

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

In the Matter of:  
Application No. 2006-01

ENERGY NORTHWEST

PACIFIC MOUNTAIN  
ENERGY CENTER PROJECT

**PREHEARING ORDER NO. 3**

**COUNCIL ORDER NO. 834**

**PREHEARING CONFERENCE ORDER  
REGARDING SCHEDULE OF  
ADJUDICATIVE HEARINGS AND  
PARTIES' ISSUES LIST**

**Nature of the Proceeding:** This matter involves an application from Energy Northwest (Applicant), to the Washington State Energy Facility Site Evaluation Council (EFSEC or Council) for certification to construct and operate the Pacific Mountain Energy Center (PMEC or Project), an integrated gasification combined cycle (IGCC) facility proposed to generate 793 megawatts of electric energy. The proposed Project would be located within Cowlitz County, Kalama, Washington.

**Procedural Setting:** The Council convened a prehearing conference on Tuesday, November 13, 2007, in Olympia, Washington, pursuant to due and proper notice. The prehearing conference was held before Council Chair James O. Luce and members Richard Fryhling (Department of Community, Trade, and Economic Development); Tim Sweeney (Utilities and Transportation Commission), Hedia Adelsman (Department of Ecology), Jeff Tayer (Department of Fish and Wildlife), Judy Wilson (Department of Natural Resources), Vern Eaton (Cowlitz County), and Justin Erickson (City of Kalama). C. Robert Wallis, Administrative Law Judge (ALJ), presided. Excused from the Conference was Bruce Rader, Port of Kalama.

The purpose of this conference was to set a schedule for the adjudicative proceeding and to review the parties' lists of issues for determination in the adjudication.

**Participants:** The Parties were present as follows:

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** by Laura Watson, Assistant Attorney General, Olympia.

**Washington Department of Community Trade and Economic Development** by Alice Blado, Assistant Attorney General, Olympia.

Petitioners for Intervention:

**Columbia Riverkeeper, Willapa Hills Audubon Society, Rosemere Neighborhood Association,** by Brett VanderHeuvel, Attorney, Columbia Riverkeeper, Portland, Oregon.

**Northwest Energy Coalition, Washington Environmental Council, Sierra Club,** by Stephen Mashuda, Attorney, Earthjustice, Seattle.

### **Adjudicative Hearing Schedule**

Ms. Thomas proposed an adjudicative schedule beginning with the date of a Council decision determining that the adjudication may continue.<sup>1</sup> The proposal was presented in terms of time frame rather than calendar dates because of the uncertain beginning point. The parties found the proposed time frame to be generally acceptable, provided the actual schedule takes into account the seasons, holidays, and other events. Parties also expressed a desire that the Council defer a determination on post-hearing process until later, when the scope and nature of the hearing may be considered. The calendar item “Phase 2 Issues List” is intended to include issues relating to the NPDES and PSD applications and issues relating to the Greenhouse Gas Reduction Plan. With those understandings, the Council accepts the proposed schedule, which is attached to this Order as Attachment 1.

### **Parties’ Issues List**

Ms. Thomas also presented the parties’ proposed issues list,<sup>2</sup> which includes items on which the parties agree, items that the parties agree to defer, and items on which the parties disagree and requested rulings.

The Council accepts the statements of agreed issues, and accepts the parties’ deferral of specified issues. We resolve the disputed issues as follows:

**Disputed Issues 1 through 4:** These are issues proposed by Counsel for the Environment. Energy Northwest argues that the issues are posed too broadly and fail adequately to confine the proposed testimony. Issue 1 involves mitigation for “adverse impacts to the environment;” Issue 2 involves adequacy of cumulative impact assessment and mitigation; Issue 3 involves compliance with all applicable laws; and Issue 4 involves possible beneficial changes to the environment. We find that the issues are adequately phrased for this stage of the proceeding. After discovery has been undertaken, we expect it will be possible to be more specific in identifying actual issues, as opposed to categories of issues, to be addressed.

