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BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

4 IN RE APPLICATION NO. 99-1)
5)
6)
7 SUMAS ENERGY 2)
8 GENERATION FACILITY)

CONSTANCE HOAG'S
RESPONSE TO SE2'S MOTION
FOR RECONSIDERATION

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I. Introduction

The Energy Facility Site Evaluation Council, after public hearings, adjudication hearings, and deliberation, recommended denial of site certification for the proposed SE2 power facility. Their findings were clearly laid out in Order No. 754, and based upon the statutory requirements of their governing statutes. The EFSEC decision is supported by those familiar with the issues and the area, including the Whatcom County Council (see Attachment A). However, the applicant, SE2, has filed a motion for reconsideration. This motion should be denied. The motion is not based on legal grounds for reconsideration such as an error of law, but rather upon a changed application, false assumptions, new questionable submissions that have not been subject to critical analysis or cross-examination¹, and straw man arguments wherein the applicant misrepresents the Council's order, and then argues against its own inaccurate paraphrase. The applicant misuses the reconsideration process to change their application after the public and adjudicatory process has closed. The proposed changes deny a person the fundamental rights conferred under the law, and are a violation of due process. (RCW 80.50.090 (3))

¹ The importance of critical analysis and cross-examination is made evident by the attached chart from a "press kit" which SE2 distributed to politicians and the press in an effort to discredit the EFSEC Order No. 754, and gain support for their project (Attachment B). The chart is entitled "Northwest Plants Compared to Sumas 2", and is apparently intended to impress upon the viewer how "clean" SE2 is compared with other plants. However, the grievous offender, the Solar Taurus Simple Cycle, is, according to the manufacturer, only a 5 megawatt generator. While less efficient, the annual emissions would be miniscule compared with SE2.

1 SE2 in its motion makes bold assertions that cannot be supported in the record. Of
2 particular significance is the claim that “elimination of the proposed diesel back-up option would
3 avoid the air quality impacts of concern.” (Motion for Reconsideration [MFR] p.11 at 21-23)

4 Adding diesel to this project added insult to injury. Removing diesel removes the insult,
5 but not the injury.

6 7 II. THE MOTION FOR RECONSIDERATION SHOULD BE DENIED

8 I respectfully request the Council to allow me to respond to the applicant’s last minute
9 changes and comments on air quality, as I live only 3 miles from the facility, and the air that my
10 family and I breathe will be impacted by this facility, if built. These changes are being proposed,
11 along with unfounded assertions by the applicant, to which I will be unable to respond, after
12 public hearings have closed.

13 For the sake of expediency, I adopt the arguments of the Counsel for the City of
14 Abbotsford regarding air quality, and the data presented in his brief regarding the ambient air
15 quality that would be affected by a gas-firing mode of operation. In addition, I would add that the
16 Council found that “This polluted confined, highly populated and rapidly growing area is not an
17 appropriate site in which to locate a power plant, which would emit three tons a day of criteria
18 and toxic pollutants.” (Council Order No. 754 finding #47 at 51) **Even without diesel, this plant**
19 **will emit nearly 3 tons per day of pollutants.**

20 The applicant asks the Council to rely on *data*, and then proceeds to selectively quote
21 from a *non-data* judgement statement contained in the FEIS, which is not supported by the data
22 contained within the same document. (MFR p.11 at 31-36) It ignores the *data* attached as
23 Appendix K, which states, “For worst case **oil-firing** conditions, the maximum 24-hr
24 concentration is **8 ug/m3**...for ...**gas-firing**... the maximum is **6.2 ug/m3**.” This is a **difference**
25 **of only 1.8 ug/m3** of a pollutant of much concern, and to which there is much expert testimony in

