BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of
Application No. 94-2

CHEHALIS POWER LIMITED
PARTNERSHIP

COUNCIL ORDER NO. 671
FINDING OF CONSISTENCY WITH
LEWIS COUNTY AND CITY OF
CHEHALIS COMPREHENSIVE
LAND USE PLANS

This matter was heard on November 9, 1994 in Chehalis, Washington and on
November 14, 1994 in Olympia, Washington, before Chairman Frederick Adair and the
members of the Energy Facility Site Evaluation Council of the State of Washington.

The parties appeared and were represented as follows:

Lewis County: Lewis County Department of Public Services
by Mike Zinged, Planning Manager
350 N. Market Blvd
Chehalis, WA 98532-2626

City of Chehalis: City of Chehalis
by Bob Nacht, Community Development Manager
Post Office Box 871
Chehalis, WA 98532

Applicant: Chehalis Power Limited Partnership
by Paul Margaritis, Vice President and Project Director
1177 West Loop South, Suite 900
Houston, Texas 77027-9006

Applicant: Chehalis Power Limited Partnership
by Tom Becker, Attorney
Preston, Gates, & Ellis
5400 Columbia Center
701 Fifth Avenue
Seattle, WA 98104-7078
Applicant: Chehalis Power Limited Partnership  
by Liz Thomas, Attorney  
Preston, Gates, & Ellis  
5400 Columbia Center  
701 Fifth Avenue  
Seattle, WA 98104-7078

Citizen: John Mudge  
190 Sanderson Road  
Chehalis, WA 98532

Citizen: David R. Spogen  
174 Yates Road  
Chehalis, WA 98532

Citizen: Rose Spogen  
174 Yates Road  
Chehalis, WA 98532

Citizen: Citizen Representation  
Alan Miller, Attorney  
Connoly, Holm, Tacon & Meserve  
201 W 5th, Suite 301  
Olympia, WA 98501-1114

SUMMARY OF LAND USE HEARING

On September 12, 1994, the Chehalis Power Limited Partnership (Chehalis Power) filed an application to construct and operate a 460 megawatt natural gas-fired combustion turbine energy facility at the Chehalis Industrial Park in Lewis County, Washington. Associated with the proposed Chehalis Generation Facility are water supply and discharge pipelines which will be located within the City of Chehalis city limits.

Pursuant to RCW 80.50.090 and WAC 463-26-050, the Council convened a public hearing on November 9, 1994, in Chehalis, Washington, to determine whether the proposed facility is consistent with Lewis County's land use plans and the City of Chehalis land use plans and zoning ordinances.

At the hearing on November 9, 1994, a representative of Lewis County appeared and testified and submitted a Memorandum to EFSEC Chair Frederick Adair. The testimony and Memorandum concluded that the project, subject to completion of an environmental impact statement, would be consistent with the goals, policies and locational guidelines of the Lewis County Comprehensive Plan for Urban Area Industrial Land Use. The County's testimony also stated that all unincorporated areas of Lewis County are unzoned, but the project is within an
existing industrial park and that the project is not located within a floodplain shown in the FEMA Flood Hazard Study for Lewis County or within an area governed by the Shoreline Management Act of 1971.

The County testified that portions of the proposed water supply and water discharge pipeline would be subject to a Flood Hazards Control Permit and subject to the completion of the project EIS. The primary concerns of the County were the restoration and mitigation of construction impacts from the proposed water supply and discharge pipelines. The County ended it testimony by stating "the project is consistent with the county comprehensive plan and has no adopted land use ordinance that are applicable to the proposed activity at the proposed location with the exception of those identified above in the floodplain development regulations section."

At the hearing on November 9, 1994, Mr. Bob Nacht, the Community Development Manager of the City of Chehalis testified that he had reviewed the project for consistency with the Chehalis Comprehensive Plan adopted in September, 1981. The area of concern to the City was the proposed water discharge and water supply lines within the city limits. The proposed pipeline area is included in Appendix F of the City of Chehalis Comprehensive Plan. Appendix F is the southeast extension area of the city’s Comprehensive Plan and states that manufacturing and industrial uses are consistent with the Comprehensive Plan. It was therefore Mr. Nacht’s opinion that the proposed use is consistent with the City of Chehalis Comprehensive Plan.

