

BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of
Application No. 2006-01

ENERGY NORTHWEST

PACIFIC MOUNTAIN ENERGY CENTER
POWER PROJECT

**PREHEARING ORDER NO.1
COUNCIL ORDER NO. 832**

PREHEARING ORDER: GRANTING, ON
CONDITION, PETITIONS FOR
INTERVENTION

NOTICE OF ORAL ARGUMENT
(Olympia, November 13, 2007 10:00 AM)
NOTICE OF PREHEARING CONFERENCE
**(Olympia, November 13, 2007 Following
Oral Arguments)**

Nature of the Proceedings

This matter involves Application No. 2006-1 submitted on September 12, 2006 by Energy Northwest (Applicant) for certification of a site in Kalama, Washington, to construct and operate the Pacific Mountain Energy Center, or PMEC (the Project). The Project involves the construction of a two-unit electrical generation facility, proposed to operate on synthetic gas produced from coal or petroleum coke; the facility could also operate using natural gas as fuel. The Applicant has also submitted to the Energy Facility Site Evaluation Council a Greenhouse Gas Reduction Plan that proposes geological sequestration, other sequestration and offset purchases as a means to achieve reduction in carbon emissions.

Procedural Setting

The Washington Energy Facility Site Evaluation Council convened a prehearing conference pursuant to due and proper notice to all interested persons at 2:00 p.m. on September 20, 2007, in Kalama, Washington. The Conference was held before Council Chair Jim Luce, and Council members: Richard Fryhling (Department of Community, Trade & Economic Development), Hedia Adelsman (Department of Ecology), Judy Wilson (Department of Natural Resources), Vern Eaton (Cowlitz County), Justin Erickson (City of Kalama), Bruce Rader (Port of Kalama) and the Administrative Law Judge, C. Robert Wallis. Excused from the Conference were: Jeff Tayer (Department of Fish & Wildlife) and Tim Sweeney (Utilities and Transportation Commission).

Participants

The following persons participated in the prehearing conference: ¹

Applicant:	ENERGY NORTHWEST by Elizabeth Thomas, Attorney at Law, K&L Gates LLP, Seattle.
Counsel for the Environment:	Michael Tribble , Assistant Attorney General (AAG), Olympia.
Council Member Agencies:	Washington Department of Ecology ² by Laura Watson, Assistant Attorney General, Olympia.
Petitioners for Intervention:	Columbia Riverkeeper, Willapa Hills Audubon Society, Rosemere Neighborhood Association, by Scott Jerger, Attorney, Field Jerger, LLP, Portland, Oregon. Northwest Energy Coalition, Washington Environmental Council, Sierra Club by Stephen Mashuda, Attorney, Joshua Osborne-Klein, Attorney, Jan Hasselman, Attorney, Earthjustice, Seattle.

The Department of Community, Trade and Economic Development (CTED) gave notice of its intention to participate in the docket as a party, but failed to appear at the prehearing conference. The Department has a statutory right to participate in this manner, and may enter an appearance in writing. The appearance should be entered no later than **October 11, 2007** if the Department still intends to participate, or the Council may consider the original notice to be abandoned. The Department's failure to attend and participate requires that it abide by the agreements made during, and the results of, the prehearing conference.

Action on Petitions for Intervention.

The Council granted all of the petitions for intervention. Intervenor Willapa Hills provided a declaration from its attorney in lieu of a verified petition for intervention, but will provide a verified petition for the Council's file. Parties to joint petitions agreed to avoid duplicating presentations with other of their joint petitioners during the litigation, provided, in the case of the Riverkeeper group, that if unforeseen circumstances occurred in which such presentations of evidence or pleadings appeared necessary, intervenors' counsel would consult first with applicant's counsel and then, if before the Council, to seek leave from the Council to make overlapping presentations. Counsel agreed to provide contact information for purposes of a service list for the proceeding.

¹ Contact information for the parties' representatives and others requiring service are listed in Appendix I to this order.

² Representatives of Council member agencies act as judges of matters being adjudicated in an application proceeding. In particular, when an agency chooses to participate as a party in adjudication, the agency must provide total separation between the council member and persons involved in advocacy of a position. See, RCW 34.05.455.

Issues regarding the Applicant's Greenhouse Gas Reduction Plan.