1 the record. Dr. Jane Koenig testified, "...the fine particle air pollution that is projected to be
2 emitted by the SE2 plant poses a health hazard to the public." (Koenig prefiled at 2) BC Lung
3 association testified that hospitalization rates for heart and lung disease are already higher in the
4 Abbotsford/Chilliwack area than in Vancouver. Environment Canada states in its report that
5 "...current objectives for ozone and particulate matter do not adequately protect human health,"
6 and established a health reference level of 15 ug/m³ on a 24-hour average, defined as "the lowest
7 ambient concentrations at which statistically significant increases in human health effects have
8 been detected." (Exhibit 132.21 at 3) **If you add 6.2 to the levels already present in area
9 monitoring, (submitted to the record during public hearings and a bench request) you
10 produce levels greater than the health reference level of 15, in 11 out of 12 months, some
11 levels in the 30's.** The levels already exceed 15 in 7 out of 12 months.

12 Much has been made of Canadian concerns on this issue, and they are understandably
13 concerned. However, **the effects are even greater in the U.S.** A review of the *data* shows that
14 the PM10 (actually PM2.5, as was confirmed by experts during adjudication) deposition from the
15 project in the U.S. is **10 ug/m³** for the 24 hr max average, while in Canada the highest is **7**.
16 (FEIS, p. 3.1-15) While the figure currently includes oil, the data clearly reveals a
17 proportionately heavier deposition on the US side, and the previously discussed data discussed
18 demonstrates only a slight difference between the oil and gas deposition (1.8 ug/m³, FEIS,
19 Appendix K).

20 The applicant submitted with its motion a health report from the South Fraser Health Region
21 (MFR Appendix A). This report should not be allowed to be submitted, as it was not available
22 for the public to respond to in hearings, nor available for critical analysis or cross-examination
23 during adjudication. However, a cursory review reveals some important items which should be
24 brought to the Council's attention, should the document be allowed into the record:

- 1 • Noticeably absent from the signatories is the health officer from the Lower Fraser Valley
2 Health Region, the region that will actually be impacted by the proposed project.
- 3 • The South Fraser Health Region is west of the proposed project, and does not include the
4 Abbotsford/Chilliwack/Hope, etc. region where the impacts of the project will be felt.
- 5 • The applicant **selectively** quotes from the document, but **overlooks pertinent comments**
6 within the report which confirm the more specific data which is already in the record, such as
7 “the highest levels of ozone are found east of Vancouver and Burnaby. Regionally the area
8 of highest concentrations varies from year to year but are found in the area from Pitt
9 Meadows to Hope” [the area in which Abbotsford is located] (MFR Appendix A, at 2), and
10 “Air pollution is an important public health problem. About as many deaths in the lower
11 mainland may be attributable to air pollution as from HJIV, accidental falls or traffic
12 accidents” (MFR Appendix A, at 3) and “In addition, there are many non-fatal episodes of
13 illness attributable to air pollution that have not been estimated in this report. These effects
14 include hospitalization, emergency room and physician office visits, increases in symptoms
15 and restriction of activity.” (MFR Appendix A, at 3)
- 16 • As was testified to by BC Lung Association on the public record in these hearings, the air
17 quality in the Abbotsford/Chilliwack area is significantly worse than Vancouver, BC, due to
18 topography and wind currents. Comparing the “lower mainland”, including many cities to
19 the west of Abbotsford, which get a breath of fresh air off the ocean, is very different than the
20 confined portion of the airshed to which there is overwhelming specific evidence in the
21 record.
- 22 • The report refers to “lower mainland” air quality and comparisons to other cities, but does not
23 detail what “lower mainland” consists of, or whether there was a city by city comparison, or
24 whether the entire area (most of it rural) was considered in the aggregate in comparing with
25 urban cities in the US.

1 • More could be said, but I believe the point has been made, and I wish to respect the time
2 demands placed upon the Council.