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<sup>1</sup> In Council Order No. 2 in this matter, entered Nov. 27, the Council stayed the adjudication and directed that application processing be discontinued pending applicant action resolving issues arising from the Greenhouse Gas Reduction Plan ENW proposed to satisfy the requirements of RCW 80.80.040(13). The adjudicative schedule will therefore begin with a Council order lifting the stay and with the scheduling of another prehearing conference to assess the status of the application and the need for and timing of future process.

<sup>2</sup> The proposed issues list, revised to number disputed issues, is attachment 2 to this Order.

**Disputed Issue 5:** Compliance with SEPA. The parties agreed to defer this issue pending production of a supplemental EIS.

**Disputed Issue 6:** Construction impacts. This also appears adequately framed for this phase of the litigation – see Issues 1-4.

**Disputed Issue 7:** Compliance with the legislative statement of purpose. We believe this to be improper and reject it; the statement of purpose of a law is a general statement of reasons for the law and does not define standards of behavior to which any party is obligated – those standards are contained in other provisions of law or rule, which may properly be the basis of hearing issues.

**Disputed Issue 8:** Compliance with RCW 80.52. Parties should have the opportunity to argue to the Council, at least to the extent of determining jurisdiction. The jurisdictional decision should not be based on such a limited record as was created at the prehearing conference.

**Disputed Issue 9:** Endangered Species Act. The parties agree that specific references to the ESA will be made in other issues, and this issue may be deleted.

**Disputed Issue 10:** Plant effect on global warming. Deferred by consent of parties.

**Disputed Issue 11:** Local land use. Some aspects of this issue have been determined. Riverkeepers must identify specific issues that have not been determined, no later than presentation of Phase 2 issues, to keep this issue alive.

**Disputed Issue 12:** Water rights, and effect of their exercise on water bodies, water supply, and wetlands. While the grant or denial of water rights is outside the council's jurisdiction, the effects and timing of the exercise of those rights appear proper for consideration in the absence of a demonstration that the Council is barred from considering such effects.

**Disputed Issue 13:** Effect on aquifer recharge and ground/surface water of carbon sequestration and water uptake. These appear to be appropriate matters for consideration, based on the current application.

**Notice to Parties:** Unless modified, this prehearing conference order shall control all 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 mailing of this order.

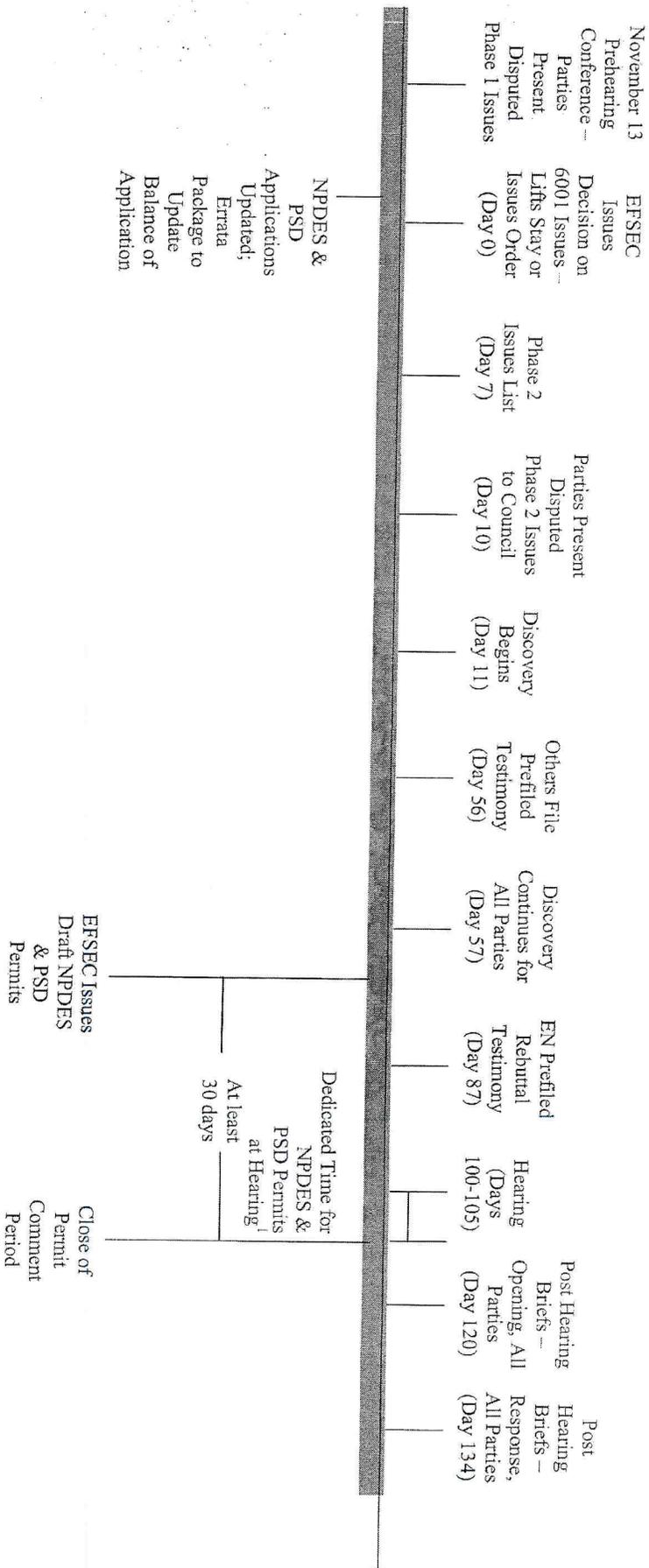
DATED and effective at Olympia, Washington, this \_\_\_\_th day of November 2007.