At the prehearing conference, the Council shared with parties certain concerns about the application and, in particular, the proposed Greenhouse Gas Reduction Plan and the proposal's compliance with the provisions of RCW 80.70 and ESSB 6001, enacted by the 2007 Washington legislature. The Council developed a series of questions for the parties to respond to, and at the conference invited parties to share their views on the questions in briefs. The questions are attached to this order as Appendix II.

The Parties agreed to respond to the questions by means of simultaneous opening briefs, to be filed no later than October 25, 2007, and simultaneous answering briefs, to be filed no later than November 8, 2007. The Council advised the parties of the possibility of oral argument, and invited them to choose a date during the week of November.

Parties other than applicant agreed to coordinate their presentations and avoid unnecessary duplications. For certainty in scheduling and for the convenience of all parties, the Council schedules oral argument on the issues, subject to cancellation if the Council finds it unnecessary.

PROCEDURAL MATTERS

Procedural schedule.

The Applicant submitted a proposed schedule for submissions and hearings in this docket. After learning of the Council's desire to consider questions relating to the application's status under law, the Applicant did not pursue the schedule. The Applicant and other parties agreed to work together to develop an issues list to determine the scope of the hearing, and agreed to schedule a prehearing conference on November 13, 2007, for presentation of the agreed issues list, for determination of any unresolved issues, and for discussion of further procedural steps.

Filing and Service of litigation documents.

The parties asked to receive service of case-related documents by electronic mail, notwithstanding the provisions of RCW 34.05.010 requiring physical service by mail or commercial delivery service, or by personal delivery. RCW 34.05.050 provides that parties may waive provisions in the APA that protect their interests; all parties agreed to submit such requests waivers of the service provisions promptly, in writing, with a copy to other parties. The parties also agreed to submit their contact information to the Council for preparation of a service list. Waivers of *service* requirements do not affect requirements for *filing* documents with the Council. Filing dates determined by the Council require that submitted materials reach the Council offices no later than the close of business of the date specified, unless the date is extended. The Council requires an original plus fifteen (15) copies of each filing, unless other arrangements are made. The Council also requires parties to provide the documents electronically on disk with the paper filing, and to provide the documents by electronic mail to persons so identified on the attached service list.

Dates for the briefing schedule were determined at the prehearing conference.

For convenience of the parties and to provide scheduling certainty, the Council schedules the next prehearing conference and oral argument³ to coincide with the Council's November regular meeting. Unless cancelled, argument will be held on November 13, 2007, at 10:00 AM,⁴ at the Council office, with the prehearing conference to follow at the conclusion of the oral arguments. The schedule of procedures determined at the conference is as follows:

<u>Event</u>	<u>Date</u>
Opening briefs	Oct. 25, 2007
Answering briefs	Nov. 8
Oral argument	Nov. 13
Prehearing conference	Nov. 13

Notice to Parties: Unless modified, this prehearing conference order shall control further proceedings in this matter. In accordance with WAC 463-30-270(3), any objections to this order must be stated within ten days after the date of service.

Dated at Olympia, Washington, and effective this 26th day of September, 2007.

WASHINGTON STATE ENERGY FACILITY SITE EVALUATION COUNCIL

C. Robert Wallis, Administrative Law Judge

³ Oral argument is subject to cancellation if the Council believes it unnecessary.

⁴ For parties' convenience, the argument and a prehearing conference are being scheduled simultaneously. The schedule is coordinated with a Council meeting for convenience of the parties and the Council members. The Council will hear argument, unless the Council determines argument to be unnecessary; and then will conduct the prehearing conference.

Appendix I

Pacific Mountain Energy Center Power Project Application No. 2006-01
Service List

Unless otherwise indicated, copies must be served on all persons on this list.