At the hearing on November 9, 1994, Mr. Paul Margaritis, of Chehalis Power, testified that the applicant has studied all relevant land use plans and has determined that the Chehalis Generation Facility is consistent with those plans.

At the hearing on November 9, 1994, Mr. John Mudge testified that that he did not believe the Chehalis Generation Facility project was consistent with the local land use plans. He stated that he believed the Chehalis Industrial Park was designated for light industrial use and that the project is heavy industry. Mr. Mudge concluded his testimony by stating that the Believed the project was not consistent with the County’s proposed Growth Management Plan because the project is heavy industry in an area south of Chehalis planned for residential growth.

The Council continued the hearing on November 14, 1994 in Olympia and received letters and comment sheets submitted by:

Mr. John D. Mudge
Ms. Rose M. Spogen
Mr. Michael L. Nowicki
Ms. Lisa Hurd
Mr. Edward T. Cerkan
Charles R. And Janice R. Rayburn
Kimbel R. Brown
Mr. Frank Frazee
Mr. Fred Haunreder
Ms. Betsy Hines  
Mr. Alphonse F. Nowicki  
Mrs. Donald Sturdevant  
Mr. Michael D. Smith  
Ms. Constance I. Hatfield  
James B. and Patricia Murphy  
William and Barbara Bishop  
Mr. Edward A. Fletcher, D.D.S.  
Paul F. and Betty Sweet  
Ms. Rosemary Geiger

In addition, one letter received was signed by 30 persons, many are the same persons whose letters were submitted individually. In summary, these written comments state that the proposed project is not consistent with the Lewis County Comprehensive Plan, the project is a “break with prior development,” is “heavy industry”, and is not consistent with the proposed Growth Management Plan”. Many stated that traditional land use in the area has not included such projects as proposed by Chehalis Power, and that the project will impact groundwater resources and lifestyles within the area and that these adverse impacts are not consistent with the county plan.

At the hearing on November 14, 1994 testimony was given by Mr. David R. Spogen who stated that many of the community feel that the Industrial Area has been used for “light industry” and now there appears to be a shift to “heavy industry” without the knowledge of the local community. He further stated that the traditional use for light industry is “de facto zoning” and that the proposal by CRSS is new, a heavy industry and not an appropriate site for the project. He acknowledged that there is no zoning in Lewis County. He continued to testify that no county zoning is working against the citizens of the area.

Tom Becker of the law firm of Preston, Gates, & Ellis, representing Chehalis Power, stated¹ that Lewis County and the City of Chehalis had stated to the Council that the project was consistent with the local land use plan at the time the application was submitted to the Council. He further noted that it was up to the Council to determine only that the project was or was not consistent with local land use plan at the time of application and that Council rule state that testimony by the local governments is prima facia proof of consistency. In response to questions by a Council member regarding other industries in the Industrial Area. Mr. Becker stated that Pittsburgh Plate Glass had a facility that could be considered heavy industry and Fred Meyer has a large, major distribution center in the Industrial Area.

Following the November 14, 1994 hearing, the Council received correspondence from a number of persons. All of these documents were received and reviewed by the Council members prior to December 12, 1994. At the hearing held on December 12, 1994, all of these documents were admitted into the record as exhibits. In addition, the Council admitted additional exhibits from Ms. Liz Thomas, representing the applicant responding to a letter

¹ Mr. Becker’s statements were not given under oath.
written by Mr. Allen Miller, and a certification by Robert Nacht of his November 9, 1994 letter to the Council.

Mr. Allen Miller, representing thirteen citizens, testified at the hearing on December 12, 1994, that Lewis County had not complied with the state’s Growth Management Act (GMA) because it has failed to meet the deadlines imposed for adopting a Critical Areas Ordinances and county-wide planning policies. Mr. Miller recommended the Council postpone its land use decision until the county adopted the Critical Areas Ordinances and county-wide planning policies.

Ms. Liz Thomas, representing the applicant, testified at the December 12 hearing stating that she acknowledged that Lewis County was not in compliance with the state’s GMA, but the Council’s rules and regulations do not require a determination of consistency with the GMA. Ms. Thomas also stated that critical area ordinances and county-wide planning policies developed for the GMA are not to be used to evaluate individual projects. In fact, the statute explicitly limited the use of GMA plans to guiding the development of comprehensive plans.

