

1 Declaration of Mailing

2 I certify, under penalty of perjury under
3 the laws of the State of Washington, that
4 on the below date, I sent true and correct
5 copies of Constance Hoag’s Motion for
6 Reconsideration via U.S. mail to all parties
7 of record as specified by the Council’s
8 Service List dated 01/08/02 at the addresses
9 provided therein. Dated this 7th day of June,
10 2002, at Lynden, Washington.
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16 BEFORE THE STATE OF WASHINGTON
17 ENERGY FACILITY SITE EVALUATION COUNCIL

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19 IN RE APPLICATION NO. 99-1)
20)
21) CONSTANCE HOAG’S
22 SUMAS ENERGY 2) MOTION FOR RECONSIDERATION
23 GENERATION FACILITY) of COUNCIL ORDER NO. 768
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28 Council Order No. 768 grants approval of a power plant in an unsuitable
29 location. The adjudicatory record clearly shows that this is an inappropriate location for
30 a power plant. In addition, while the Council includes language in Order No. 768 that is
31 reflective of concerns brought forward by myself, other intervenors, and the public, there
32 is a lack of firm criteria to actually address those concerns and offer protection for the
33 public and meet the legal requirement of the EFSEC to assure the public that the
34 safeguards that are applied are “*technically sufficient for their welfare and protection.*”
35 (RCW 80.50.0101 (1))

36 WAC 463-14-020 states that Council action will be *based on the policies and*
37 *premises set forth in RCW 80.50.010 (1), (2), and (3).*

38 “It is the intent to seek courses of action that will balance the increasing demands for energy
39 facility location and operation in conjunction with the broad interests of the public. *Such action*
40 *will be based on these premises:*

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

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9 **This order violates the law. It does not provide criteria that are technically**

10 **sufficient for the welfare and protection of the public, and does not protect the**

11 **quality of the environment or promote air cleanliness or pursue beneficial changes**

12 **in the environment.**

13 I am so thoroughly disappointed in this order that it is very difficult to write this

14 response.

15 In Sunday school as a child, we used to sing, “the wise man built his house upon the

16 rock...” The song contrasted this with the foolish man who built his house upon the sand and

17 was wiped out by the next storm. EFSEC order No. 768 does not reflect the wisdom of a wise

18 man. If I were an energy developer, I would be thrilled with this order. This would mean that

19 now I could put on a blindfold and play pin-the-tail-on-the-donkey in picking a plant location,

20 because if you can build this power plant in Sumas, you can build one anywhere you wish.

21 The EFSEC (Energy Facility **SITE EVALUATION** Council) in this order has offered

22 some minor mitigation to SE2's proposal, but these measures are insufficient to protect me and

23 my community from the devastating impacts of this plant. It is far from the grid, in a floodplain

24 that floods frequently, in a seismic area with an active fault underlying the proposed site, will

25 consume vast quantities of our precious water resource, and will add massive amounts of air

26 pollution in an area already hard hit with pollutants.

27 High power lines must be strung across 48 miles of Whatcom County or through the

28 heart of Abbotsford. There is nothing in the EFSEC order to address these impacts, and the

29 Council has steadfastly refused to allow those of us who will be impacted to address this issue,

1 even though the company failed to put up the required deposit with the Canadian NEB to run the
2 lines through Canada, and even though the Canadian Pacific Railway has stated that it will not
3 allow SE2 to use its right of way as long as any level of government or the community is opposed
4 to this plant. The proposed lines would run in my front yard if they went through Whatcom
5 County, and if the power plant is built, the power must go somewhere, so it remains extremely
6 disappointing that this is not addressed.

7 Farmers are within inches of having their barns and cows flooded out. The modeling
8 already done by the City of Sumas shows that if this industrial area is filled, the increase could be
9 at least 11 inches. The EFSEC order is only requiring that SE2 do some unsteady state modeling,
10 which they were supposed to do a year ago. There is nothing in the order to protect the farmers
11 or other citizens. Nothing says, “and if it shows it will increase depths, or flood areas that were
12 not previously flooded, mitigation will be done.” They are still resorting to the applicant’s vague
13 term “unreasonable adverse impact.” According to whom? I’m sure that a farmer flooded off his
14 farm by the new fill for the power plant would find that to be an unreasonable adverse impact.
15 However, the applicant has argued that it would be unreasonable for them to pay for any impacts
16 to county facilities caused by their plant, so it gives you an idea what they think is reasonable.
17 The City of Sumas went so far as to say that unless flood depths were increased by at least 12
18 inches, it should not be considered an adverse impact. “Unreasonable adverse impacts” must be
19 defined unless EFSEC gives objective criteria that are technically sufficient to provide protection
20 for the public.

21 This plant will consume over a million gallons of water a day, in an area where the
22 aquifer is closed to further withdrawals, and farmers have been waiting for years to obtain water
23 rights. The water would be discharged to the Fraser River rather than replenishing the aquifer.
24 The City of Lynden, just down the road has already exceeded its water right and is looking for
25 more.