Energy Facility Site Evaluation Council		
<p>Mr. Allen J. Fiksdal (<u>original and 15 copies</u>) EFSEC Manager Energy Facility Site Evaluation Council 905 Plum Street SE, Building 3 PO Box 43172 Olympia, WA 98504-3172 Ph: (360) 956-2152 Fax: (360) 956-2158 allenf@cted.wa.gov</p> <p>Serve an electronic version of all documents to both:</p> <p>allenf@cted.wa.gov stephenp@cted.wa.gov</p>	<p>Kyle Crews Assistant Attorney General P.O. Box 40108 Olympia, WA 98504 Ph: (360) 664-2510 Fax : (360) 586-3593 kylec@atg.wa.gov</p> <p>Bob Wallace Administrative Law Judge c/o EFSEC 905 Plum Street SE Building 4 P.O. Box 43172 Olympia, Washington 98504-3172 Ph: (360) 956-2121 Fax: (360) 956-2158</p>	
Applicant – Energy Northwest		
<p>Ted Beatty Energy Northwest PO Box 968 Richland, WA 99352 Ph: (509) 372-5531 Fax:(509) 377- 8124 tbeatty@energy-northwest.com</p> <p>Tom Kreuger Energy Northwest PO Box 968 Richland, WA 99352 tkreuger@energy-northwest.com</p>	<p>Liz Thomas Attorney at Law K&L Gates 925 4th Ave. Suite 2900 Seattle, WA 98104 Ph: (206) 623-7580 liz.thomas@klgates.com</p>	<p>Katy Chaney URS Corporation 1501 4th Avenue, Suite 1400 Seattle, WA 98101 Ph: (206) 438-2061 Fax: (866) 489-8791 katychaney@urscorp.com</p>
Counsel for the Environment		Department of Ecology
<p>Michael Tribble Assistant Attorney General Counsel for the Environment Office of the Attorney General 1125 Washington St. S.E. P.O. Box 40100 Olympia, WA 98504-0100 Ph: (360) 753-2711 Fax:(360) 664-0229 michaelt1@atg.wa.gov</p>		<p>Laura Watson Assistant Attorney General Department of Ecology 2425 Bristol Court SW 2nd Floor P.O. Box 40117 Olympia, WA 98504-0117 Ph: (360) 586-6770 LauraWa2@atg.wa.gov ECYOLYEF@atg.wa.gov</p>

Washington State Department of Community, Trade and Economic Development		
<p>Alice Blado Assistant Attorney General CTED P.O. Box 40109 Olympia, WA 98504-0117 Ph: (360) 753-6216 Aliceb@atg.wa.gov</p>	<p>Tony Usibelli Assistant Director, Energy Policy Division CTED PO Box 43173 Olympia, WA 98504-3173 Ph.: (360) 725-3110 Fax: (360) 586-0049 tonyu@cted.wa.gov</p>	<p>Mark Anderson Senior Energy Policy Specialist CTED PO Box 43173 Olympia, WA 98504-3173 Ph: (360) 725-3117 Fax: (360) 586-0049 marka@cted.wa.gov</p>
Port of Kalama	Cowlitz County	City of Kalama
<p>Mark Wilson, Manager of Planning Port of Kalama 380 W. Marine Dr. Kalama, WA 98625 Ph: (360) 673-2325 markwilson@portofkalama.com</p>	<p>Mike Wojtowicz, Director Dept. of Building and Planning Cowlitz County 207 4th Avenue Kelso, WA 98626 Ph: (360) 577-3052 Fax: (360) 414-5550 wojtowiczm@co.cowlitz.wa.us</p>	<p>Pete Poulsen, Mayor City of Kalama 320 N. First P. O. Box 1007 Kalama, WA 98625 Ph: (360) 673-4561 Fax: (360) 673-4560 cityofkalama@kalama.com</p>
Columbia Riverkeepers		
<p>Brent VandenHeuvel Columbia Riverkeeper 917 SW Oak St. Suite 414 Portland, Oregon 97205 Ph: (503) 224- 3240 brett@lawofficebv.com</p>	<p>Scott Jerger Field Jerger LLP 610 SW Alder Street, Suite 910 Portland, Oregon 97205 Ph: (503) 228-9115 scott@fieldjerger.com</p>	
NW Energy Coalition		
<p>Nancy Hirsch, Policy Director NW Energy Coalition 219 1st Avenue South, Suite 100 Seattle, WA 98104 Ph: (206) 621-0094 Fax: 206 621-0097 nancy@nwenergy.org</p> <p>Joshua Osborne-Klein Earthjustice 705 Second Ave Suite 203 Seattle, WA 98104 Ph: (206) 343-7340 Fax: (206) 434-1526 Josborne-klein@earthjustice.org</p>	<p>Stephen Mashuda Earthjustice 705 Second Ave, Suite 203 Seattle, WA 98104 Ph: (206) 343-7340 Fax: (206) 434-1526 smashua@earthjustice.org</p> <p>Jan Hasselman Earthjustice 705 Second Ave Suite 203 Seattle, WA 98104 Ph: (206) 343-7340 Fax: (206) 434-1526 jhasselman@earthjustice.org</p>	