Mr. John Mudge testified at the December 12th hearing. Mr. Mudge stated that the City of Chehalis and Lewis county had adopted formal plans with Lewis County adopting its plan on June 24, 1991 well in advance of the application date. Mr. Mudge stated that even though Mr. Zengel from Lewis County had stated the project was consistent with the county’s plan, he didn’t think the project was in accordance with the county’s plan, and that Mr. Zengel’s finding was fundamentally arbitrary and capricious because Mr. Zengel did not explain how the project met the various standards which the plan set forth. Mr. Mudge testified that he had applauded Mr. Zengel’s finding to the County Commissioners and had received a letter from the county Prosecuting Attorney’s Office which stated the county had declined to hear the appeal because they had deferred their administrative appeal to EFSEC. Mr. Mudge continued by stating that the county has not shown how the proposed use complies with the goals and objective of the county’s comprehensive plan.

Mr. Paul Margaritis testified that Chehalis Power believes that the project is consistent with the applicable land use plans, specifically the land use portions; however, he recognized that to be in total compliance environmental evaluations need to be made. Mr. Margaritis also stated that the county’s land use plan is the only plan which covers the proposed site, however the Port of Chehalis developed a plan to support a SEPA application for infrastructure work the Port proposed. The Port’s plan also included a description of a development scheme which included designation of light and heavy industrial use areas. Mr. Margaritis noted that the proposed site is in the area designated as heavy industrial use which includes power generation facilities.

In response to Mr. Margaritis’ testimony, Mr. Mudge further testified that he had questioned the Port of Chehalis and that their consulting engineer defined heavy industry as encompassing almost everything and in particular any business that has anything coming in, does something to it, and sends it out the back door is heavy industry. Mr. Mudge contended that a power generating facility does not meet that definition. Mr. Mudge continued by describing discussions with persons which were members of the citizen advisory board, which stated that
power generating facility included existing power generating facilities in the county including the Centralia Coal-fired Generating facility, but were located in remote areas and had nothing to do with a power generating plant in the Chehalis Industrial Park.

Mrs. Rose Spogen testified at the December 12th hearing saying she represented 239 people who had signed a letter to the Council which contends that the cumulative impacts of the proposed facility makes it inconsistent with the current land use. She further stated that she and those she represents feel that area should have continued to be used in accordance with its current use.

FINDINGS OF FACT

Based upon the oral and written evidence presented in this proceeding, the Council makes and enters the following findings of fact:

1. On September 12, 1994, Chehalis Power Limited Partnership filed an application with the Council to construct and operate a 460 megawatt electrical generation facility at the Chehalis Industrial Park in Lewis County and water supply and discharge pipelines through a portion of the City of Chehalis, Washington.

2. The Council convened a public land use hearing at 8:00 p.m. at W. F. West High School on November 9, 1994 in Chehalis, pursuant to due and proper public notice. It continued the hearing on the record to November 14, 1994 in Olympia, Washington.

3. The hearing was continued on November 14, and December 12, 1994 in Olympia, Washington.

4. The proposed project is consistent with Lewis County’s Comprehensive Land Use Plan as adopted in June of 1991, and the City of Chehalis’ Comprehensive Land Use Plan in effect at the time of application.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Council makes and enters the following Conclusions of Law:

1. The Council has jurisdiction over the subject matter of this proceeding and the parties to it pursuant to RCW 80.50.090 and Chapter 463-26 WAC.

2. Pursuant to WAC 463-26-110, the proposed project is consistent with the Lewis County Comprehensive Land Use Plan and the City of Chehalis’ Comprehensive Land Use Plan as required by RCW 80.50.090(2).
DETERMINATION AND ORDER

THE COUNCIL ORDERS that the proposed land use of the proposed Chehalis Generation Facility as described in Application No. 94-2 of Chehalis Power is consistent with the Lewis County Comprehensive Land Use Plan and the City of Chehalis' Comprehensive Land Use Plan in place at the time of application.

Any petition for reconsideration must be filed with the Energy Facility Site Evaluation Council, 925 Plum Street SE, PO Box 43172, Olympia, WA 98504-3172 within ten (10) days and must state the specific grounds upon which relief is requested.

Dated at Olympia, Washington and effective this 14th day of December 1994.

Washington State Energy Facility Site
Evaluation Council

By Frederick S. Adair
EFSEC Chair

Attest:

By Jason Zeller
EFSEC Manager