3 SE2 claims to base its motion on two premises. The first assigns a conclusion to the Council
4 which is not a part of the Order. The applicant’s opening statement mischaracterizes the
5 Council’s summary and findings in Order No. 754. The Order does not say that “increasing the
6 state’s generating capacity through the development of privately owned ‘merchant’ power plants
7 provides little, if any, public benefit.” (Motion for Reconsideration (MFR) p. 2 at 10-12) The
8 Council states that “ On balance, the significant environmental and social costs of the facility, if
9 located at the site proposed, outweigh the resulting energy benefits it would provide only to the
10 most competitive bidders in the wholesale markets of the Western states power grid.” (Order No.
11 754, Synopsis) Additionally, finding No. 28 (Order 754 at 49) states “SE2 seeks authorization to
12 build a merchant plant and intends to sell its energy to the highest bidder, within or out of the
13 region. SE2 has not demonstrated that the energy that the proposed plant would produce would
14 assist the State of Washington or the Northwest region in meeting their energy needs or in
15 meeting those needs at a reasonable cost.” These findings reflect the balancing and need and
16 consistency requirements of the statute, and carefully articulated in the full text of the order
17 (Order 754 at 12-16) This is not the same conclusion that SE2 claims the Council reached, and
18 then proceeds to argue against.

19 The second premise is that the Council could address the environmental concerns articulated
20 in Order No. 754 by imposing conditions and requirements in the Site Certification Agreement
21 (MFR p.2 at 16-20). The applicant is suggesting a changed application. The Council explains
22 why they did not pursue such a course of action regarding the diesel, concluding that it would be
23 “fundamentally unfair to recommend certification of the project with such a major change
24 without allowing the parties and public to respond to such a different project.” (Order at 9)

1 The applicant’s suggestion is also based on the assumption that all environmental concerns can be
2 addressed with imposed conditions. This is simply not the case. Imposed conditions cannot
3 change the topography of the area that traps pollutants. Conditions cannot address the 1,000 feet
4 of unconsolidated sediments between the surface of the site and bedrock far below, atop an active
5 earthquake fault. Conditions cannot remove the risk of building a plant requiring numerous tanks
6 of hazardous chemicals atop that same fault, beside Johnson Creek, a salmon-bearing stream
7 flowing through the town of Sumas before joining the Fraser River. Conditions cannot remove
8 the risk of a 16-inch high-pressure gas pipeline, which will surround the town of Sumas,
9 exploding from earth movement, as occurred in recent years only 5 miles away. Additionally, the
10 conditions proposed by the applicant do not remove the tremendous negative impact that this
11 plant will have on the health and welfare of myself, my family, and my community.

12 **A.** SE2 inaccurately paraphrases the Council’s clear order, and then argues against its own
13 reworded statement. (MFR p. 3 at 20-28) The paraphrased “conclusion that increasing generating
14 capacity will not benefit the state or region” is not the same as the Council’s order, “While it may
15 be legitimate to accept some environmental impacts in order to compensate for demonstrated
16 energy benefits, this is not the case when the locale where the plant is sited is not assured of
17 energy benefits. If an Applicant has shown no assured energy benefit to the state, then it is
18 inequitable that the people of that state receive the damage to their air quality and suffer the other
19 negative environmental impacts.” (Order at 15) SE2’s paraphrase also contradicts the Council’s
20 order at 16. The need is directly related to my intervention, as if it is not needed, I should not be
21 subjected to any of the impacts of this facility.

22 **1.** Counsel for the applicant incorrectly cites RCW 80.50.010 (4) [nuclear site restoration] to
23 claim that the Council’s findings are inconsistent with the governing statute (MFR p.4 at 17).
24 However, typo aside, the actual text from the order, “Having found that the Applicant has
25 demonstrated only generalized energy benefit from the proposed plant, we next proceed in our

1 duty to balance that benefit with the environmental impacts that would result from the building
2 and operation of the proposed project” (Order at 16), is consistent with RCW 80.50.010, which
3 requires balancing. The legislative intent is to “...*balance* the increasing demands for energy
4 facility location and operation in conjunction with the *broad interests of the public*,” and the
5 premises upon which the action will be based are:

- 6 (1) To assure Washington state *citizens* that, where applicable, operational safeguards are *at least*
7 as stringent as the criteria established by the federal government and are *technically sufficient*
8 *for their welfare and protection*.
- 9 (2) To *preserve and protect the quality of the environment*; to enhance the public’s opportunity to
10 enjoy the esthetic and recreational benefits of the air, water and land resources; *to promote*
11 *air cleanliness*; and to *pursue beneficial changes in the environment*.
- 12 (3) To provide abundant energy at reasonable cost.