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C. Robert Wallis, Administrative Law Judge

**Pacific Mountain Energy Center  
Hearing and Permitting Timeline  
Energy Northwest's Proposal**  
(Not to scale)

**General Hearing Activities**



**Permitting Activities**

<sup>1</sup> The parties anticipate that the Council will schedule separate hearings on the PSD and NPDES permits during the course of the adjudicative hearing, in accordance with RCW 463-30-300(4).

## Attachment 2

### Consolidated Issue List

11/9/2007

#### Issues the Parties Agree to Include:

Consolidated Issue 1. Whether the project adequately assesses impacts on vegetation and non-fish wildlife, including, but not limited to, impacts on threatened, endangered, and sensitive plant and animal species and their habitat and if so, whether the project adequately mitigates for those impacts. (CFE Issue 2; Riverkeeper Issue III.b).

Consolidated Issue 2. Whether the project adequately assesses adverse impacts to fish life; and whether the project has adequately mitigated for those impacts. Are the assessment and mitigation of impacts to salmonids from wastewater and stormwater discharge from the project site adequate? (CFE Issue 3; Riverkeeper Issue III.b).

Consolidated Issue 3. Whether the project avoids impacts to wetlands and adequately assesses and mitigates any unavoidable impacts, including but not limited to the cumulative impacts of the 2.1 acre wetland fill proposed by the Port of Kalama along the north edge of the PMEC site. (CFE Issue 5; Riverkeeper Issue III.b).<sup>1</sup>

Consolidated Issue 4. Whether the project adequately assesses and mitigates noise impacts. (CFE Issue 8).

Consolidated Issue 5. - Whether the project adversely impacts recreational opportunities in the vicinity of the project; and if so, whether these concerns have been adequately assessed and mitigated. (CFE Issue 9; Riverkeeper Issue III.b).

Consolidated Issue 6. Whether the project creates any public health and safety concerns, including, but not limited to, transportation and storage of solid waste and hazardous materials, and presence of electric and magnetic fields; and if so, whether the project adequately assesses and mitigates those concerns. (CFE Issue 10; Ecology Issues C.1, C.2, D.1).

Consolidated Issue 7. Whether the project adequately assesses and mitigates visual impacts, such as light, glare, and water vapor plumes. (CFE Issue 11).

Consolidated Issue 8. Whether the project adequately plans for decommissioning of the facility in the event of financial disaster, natural disaster, and at the conclusion of the project's life cycle. (CFE Issue 12).

Consolidated Issue 9. Whether the project adequately plans for site restoration of the project area. (CFE Issue 13).

