

CHAIR LUCE: The Council for the Washington State Energy Facility Site Evaluation Council will come back to order. We are here to consider comments from the public with respect to Proposed Rule Making Chapter 463-28, 463-47, 463-66 Washington Administrative Codes. Councilmembers have the proposed amendments before them, and I know that we've all had a chance to review them. Maybe we should take roll to begin with. The clerk will call the roll.

MR. MILLS: Community Trade and Economic Development?

MR. FRYHLING: Dick Fryhling is present.

MR. MILLS: Department of Ecology?

Hedia is excused.

MR. MILLS: Department of Fish and Wildlife?

MR. TAYER: Jeff Tayer is present.

1 MR. MILLS: Department of Natural Resources?

2 MS. WILSON: Judy Wilson is present.

3 MR. MILLS: Utilities and Transportation
4 Commission?

5 MR. SWEENEY: Tim Sweeney.

6 MR. MILLS: Chair?

7 CHAIR LUCE: Chair is present.

8 Aer there people on the phone?

9 MR. GARRETT: Ed Garrett, ROKT.

10 CHAIR LUCE: Ed, you're there. Okay.

11 Anyone else other than Ed?

12 Is Patty on the phone?

13 MR. FIKSDAL: No.

14 CHAIR LUCE: Okay. She'll be joining us
15 too?

16 MR. FIKSDAL: No, because this is rule
17 making.

18 CHAIR LUCE: That's right. That's rule
19 making. You're absolutely correct.

20 The rule making before us, Allen, would you
21 care to summarize if you could the proposed rule changes.

22 MR. FIKSDAL: Sure. Chapter 463-28 State
23 Preemption basically says EFSEC will schedule an
24 adjudicative--or the changes will end up that EFSEC will
25 schedule an adjudicative proceeding if an energy facility

1 or alternative energy resource is found to be inconsistent
2 with local land use plans and zoning ordinances rather
3 than requiring an applicant to apply to a local government
4 for changes to land use plans or zoning ordinances.

5 The rationale for this change is that the
6 Council believes these changes are consistent with the
7 Council's statutory authorities for preemption, and it
8 will streamline the land use review process and will
9 eliminate duplicative land use consistency reviews and
10 will expedite its regular process while keeping issues
11 related to land use in a formal review process.

12 The second chapter that the Council will
13 consider is Chapter 463-47, the SEPA rules. The changes
14 will allow EFSEC to have the option of having SEPA which
15 stands for the State Environmental Policy Act documents
16 prepared by EFSEC by its independent consultants or an
17 applicant. It gives EFSEC the option of preparing a final
18 Environmental Impact Statement before or an adjudicative
19 hearing and changes the immediate responsibility for SEPA
20 activities from the Councilmembers to the Council's
21 responsible official.

22 The rationale is that the Council believes
23 that these changes will provide for more cost effective
24 SEPA document preparation, allow more flexibility in
25 sequencing the SEPA with EFSEC's adjudicative proceedings,

1 and more clearly define internal SEPA responsibilities.

2 The third chapter that the Council is
3 considering amending is Chapter 463-66, which is amending,
4 transferring, or terminating a site certification
5 agreement.

6 The changes would change the requirements
7 that all amendments to the site certification agreement
8 would be approved by EFSEC through resolution or orders
9 and would the eliminate the Governor approval of some
10 amendments.

11 The rationale is that the Council finds no
12 provisions in Chapter 850.50 RCW that requires the
13 Governor to approve amendments to site certification
14 agreements and that the proposed changes allow EFSEC to
15 make all decisions regarding amendments to site
16 certification agreements and will expedite the amendment
17 process.

18 You have and we have sent out what's called
19 a CR-102. It's a proposed rule making notice that lists
20 the changes, and also you have before you and was sent out
21 with the notice for proposed rule making the proposed
22 changes to each of those chapters, specifically to the
23 different sections that show additions and deletions:
24 additions by underlining, deletions by strike out.

25 These were sent to our rule making mail list

1 in April, and the timing and the notice of these hearings
2 were sent also. So today's hearing at three o'clock which
3 we're in currently and we have one scheduled for tomorrow,
4 June 13, starting at 2:00 at the Yakima area Arboretum,
5 1401 Arboretum Drive, Yakima, Washington.

6 So with that, Mr. Chairman, I think the
7 Council should take oral comment, and after any oral
8 comments you have before you, the written comments that
9 we've received I'll just basically read those, not the
10 whole comments but from whom we got them into the record.