13
14 SE2 makes the simplistic statement that “...increasing supply places downward pressure on
15 prices.” (MFR p. 4 at 13) However, in the complex energy market, prices do not correlate
16 directly with supply and demand. The energy market is driven by many factors including not
17 only supply and demand, but also need, price manipulation, regulation and deregulation, weather,
18 conservation efforts, and costs of production. The argument that simply permitting more gas-
19 fired plants will ensure “abundant energy” at a “reasonable cost” is fatuous, and contradicted by
20 the evidence in these proceedings. Unwarranted construction of natural gas plants may actually
21 drive up electrical costs. As with diesel use, (See Order at 43), such large consumption of natural
22 gas is likely to increase the costs of this finite resource to all other residents and industry, (Jim
23 Lazar, revised p.3) and will increase the costs of production for other facilities using natural gas
24 to produce electricity, thereby also causing an increase in the cost of electricity.

25 SE2 ignores in its arguments the other plants that are permitted, but not yet built which were not
26 included in the reliability studies to which they refer. (MFR p.4 at 29-31, footnote 3)

27 Dick Watson, Director of Planning for the Northwest Power Planning Council, states in his
28 prefiled testimony: "There are approved site certificates or licenses in the region for
29 approximately **3500 megawatts** of additional capacity." These were **not included** in the

1 NWPPC power analysis. (Watson p.5 at 16) He made similar comments about other reports SE2
2 has cited to indicate a possible shortage (Watson p.6) When asked about the SE2 plant, Mr.
3 Watson stated that other alternatives are "probably more appropriate." (p. 11 at 12)

4 SE2 makes the unsubstantiated argument that they are "one of the only projects
5 positioned to come on line in Washington within the next two years" and thus "S2GF presents
6 one of the only "near term" solutions available (MFR p.6 at 15-17). **This is blatantly untrue.**
7 There are 6 power projects under construction in the Northwest, due to be completed this year
8 and next, with another 6 projects that are permitted, but have not yet begun construction. Of
9 those with permits, but not under construction yet, all 6 are in Washington State (Attachment C)
10 SE2 argues in their closing brief against being required to build in the near term, yet they
11 maintain that they one of the only near term solutions to the short term need. Additionally,
12 experts indicate that after the year 2004, we may be facing a glut (Attachment D).

13 SE2 inaccurately paraphrases the Council's eloquent and articulate discussion of need
14 and consistency (Order at 12-16), and then argues against it (MFR p.6 at 17-23). The applicant
15 also misrepresents the statutory requirement (MFR p.6 at 21), citing a "statutory command to
16 increase energy facilities." This interpretation of the statute would put EFSEC in the absurd role
17 of simply applying conditions to any application, but lacking the power to recommend approval
18 or denial. The statute actually reads, "to recognize the pressing need for increased energy
19 facilities, and to ensure through available and reasonable methods, that the *location and operation*
20 of such facilities will produce minimal adverse effects on the environment, ecology of the land
21 and its wildlife, and the ecology of state waters and their aquatic life." (RCW 80.50.010, policy)
22 SE2 selectively ignores WAC 463-47-110 (1a) "The overriding policy of the council is to avoid
23 or mitigate adverse environmental impacts which may result from the council's decisions", RCW
24 43.21F.015 (1-4) "The development and use of a diverse array of energy resources with emphasis
25 on renewable energy resources shall be encouraged; The supply of energy shall be sufficient to

1 insure the health and economic welfare of its citizens; The development and use of energy
2 resources shall be consistent with the statutory environmental policies of the state; Energy
3 conservation and elimination of wasteful and uneconomic uses of energy and materials shall be
4 encouraged, and this conservation should include, but is not limited to, resource recovery an
5 materials recycling;...”, and WAC 173-400-040 (5) “No person shall cause or permit the
6 emission of any air contaminant from any source if it is detrimental to the health, safety or
7 welfare of any person, or causes damage to property or business.” The EFSEC Order No. 754 was
8 firmly grounded in all the governing statutes.

