

BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of Application No. 99-1:

SUMAS ENERGY 2 GENERATION
FACILITY

SETTLEMENT AGREEMENT BETWEEN
WASHINGTON DEPARTMENT OF
ECOLOGY AND SUMAS ENERGY 2
REGARDING SECOND REVISED
APPLICATION

I. Introduction

A. Parties

Sumas Energy 2, Inc. (SE2) filed a Second Revised Application seeking a Site Certification Agreement (SCA) from the Energy Facility Site Evaluation Council (EFSEC) to construct and operate the proposed Sumas 2 Generation Facility (S2GF or Project).

Washington Department of Ecology (Ecology) was created to administer the state of Washington's water management program, including its comprehensive water quality and water resource allocation programs. Ecology also has statutory responsibilities in the matters of flood control, shoreline and coastal zone management, air quality, and environmental review and coordination, pursuant to the State's environmental policy statute. Ecology is a party to the site certification adjudication before EFSEC.

B. Purpose and Intent

SE2 and Ecology (collectively "the Parties") have been involved in discussions and negotiations related to the Project's potential effect upon water quality and wetlands. The

Project consists of a 660 MW combined-cycle combustion turbine generation facility and associated facilities, including a 4.25-mile natural gas pipeline and a 5.9-mile 230 kV transmission line connection facility. Through this Agreement, Ecology and SE2 set forth the obligations and restrictions that the Parties intend to have incorporated into the SCA as conditions for the Project should EFSEC recommend that the Project be certified. The obligations and restrictions set forth in the Agreement relate to resources that will be affected by construction and operation of the Project facilities at the Project site, the construction and operation of the approximate 4.25-mile natural gas pipeline from the border crossing east of Sumas, Washington to the Project site, and the construction and operation of the approximate 0.5-mile electrical transmission line from the Project site to the U.S.-Canadian border, as these components are proposed at the time of entry of this Agreement.

C. Resolution of Issues

SE2 has undertaken preliminary site impact assessments to identify the major significant water quality and wetland impacts expected from construction and operation of the Project facility, natural gas pipeline, and electrical transmission line. The Parties agree that not all impacts may be known and therefore, the Agreement contains commitments to address currently expected specific impacts and a commitment to principles of impact assessment and mitigation for potential future unknown impacts.

The Parties further agree that SE2 will comply with any conditions in any settlement agreement with any other Party to the EFSEC proceeding that set stricter standards regarding wetlands and water quality.

In addition, Ecology initially raised issues with respect to air emissions and water resources. These issues have been resolved to Ecology's satisfaction and, therefore, no testimony was submitted for the adjudicative hearing.

II. SE2 Commitments

A. Water Quality

1. Wastewater Treatment

There is an existing contract between Sumas Cogeneration Company, L.P. ("SCCLP") and the City of Sumas ("City") for wastewater treatment and discharge. The City has discontinued operation of its wastewater treatment plant and, by contract, now sends its wastewater stream to the City of Abbotsford, British Columbia, Canada for processing at the Joint Abbotsford Mission Environmental System (JAMES) treatment plant (collectively, "Abbotsford"). Under the contract, Abbotsford has committed to accepting a maximum flow from the City that increases each year up to a limit of 400,000 gallons per day. Through an agreement with the City, SCCLP is permitted to discharge up to 80,000 gallons per day to the City's system. SE2 will generate an average of 39,000 gallons per day of wastewater. The City has consented to the transfer of all or any portion of the 80,000 gallons per day to SE2. The combined discharge from SCCLP and SE2 will not exceed the quantity of water set forth in SCCLP's existing agreement with the City (80,000 gallons per day).

The City's NPDES Permit for its wastewater treatment plant has expired. SE2 will not discharge its wastewater to the City's wastewater treatment plant unless the City has obtained permission or authorization to operate the treatment plant.

SE2 further agrees that its wastewater will meet all discharge standards currently imposed on SCCLP, pursuant to the agreement between SCCLP and the City of Sumas.

2. Hydrostatic Test Water

SE2 agrees that none of the hydrostatic test water will be discharged directly into surface waters of the State and any such water discharged into a Publicly Owned Treatment Work will meet all applicable pre-treatment standards.

3. Stormwater Pollution Prevention Plans

SE2 agrees that any Stormwater Pollution Prevention Plan required by any NPDES permit required for construction and operation of the Project will be submitted to EFSEC for approval and, at the same time, will be submitted to Ecology for review and comment. Source control Best Management Practices will be selected and identified during a detailed design of the plant site, and will be included in the required Stormwater Pollution Prevention Plans.

4. Stormwater Drainage Design

SE2 agrees to prepare a stormwater drainage design plan to be submitted to EFSEC for approval, and, at the same time, shall be submitted to Ecology for review and comment. The final stormwater drainage design plan, as approved by EFSEC, shall comply with the requirements of the Department of Ecology's Stormwater Management Manual for Western Washington, dated August 2001 ("Manual").

The stormwater drainage design will include the design of an orifice intended to permit an adequate flow of water into the created and enhanced wetland area located on the southwest portion of the site and shall include a means of directing increased stormwater flows into the proposed drainage along the north and east property lines. The design shall also include an orifice intended to permit an adequate flow of water into the created and enhanced wetland area located to the east of the site and shall include a means of directing

increased stormwater flows directly into the existing 42-inch stormwater drainpipe when such increased flow would potentially create scour or erosion within the new wetland areas.

