

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

**In re the Matter of
Application No. 2001-01**

WALLULA GENERATION, L.L.C.

WALLULA POWER PROJECT

COUNCIL ORDER NO. 769

PRE-HEARING ORDER NO. 3

**Order on Settlement Agreements and Order
setting Adjudication Hearing**

Nature of the Proceeding:

This matter involves an application to the Washington State Energy Facility Site Evaluation Council (EFSEC or Council) for certification to construct and operate a natural gas-fired energy facility located near Wallula, in Walla Walla County, Washington.

Procedural Setting and Participation:

The Council convened the third prehearing conference in Olympia, WA, on June 4, 2002, pursuant to due and proper notice to all interested persons. (WAC 463-30-270)

The conference was held before Council Chair, James Luce, and Council members Charles Carelli (Department of Ecology), Jenene Fenton (Department of Fish and Wildlife), Dick Fryhling (Department of Community Trade and Economic Development), Tony Ifie (Department of Natural Resources), Jeffrey Showman (Washington Utilities and Transportation Commission), and the Administrative Law Judge Donald G. Meath.

Settlements Agreements:

The principal purpose of this pre-hearing conference was for the Council to consider settlement agreements between the applicant and the following parties: Washington State Utilities and Transportation Commission (marked and admitted as Exhibit #2), Washington State Department of Fish and Wildlife (marked and admitted as Exhibit #3), Washington State Department of Transportation (marked and admitted as Exhibit #4), and the Washington State Department of Community Trade and Economic Development (marked and admitted as Exhibit #5).

The Council considered the text of each settlement agreement as well as testimony presented in support of each. This order sets forth the decision of the Council regarding each settlement agreement.

Discussion and Decision:

In an EFSEC adjudicative proceeding, any settlement must be stated on the record or submitted in writing and is subject to approval by the Council. WAC 463-30-250(2). The Council's approval of a settlement agreement means that the Council accepts the agreement as binding between the settling parties and as setting an appropriate minimum standard if the project is approved. No settlement binds the Council to approve or deny the project.

Furthermore, no settlement is binding on parties other than the settling parties. Non-settling parties may present relevant evidence during the adjudicative proceeding to support a different standard.

As indicated above, the Council considered the text of each settlement agreement and the testimony in support thereof. To the extent that the settlement agreements are approved, as discussed below, the approvals are subject to the following conditions:

1. In the event that the Council recommends in favor of the siting of the Wallula Generation Facility, the Council retains its authority to prescribe Site Certification conditions and requirements that the Council deems appropriate for this facility.
2. Approval of these agreements does not constitute ceding of the Council's jurisdiction to other parties. The Council retains its jurisdiction to monitor and enforce the terms of the settlements. The Council may work with the settling agencies to determine plans and appropriate responsibilities for effective monitoring and enforcement of all settlement requirements associated with construction and operation of the project.

Settlement Agreement between the Utilities and Transportation Commission and the Applicant

The Council approves the settlement agreement between the Washington State Utilities and Transportation Commission and the Applicant. (Exhibit #2).

Settlement Agreement between the Department of Fish and Wildlife and the Applicant

The Council approves the settlement agreement, as corrected, between the Washington State Department of Fish and Wildlife and the Applicant. (Exhibit #3). The Applicant and the Department shall file a corrected agreement changing the date on page 3, line 13 from 2002 to 2001 and changing page 5, lines 11-13 by placing a period after the word "forbs" on line 11, beginning a new sentence with the word "prior" on line 11, and placing a comma after the word "Project" on line 13.

Settlement Agreement between the Department of Transportation and the Applicant

The Council approves the settlement between the Washington State Department of Transportation and the Applicant. (Exhibit #4).

Settlement Agreement between Department of
Community Trade and Economic Development and the Applicant

The Council reserves a decision on the agreement pending consideration of the settlement agreement between the Council for the Environment and the Applicant upon which this agreement is contingent. (Exhibit #5).

Next Pre-hearing conference:

The Council will not set another pre-hearing conference prior to the adjudicative hearings. If events necessitate an additional pre-hearing conference, the Council will notify all parties.

Adjudicative Hearing:

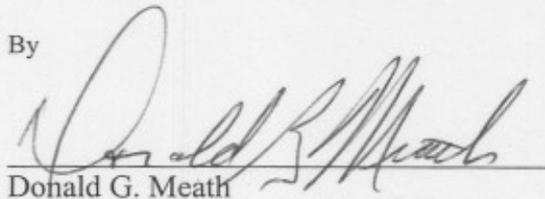
The Council sets the adjudicative hearing for July 16-19, 2002, in Walla Walla, Washington. The Council will notify all parties of the specific site and agenda at a later time. The Council will consider other settlement agreements at the time of the adjudicative hearings.

Notice to Parties:

Any objection to the provisions of this order must be filed within ten days after the date of service of this order, pursuant to WAC 463-30-270(3). Unless modified, this prehearing conference order shall control further proceedings in this case.

Dated at Olympia, Washington and Effective this 14th day of June, 2002.

By



Donald G. Meath
Administrative Law Judge