9 **2.** SE2 argues that “The Council’s Conclusion that the S2GF must fully mitigate
10 environmental impacts and fully internalize environmental costs is inconsistent with the Facility
11 Siting Statute and the Council’s past decisions.” (MFR p.6 at 25-29) Once again, this is a
12 mischaracterization of both the Council order and the statute. The order stated among other
13 relevant arguments, that “All that is required is that we internalize to the extent feasible the cost
14 of the impacts; then, the costs necessarily are borne by the beneficiaries”, and “Under the tests
15 described in the previous section, the Council would permit the costs of a modest amount of
16 environmental degradation to remain externalized in exchange for the general benefits that the
17 Applicant has demonstrated. But in the absence of more direct, specific benefits being
18 demonstrated, no more than that modest amount should be allowed.” (Order at 16)
19 The statute requires EFSEC “to ensure through available and reasonable methods, that the
20 location and operation of such facilities will produce minimal adverse effects on the environment,
21 ecology of the land and its wildlife, and the ecology of state waters and their aquatic life. It is the
22 intent to seek courses of action that will balance the increasing demands for energy facility
23 location and operation in conjunction with the broad interests of the public.” This is consistent
24 with internalizing.

1 **3.** The applicant proposes new provisions for long-term contracts, but fails to procure
2 additional resources such as energy conservation or renewable sources (RCW 43.21F.015
3 (2)) To argue that the facility itself is consistent with diversity or preferred resource
4 acquisition strategies is specious, as the number of gas-fired plants already permitted or
5 in the permitting process poses a supply and price problem for natural gas (Lazar). The
6 applicant fails to provide assurances that the energy produced “will assist the state or
7 Northwest region directly in meeting its energy needs or in meeting those needs at a
8 ‘reasonable cost’, the second half of the statutory objective.” (Order at 16) Additionally,
9 the Applicant gives the Council only 30 days to determine whether the obligations
10 suggested have been satisfied (MFR p.9 at 4-30).

11 **B.** The Council cannot simply address concerns with mitigation. This location is simply not
12 an appropriate site for a large power plant. The Council states in its order that “...the
13 public’s general belief that this amount [3 tons] of pollution emitted into an already
14 sensitive and confined airshed is likely to cause adverse health impacts is *supported* by
15 more concrete evidence in our adjudicative record.” This concern is not addressed.
16 Proposals for offsets in other locations will not benefit the children at the **elementary**
17 **school, 500 yards away**. As discussed earlier, the *localized* impacts are very heavy.
18 Additionally, proposing mitigation measures **after** the public process has been closed, so
19 the public cannot respond to them violates due process, and may also violate SEPA rules.
20 These state that “EISs are not required to analyze in detail the environmental impacts of
21 mitigation measures *unless* the mitigation measures:...involve significant new
22 information ...on, a proposal’s probable significant adverse environmental impacts; and
23 will not be analyzed in a subsequent environmental document prior to their
24 implementation.” (WAC 197-11-660 (2a,b)) This could be interpreted to require that a

1 new EIS, detailing the environmental impacts of the new proposed mitigation measures
2 would be required, should the council decide to reconsider its decision.

3 Without waiving my objections to these last-minute, post- public process
4 proposed changes, I will very briefly discuss the items which will impact myself and my
5 family:

6 1. Air quality.

7 a. I have discussed this at length earlier in this brief. Even without diesel, there
8 will still be nearly 3 tons of hazardous emissions into a confined airshed,
9 creating levels well above thresholds of documented adverse health impacts.