The requirements of the August 2001 Manual will apply to all points of discharge from the site.

B. Wetlands

1. SE2's Commitments

SE2 agrees that it shall recommend the mitigation measures identified in the following sections of this Agreement be incorporated into the SCA as binding commitments.

2. Wetland Mitigation

SE2 shall prepare a final wetland mitigation plan that includes a combination of wetland preservation, enhancement and creation to replace wetlands that will be filled and/or altered. The plan shall be based upon Figure 3.4-5 of the Second Revised Application as revised on August 31, 2001 (Exhibit ADE-5), this stipulation, any stipulation between SE2 and Washington State Department of Fish and Wildlife regarding wetlands, the "Wetland Delineation & Mitigation Report" (the "Report") dated June 26, 2000 (filed with EFSEC as Exhibit JW-4), as modified by the Second Revised Application and the prefiled testimony of A. David Every (Exhibit ADE-T). In general, the plan shall include the following:

The western half of the plant site, or "West Mitigation Area," will be used for compensatory mitigation, and plant construction will only occur in the eastern half of the plant site. The Port of Bellingham property, or "East Mitigation Area," will also be used for compensatory mitigation (*see* Exhibit ADE-5). All wetlands within the mitigation sites will be enhanced and much of the uplands within the mitigation sites will be converted to wetlands. The remaining uplands will be enhanced to support forested habitat and serve as a wetland buffer.

Within the meadow and cornfield portions of the mitigation sites, cover by non-native species will be reduced and a variety of wetland habitat types will be established. Topographic modifications will be made to create palustrine aquatic bed (PAB) communities that are semi-permanently flooded and support aquatic plants. Additionally, palustrine emergent wetland communities that are seasonally flooded (PEMC) will be created adjacent to and near the PAB communities. The PEMC communities will support a variety of wetland grasses, sedges, rushes, and flowering herbs. Palustrine scrub-shrub (PSS) and palustrine forested (PFO) wetland communities will be established as well. These communities will comprise the majority of the compensatory mitigation areas and will support a variety of native trees and shrubs. Native coniferous evergreen and broad-leaved deciduous trees will be planted in the areas where upland forest will be established.

To enhance the forested wetland area in the northwest portion of the site (the PSS/PFO wetland community), several hundred western red cedars and western hemlocks will be planted.

Upland forest will be established within the approximately 1 acre of upland meadow corn field located in the southern portion of the mitigation areas and 2.78 acres of grassy median between Haul Road and State Route 9.

As part of the final mitigation plan, SE2 shall clarify ownership of the median strip (between the haul road and State Route 9) proposed as an upland buffer. SE2 shall document how much of the median strip is within the SR 9 right of way. The right of way shall be depicted on figure 3.4-5. SE2 shall evaluate likelihood that the buffer will remain as a vegetated buffer into the foreseeable future.

As part of the final mitigation plan, SE2 shall apply the Washington State Wetland Function Assessment Method (WFAM) by including the 8.8 scrub-shrub and forested

wetland, and calculate the acre-points for the proposed mitigation action. SE2 shall evaluate and discuss the increase and decrease (in acre-points) of each wetland function evaluated in the WFAM analysis.

The final design for SE2's wetland mitigation plan shall be submitted to EFSEC for approval, and, at the same time, shall be submitted to Ecology for review and comment.

In addition, SE2 agrees, in coordination with Ecology and WDFW, to develop a Performance Plan ("Plan") for its wetland mitigation. The Plan will include the following: a description of monitoring that must be performed; a monitoring schedule; submittal of monitoring reports on a prescribed schedule; performance standards for each aspect of the wetland mitigation plan; and contingencies in the event that any aspect of the wetland mitigation plan fails. Monitoring pursuant to the Plan shall be performed one, two, three, five and seven years after establishment of the wetland mitigation areas. Performance standards shall be developed using guidance in publications available on Ecology's wetlands homepage, as well as "Success Standards for Wetlands Mitigation Projects – A Guideline" (Mary Ossinger, WSDOT Environmental Affairs Office, Draft August 1999). The performance plan shall include design and grading drawings, typical cross sections, and detailed planting plans. SE2 shall ensure that it will not use plant species not native to the Puget Lowlands bioregion. The performance plan shall be submitted to Ecology for review and to EFSEC for approval. SE2 shall modify the plan documents should EFSEC's review indicate items in need of revision.

SE2 agrees that, in lieu of the dedication or easement to the City of Sumas described in Sections 1.4 and 3.4 of the Second Revised Application, prior to construction, SE2 shall execute and record a restrictive covenant with respect to the western and eastern wetland mitigation areas in substantially the form attached hereto as Exhibit A.

III. Withdrawal of Objections

Based upon the above commitments made by SE2, Ecology agrees that SE2 has addressed Ecology's water quality issues and fully mitigated the Project's impacts to wetlands. Therefore, based on this Agreement, Ecology stipulates to the withdrawal of all of its issues from the adjudicative hearing, and to the withdrawal of the prefiled testimony of Erik Stockdale and Steve Hood.

DATED: September ____, 2001.

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