11 CHAIR LUCE: That would be fine. Do we have
12 any oral comments? Anyone care to offer comments for the
13 record here today verbally?

14 Allen?

15 MR. FIKSDAL: I have no comments.

16 CHAIR LUCE: I guess the Chair's only
17 comment would be that at least with respect to the state
18 preemption provision if you members will recall the
19 underlying statute 80.50.110 states without any ambiguity
20 I believe that the state does hereby preempt any and
21 all--I'll paraphrase it--preempts the regulation and
22 certification of location, construction, operational
23 conditions. So we're in essence aligning the rules with
24 what the underlying statute already requires and directs,
25 and I use those words intentionally because the state does

1 preempt and has preempted for some period of time.

2 I guess the other thing I would say is that
3 not withstanding the change in the rules, if a project is
4 found inconsistent with local land use plans, we will
5 still have an adjudicative hearing and we will still
6 consider all of the concerns and issues raised by local
7 government at that particular hearing. We will still have
8 the SEPA process. We will still look at how the parties
9 act in the context of the proceedings to determine I don't
10 want to use the good faith but to determine their approach
11 to this issue. So I see this as aligning our statute, our
12 WACs with our existing statute.

13 SEPA rules, correct me if I'm wrong, but in
14 preparation of SEPA documents the way that we're proposing
15 this to be done is a manner that's frequently done within
16 the state, is it not?

17 MR. FIKSDAL: That's correct. If I recall
18 correctly, the primary change to the SEPA rules was to
19 allow the Council to issue the Final EIS at a time that it
20 deems most appropriate. The current rule says that you
21 cannot issue the Final EIS until after the adjudicative
22 proceeding.

23 I think you recall the last year we looked
24 at different ways that the Council can conduct its review,
25 and one of the ways was to go through the whole SEPA

1 process prior to holding adjudicative proceedings as an
2 option. Our rules wouldn't allow that so that's one of
3 the changes.

4 The other change that you brought up,
5 Mr. Chairman, it allows the Council the option of issuing
6 or drafting or doing the EIS itself, an independent or the
7 applicant, and, yes, many agencies, both local and state
8 agencies, have applicants prepare the EIS. The Council is
9 still responsible for issuing the EIS and is responsible
10 for the document. The Council still has to review the
11 document to ensure its adequacy before it's issued, and it
12 is responsible under law for the contents of that.

13 CHAIR LUCE: And that's what I wanted to get
14 at. The other issue that you just spoke to, correct me if
15 I'm wrong, but local governments and many stakeholders
16 were encouraging the Council to have the Draft EIS done
17 before the final adjudication was completed so that in the
18 context of the adjudication they would actually be able to
19 know what the completed document said; is that correct?

20 MR. FIKSDAL: That's correct. We heard that
21 comment. I've heard that comment quite often, and this
22 change, if approved, will allow the Council to do that if
23 it wished to do so.

24 CHAIR LUCE: Finally, with respect to
25 Chapter 463-66 the Governor approval of some amendments is

1 eliminated.

2 MR. FIKSDAL: That's correct. Currently the
3 way it reads is I think if it's a significant amendment
4 the Governor needs to approve the amendment. There's
5 nothing in 850 that even talks about amendments to site
6 certification agreement, and I think we've seen through
7 the past 30 years we haven't had the opportunity or the
8 need to have the Governor approve an amendment; and I
9 think this change will not in any way change anything that
10 EFSEC has done but puts it back into EFSEC's
11 responsibility for amending, terminating, or at least
12 amending a site certification agreement.

13 CHAIR LUCE: And those amendments that have
14 site certificates could be challenged by a party if they
15 chose to do so.

16 MR. FIKSDAL: Yes, I believe so under any
17 administrative action that the Council has.

18 CHAIR LUCE: Okay. Thank you for those
19 clarifications.

20 I will ask again are there any comments from
21 members of the public with respect to these proposed
22 changes?

23 MR. FIKSDAL: I think, Mr. Chairman, we
24 asked the members of the public that are here and we
25 haven't said anything about the people on the phone.