10 b. Offsets, as were discussed in the adjudicatory hearings, do little to mitigate
11 the local impact, such as the ambient air impacts at the elementary school,
12 only 500 yards away.

13 c. To avoid redundancy, I hereby adopt the arguments of the Counsel for
14 Abbotsford regarding air quality impacts.

15 2. (MFR #3)Water Quantity. SE2's argument that "uncontroverted evidence in
16 the record demonstrates that...withdrawal of water for the S2GF would not
17 deplete the aquifer..." (MFR p.21 at 11-17) is not substantiated in the record.
18 Cross-examination of the consultant hired by SE2 showed that much
19 information is lacking, including the amounts of withdrawals on the
20 Canadian side of the aquifer, where groundwater withdrawal is not regulated,
21 and has not been quantified. The remedy proposed by SE2 only covers wells
22 within the zone of influence, and **would not address any impacts to other**
23 **users on the aquifer.**

24 3. (MFR #4) Water quality. Although SE2 may not be the source of the nitrate
25 contamination, *its actions* could cause increases in the levels of nitrate in the

1 groundwater. Pumping tests done created an increased level of nitrates, and
2 generated enough concern on the part of the City of Sumas, that they filed a
3 stipulation with SE2 to install nitrate removal equipment, should this occur.
4 Once again, there is no protection for other users, should this occur.

5 4. (MFR #8) Noise. The noise mitigation that SE2 has proposed regarding low
6 frequency sounds or tones “that City and County noise regulation staff jointly
7 agree are reasonably objectionable” (MFR p.27 at 26-28) is very subjective,
8 and requires the agreement of the City of Sumas staff, along with the County
9 staff. Therefore, if either staff feels it is reasonably objectionable (noticeably
10 lacking is any decibel rating such as the WHO decibel rating for nighttime
11 bedroom noise), but the other does not agree, then SE2 need do nothing.
12 Evidence in the record clearly indicates that the current plant (SE1), causes
13 noise difficulties (see prefiled testimony of Grenzow, and Hoag), yet NESCO
14 has done nothing to improve the situation.
15 Testimony in the record (Lilly) indicated that sound mitigation measures for
16 low frequency need maintenance in order to function properly. However, the
17 proposed mitigation from SE2 would terminate after approximately one year,
18 and monitoring would apparently cease. (MFR p. 27 at 31-40)

19 5. (MFR #12) This condition does not “resolve any remaining concerns
20 about unknown seismic conditions at the Site.” (MFR p. 30, at 7-9) On the
21 contrary, the site is atop 1000 feet of unconsolidated sediments, and the
22 suggested engineering remedies discussed by the plant’s consultants, such as
23 attaching to bedrock would not be possible, because the bedrock is 1000 feet
24 down. In addition, the site is *directly* atop the fault, according to Dr.

1 Easterbrook, and could experience a change in elevation of as much as 20
2 feet in 15 seconds.

3 SE2 includes a footnote in which they refer to “some vocal opposition in Washington.”
4 (MFR at 2). I believe this is inappropriate in a motion for reconsideration, however I would like
5 to respond. During the adjudicatory hearings, SE2 consistently mis-characterized opponents as a
6 vocal minority. The opposition is, in fact, overwhelming. Over 85,000 petitions have been
7 signed opposing SE2. The number of US/Canadian signatures is generally comparable to the
8 density of population in the area, however, an examination of the US signatures reveals an even
9 greater proportion of opposition within the US population. Opponents have observed that the
10 only support for the plant appears to come from those financially connected to the project. For
11 example, at the meeting where EFSEC announced its decision to deny the project, the only two
12 signs in favor of SE2 were held by the PR firm hired to represent SE2.

13 I regret that I must include attachments which are not subject to cross-examination,
14 however, if SE2’s last-minute submissions are allowed, then I should also be entitled to offer
15 additional items for the Council’s consideration.

16

17 DATED this 30th day of March, 2001

18

19 Constance Hoag

20 2633 Halverstick Rd

21 Lynden, WA 98264

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23