Consolidated Issue 10. Whether the project adequately assesses and mitigates traffic and

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<sup>1</sup> Note that the Army Corps of Engineers has requested that the Port and Energy Northwest combine the wetlands permits for the Port's property. As a result, the Port may take the lead with respect to the wetlands permit. If the Port does take the lead on the wetlands permit, this issue will move to the Remaining Disputed Issues list below.

transportation impacts associated with construction and feedstock delivery. (CFE Issue 14).

Consolidated Issue 11. Whether the project adequately assesses and mitigates for construction phase impacts on local infrastructure and/or services. (CFE Issue 15).

Consolidated Issue 12. Whether the project adequately assesses and mitigates aesthetic or visual impacts on the surrounding lands and community. (CFE Issue 17; Riverkeeper III.b).

Consolidated Issue 13. Given PMEC's proposed location, will it improve, or at least maintain, state and regional transmission system reliability. (CTED Issue 2.a).

Consolidated Issue 14. Will the project further the goals of using renewable energy and indigenous fuel whenever possible? For example, should PMEC be required to use petroleum coke from Washington refineries instead of coal whenever it is available? Would this result in higher efficiencies, reduced mercury and ash pollution, and potentially even reduced green-house gas emissions? (CTED Issue 2.b).

Consolidated Issue 15. Whether the regulatory and economic uncertainty surrounding likely federal regulation of greenhouse gases affects the Project's ability to provide power "at a reasonable cost." RCW 80.50.010(3)? (NWECA Issue 3).

Consolidated Issue 16. Whether the Project is in "the broad interests of the public" and that it provide power "at a reasonable cost" if it is required or chooses to operate on natural gas. RCW 80.50.010(3). (NWECA Issue 4).

### **Remaining Disputed Issues:**

Whether the project adequately mitigates for any adverse impacts to the environment created by the project. (CFE Issue 1).

Whether the cumulative impacts of the project and other projects that are either permitted or in the permit process have been adequately assessed and mitigated. (CFE Issue 18).

Whether the project fully complies with all applicable federal, state, and local laws and regulations, including, but not limited to, laws regarding water resources, water quality, air quality, solid and hazardous waste, wetlands, wildlife, spills, SEPA, and NEPA. (CFE Issue 19).

Whether the project involves beneficial changes in the environment. (CFE Issue 20).

Will the Project and the environmental analysis of the project pursuant to the State Environmental Policy Act (SEPA) (ch. 43.21C RCW) procedurally and substantively comply with SEPA and its implementing regulations (ch. 197-11 WAC)? (Ecology Issues E.1, E.2, E.4; Riverkeeper Issue III.d).

Whether impacts from the construction of the natural gas pipeline have been adequately assessed and mitigated. (CFE Issue 16).

Whether the Project is in "the broad interests of the public" and "preserve[s] and

protect[s] the quality of the environment; [] enhance[s] the public’s opportunity to enjoy the esthetic and recreational benefits of the air, water and land resources; [] promote[s] air cleanliness; and [] pursue[s] beneficial changes in the environment,” if it will affect demand for energy from clean, renewable generating facilities. RCW 80.50.010(2). (NWECA Issue 4).

Compliance RCW 80.52: . . . Energy Northwest takes the position, evidently for purposes of chapter 80.52 RCW only, that the PMEC is two separate 340 MW facilities and hence the law is inapplicable. (NWECA Issue 5).

Will the project comply with the Endangered Species Act? (Riverkeeper III.b).

The impact of greenhouse gas emissions from PMEC on global warming, which will affect the health of the Columbia River basin ecosystems and water quality (Riverkeeper III.c).

Does PMEC comply with applicable local land use regulations, including but not limited to, critical areas ordinances and shoreline protections? (Riverkeeper Issue III.e).

Whether PMEC has obtained valid water rights, the effect of these water rights on the Port of Kalama, the City of Kalama, private local wells, local aquifers and wetlands, and the Columbia River. (Riverkeeper Issue III.f).

Whether the proposed plant will negatively impact the aquifer recharge and ground/surface water throughout the region, including the Troutdale Aquifer System, a vulnerable aquifer that supplies nearly the entirety of Clark County’s drinking water. (Riverkeeper Issue III.f).