1 CHAIR LUCE: All right. I included them in
2 members of the public.

3 Mr. McMahan, do you have any comments you
4 wish to offer?

5 MR. McMAHAN: No.

6 CHAIR LUCE: Ed, you're on the phone. Do
7 you have any comments us you ant to offer?

8 MR. GARRETT: I'll be submitting mine in
9 writing.

10 CHAIR LUCE: Thank you, Ed.

11 Other people on the phone?

12 No one else on the phone.

13 Councilmember comments, observations?

14 MR. FIKSDAL: Before you end it,
15 Mr. Chairman, let me just read the comments and I'm not
16 going to read the specific comments. You all have copies
17 of them. But we received a comment from Felicia Persson,
18 from Mike Robertson, from John and Barb Foster, from
19 Steven Kulchin, K-u-l-c-h-i-n, from Tony Gagliano with
20 Renewable Northwest Project, from Maren Sandall,
21 M-a-r-e-n, S-a-n-d-a-l-l, Emilia Burdyshaw, and Keith
22 Johnson.

23 CHAIR LUCE: Thank you.

24 MR. FIKSDAL: And those will be put into the
25 record and be part of the rule making comments.

1 CHAIR LUCE: Would you speak to the question
2 of how we go forward after the hearing tomorrow.

3 MS. WILSON: Could we just add to the record
4 that I believe it's only one of those--all of the comments
5 we received except one were in opposition to the rule
6 changes.

7 MR. FIKSDAL: Yes, I think that's well
8 taken. All the comments are opposed to particularly the
9 changes to Chapter 463-28 and 463-47. I think there is
10 only one comment that we received or one of the comments
11 mentioned Chapter 66.

12 CHAIR LUCE: Thank you.

13 MR. FIKSDAL: To go forward as noticed in
14 the CR-102 with the code reviser we do have the hearing
15 tomorrow at 2:00 p.m. in Yakima, and the Council will
16 schedule action on this or intending to adopt the changes
17 or at least consider adopting the changes at its July 10,
18 2007 meeting. So at your next monthly meeting there will
19 be an agenda item for adoption of the proposed rules.

20 If you adopt the proposed rules, I believe
21 we have to send in what's called a CR-103, which is the
22 adoption order, and then once it gets to the code reviser
23 there's a specific amount of time.

24 Tim, you may help me. It's 31 days I think
25 after that they don't take it into effect.

1 MR. SWEENEY: It depends on when it gets
2 published how you fit it in.

3 I have a question. Sorry if I spaced out on
4 it. Will there be a formal EFSEC response to comments
5 that we receive, substantive points to the comments that
6 we receive? It's something that the commission does.
7 It's kind of a nice touch.

8 CHAIR LUCE: Do we have a record of the
9 decision in other words?

10 MR. SWEENEY: Well, no, it's more a matter
11 of this point was raised and this is why we're overruling
12 it or not or why. It's basically I see some issues here
13 that could be placed out and summarized and then responded
14 to. There's some patterns in the comments that could be
15 identified and stated more clearly and then responded to.

16 MR. FIKSDAL: Would you suggest that those
17 responses from staff or a draft response from staff for
18 your July 10 meeting or are you talking about after if you
19 adopt those rules, the response to put into the record?

20 MR. SWEENEY: Generally the way I've seen it
21 done is it's a little different here, but the staff comes
22 forth with recommended responses, particularly if there is
23 action or no action taken and why, and so basically here's
24 the comment that's suggesting changes or why we shouldn't
25 and here's our response to that. We can read that, review

1 it, and then there's an answer to those comments.

2 CHAIR LUCE: That's what I would call a
3 record of decision that records the comment and answers
4 the comment however the comment is answered, and then
5 that's part of the overall package. I'm not sure how
6 that's done.

7 MR. FIKSDAL: We can sure prepare that and I
8 would be happy to do that.

9 MR. SWEENEY: I don't think it's as lengthy.
10 Like I said, there's a lot of commonality in these
11 comments.

12 MR. FIKSDAL: That would be fine. We will
13 do that for you.

14 CHAIR LUCE: Is there anything else to come
15 before the Council today?

16 Well, we will be in recess I guess and
17 continue this proposed rule making hearing tomorrow, June
18 13, in Yakima at the--

19 MR. FIKSDAL: At the area arboretum.

20 CHAIR LUCE: --arboretum.

21 Thank you very much. We will stand in
22 recess until tomorrow.

23 * * * * *

24 (Whereupon, the hearing was recessed at 3:15
25 p.m.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A F F I D A V I T

I, Shaun Linse, CCR, Certified Court Reporter,
do hereby certify that the foregoing transcript
prepared under my direction is a true and accurate
record of the proceedings taken on June 12, 2007,
in Olympia, Washington.

Shaun Linse, CCR

CCR NO. 2029