1 The EFSEC order summary and press release state that the applicant is “committing to
2 provide 100% offsets in the airshed for its NO_x and particulate matter (PM₁₀) emissions.” This is
3 very misleading, and not appropriate for a permitting agency entrusted with the public’s interest.
4 The application and the EFSEC order state that if they can’t find the offsets within a year, they
5 can instead donate \$1.5 million to an air pollution fund. The expert testimony on the record
6 shows clearly that this is only enough to offset one emission, NO_x, for one and one-half to two
7 years. Nothing beyond that, and nothing for the other boatload of contaminants it will put out.
8 And if they don’t find offsets in the local area, it won’t matter much to the elementary school
9 children downwind of the plant on Sumas Mountain. The highest impacts identified in the
10 modeling are within a few miles of the plant. If the EFSEC feels they must say yes to a really bad
11 location for a power plant, the EFSEC should REQUIRE that they offset the emissions in the
12 same areas that the modeling shows the impacts will be felt. No monetary back door. A \$400
13 million dollar plant becomes a \$401 million dollar plant. Big deal to the developer? Nope, and
14 the health of the community will not be protected, as required by law.

15 SE2 can promise the moon if it is followed with “or pay \$1.5 million.” Anyone can
16 predict which they will pick.

17 The EFSEC has acknowledged the problems with noise, and particularly low frequency
18 noise, and has even increased monitoring requirements. But the Council did not build any
19 requirements with teeth into the order, instead saying things like, “the Certificate Holder shall pay
20 attention to noise control during the design.” Pay attention? What does that mean? They ignored
21 the testimony regarding the fact that it is perfectly legal for the power plant to blast the farmers
22 out of their homes because of the noise levels allowed in agriculture for seasonal tractor work.
23 Instead of giving a specific noise level that must be attained, EFSEC once again relies on the
24 vague “reasonably objectionable” threshold.

25 The applicant’s own noise expert agrees that for the protection of the public, for
26 predictability and design information for the applicant, and for ease of administration for both the

1 county and the city, it would be desirable to put an objective rather than subjective level of noise.
2 (Brittain Tr. P.1352) He also states that “in the design process for SE2, I believe that some form
3 of noise criteria at low frequencies should be set.” (Brittain Tr. P.1318) Council Order No. 768
4 does not contain noise criteria at low frequencies, but once again relies on the “reasonably
5 objectionable” threshold which is arbitrary, and fails to provide protection for either the applicant
6 or the public. In addition, it also relies on legal standards, while it was made abundantly clear
7 that the legal standard is written in dBA, and does not address low frequency noise. It was also
8 made clear in testimony that in this location, the legal noise limit will fail to provide protection
9 for residents, as it is directly adjacent to agricultural zoning which allows up to 70 dBA at night, 8
10 times as loud as the level acknowledged to interfere with sleep.

11 L. Beranek, Noise Reduction, states that noise levels in sleeping areas should not exceed
12 45 dBA (Exh. 96.2) The World Health Organization (WHO) states that it should not exceed 30
13 dBA in an indoor bedroom at night, and that “if the noise includes a large proportion of *low*
14 *frequency* components, *still lower guideline values* should be considered.”(Exh.25.5) The order
15 should reflect an objective level for low frequency , such as “not to exceed 5dB above existing
16 ambient levels, and cumulative noise levels not to exceed the WHO guideline for indoor sleeping
17 areas, with an additional safeguard for low frequency as is recommended by WHO.” This would
18 give the applicant clear information for design. It is important to note the differences between dB
19 and dBA. Decibels (or dB) refers to the broad spectrum of noise generated, whereas A-weighted
20 decibels (or dBA) has been weighted to reduce measured levels of high and low frequencies.
21 (DEIS p.3.3-2) Health recommendations expressed in dB should not be measured in dBA.

22 On water quantity and quality, Order No. 768 fails to adequately protect my interests or
23 the interests of the public. The proposed nitrate treatment system would only protect the City of
24 Sumas, not other users on the aquifer. The record shows clearly that the applicant’s “expert” did
25 not have adequate information in his analysis, including the amount of withdrawals on the
26 Canadian side of the aquifer. The order fails to acknowledge this inadequacy, and fails to address

1 the ongoing impacts of withdrawal of such a large volume of water from the aquifer. The zone of
2 influence that is proposed may give you adequate results the first time you run it, but if the
3 withdrawals serve to deplete the aquifer in any way, that zone of influence will grow over time,
4 drawing from a greater and greater area. The only way that the public and I will be adequately
5 protected is if the applicant is required to provide comensation or mitigation if a pattern develops
6 over time. The same is also true of water quality.

7 This project should be denied. This order for approval should be reconsidered, in light of
8 the legal requirements that the EFSEC must operate under. The EFSEC, try as it might, cannot
9 make a silk purse out of a sow's ear.

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15 DATED this 7th day of June, 2002

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Constance Hoag
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