**Issues the Parties Agree to Defer and Consider following the Council’s Resolution of Legal Issues associated with the GHG Plan and Energy Northwest’s Submission of Updated NPDES and PSD Permit Information:**

Whether the project adequately assesses economic and technical viability of carbon capture and sequestration; whether, and to what extent, the project is carbon “capture ready”; and whether the greenhouse gas reduction plan submitted by the applicant (as an addendum to the application) meets the requirements of Chapter 307, Laws of 2007 (ESSB 6001). (CFE Issue 7; Ecology Issues A.9 through A.20; CTED Issues 1, 3.b, 3.c, 3.d, 3.e; NWECA Issue 1; Riverkeeper Issue III.c).

Will Energy Northwest be required to calculate the quantity of carbon dioxide required to be mitigated per Chapter 80.70 RCW and to mitigate that quantity of emissions through one of the three methods allowed for in that law? (Ecology Issue A.21).

If Energy Northwest’s mitigation plan proposes to use a self directed mitigation process, what criteria will EFSEC use to approve that mitigation plan? (Ecology Issue A.22).

Does compliance with ESSB 6001 constitute compliance with Chapter 80.70 RCW, or do these laws set out separate requirements that both need to be met before a project can be certified? (Ecology Issue A.23).

Are the estimates used by the applicant for the development of greenhouse gas mitigation

and sequestration accurate and achievable? (CTED Issue 3.a).

Will supplemental environmental review be required under SEPA for impacts associated with PMEC's compliance with chapter 80.80 RCW? (Ecology Issue E.3, NWECC Issue 6, Riverkeeper Issue III.d).

Impacts on regional and global environment: . . . NWECC, WEC and Sierra Club intend to introduce evidence of the regional and global environmental and human impacts of additional CO<sub>2</sub> emissions that will result from the PMEC. (NWECC Issue 2).

How will the Project comply with applicable water quality laws and regulations including the federal Water Pollution Control Act (Clean Water Act), 33 U.S.C. §§1251-1387, and implementing regulations; Washington Water Pollution Control Act (ch.90.48 RCW); Surface Water Quality Standards (ch. 173-201A WAC); Ground Water Quality Standards (ch. 173-200 WAC); Sediment Management Standards (ch. 173-204 WAC); State Waste Discharge Permit Program (ch. 173-216 WAC); Underground Injection Control Program (ch. 173-218 WAC); National Pollutant Discharge Elimination System (NPDES) Permit Program (ch.173-220 WAC); and Regulations for compliance with NPDES permit program (ch.463-76 WAC)? (CFE Issue 4; Ecology Issues B.1 through B.7; Riverkeeper Issue III.a).

Will the Project comply with applicable air quality laws, including the Washington Clean Air Act (ch. 70.94 RCW); Carbon Dioxide Mitigation (ch. 80.70 RCW); Climate Change; Mitigating Impacts (Senate Bill 6001); General Regulations for Air Pollution Sources (ch. 173-400 WAC); Air Operating Permits (ch. 173-401 WAC); Acid Rain Regulation (ch. 173-406 WAC); Controls for New Sources of Toxic Air Pollutants (ch. 173-460 WAC); General and Operating Permit Regulations for Air Pollution Sources (ch. 463-78); National Emission Standard for Hazardous Air Pollutants for Source Categories (MACT) under 40 C.F.R. 63; National Emission Standard for Hazardous Air Pollutants (NESHAP) under 40 C.F.R. 61; New Source Performance Standards (NSPS) under 40 C.F.R. 60; Prevention of Significant Deterioration (PSD) under 40 CFR 52; Acid Rain Program regulations 40 C.F.R. Parts 72-78 and all applicable local requirements? (CFE Issue 6; Ecology Issues A.1 through A.8; Riverkeeper Issue III.c).<sup>2</sup>

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<sup>2</sup> The last two issues are intended as placeholders on the deferred issues list. The parties intend to state their issues with greater specificity after they have had the opportunity to review PSD and NPDES applications filed by the applicant.