

RECEIVED

JUL 17 2000

Exhibit 5

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

In the Matter of Application No. 99-1:

SUMAS ENERGY 2 GENERATION
FACILITY

SUPPLEMENTAL SETTLEMENT
AGREEMENT BETWEEN
WASHINGTON DEPARTMENT OF FISH
& WILDLIFE AND SUMAS ENERGY 2
REGARDING WETLANDS

I. Introduction

A. Parties

Sumas Energy 2, Inc. (SE2) is 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 Fish and Wildlife (WDFW) has a mandate to preserve, protect, manage, and perpetuate the state's fish and wildlife resources including habitat.

WDFW is a party to the site certification adjudication before EFSEC.

B. Purpose and Intent

On May 12, 2000, SE2 and WDFW entered into a stipulation in this proceeding which addressed all of the issues raised by WDFW with the exception of identification of wetland resources, and the protection and mitigation of wetland impacts. Since May 12, 2000, the parties have met and undertaken further discussion of wetland impacts and issues. As a supplement to the May 12, 2000 Stipulation, the parties enter this stipulation to address the

1 identification of wetland resources, impacts to those resources, and SE2's agreed protection
2 and mitigation actions regarding those resources.
3
4

5 The provisions of this Agreement are intended to supplement the provisions of the
6 May 12, 2000 Agreement between the parties which was submitted to EFSEC.
7
8

9 **C. Resolution of Issues**

10 SE2 has undertaken preliminary site impact assessments to identify the major
11 significant wetland impacts expected from construction and operation of the Project facility,
12 gas pipeline, and electrical transmission line. The Parties agree that not all impacts may be
13 known and therefore, the Agreement contains commitments to address currently expected
14 specific impacts and a commitment to principles of impact assessment and mitigation for
15 potential future unknown impacts.
16
17
18
19
20
21

22 The Parties further agree that SE2 will comply with any conditions in any settlement
23 agreement with the Department of Ecology that set stricter standards regarding wetlands and
24 water quality.
25
26
27
28

29 **II. SE2 Commitments**

30 **A. SE2's Recommended Commitments**

31 SE2 agrees that it shall recommend the mitigation measures identified in the following
32 sections of this Settlement Agreement be incorporated into the SCA as binding commitments.
33
34
35
36

37 **B. Wetland Assessment and Mitigation**

38 The Parties agree that the principles of impact assessment that have been applied to
39 the currently expected impacts and that shall be applied to all unforeseen impacts are, in
40 descending order of importance, 1) avoid the impact wherever possible; 2) minimize the
41 impact, and 3) provide on-site, in-kind mitigation.
42
43
44
45
46
47

1 WDFW and SE2 agree that, to the extent impacts to wetlands habitat cannot be
2 avoided in the construction and operation of the Project, the impacts will be mitigated as
3 follows:
4
5

6
7 **1. Wetland Delineation & Mitigation Report**

8 SE2 shall undertake a wetland mitigation plan that includes a combination of
9 wetland preservation, enhancement and creation to replace wetlands that will be filled and/or
10 altered. This plan, entitled "Wetland Delineation & Mitigation Report" (the "Report") dated
11 June 26, 2000 (filed with EFSEC as Exhibit JW-4) is incorporated into this Agreement.
12
13
14

15
16 **2. Additional Mitigation**

17 a. SE2 agrees to modify the performance standards for trees and shrubs
18 set forth on pp. 23 and 24 of the Report so that 50% of the canopy closure for those
19 vegetation types will be achieved by Year 10.
20
21
22

23 b. SE2 agrees to plant Western red cedar trees in the forested and
24 shrubbed wetland on the site to enhance this wetland. The cedars will be planted on 15-foot
25 centers or in pods through the wetland where the elevation is conducive for their growth.
26 SE2 agrees to develop a detailed plan for these plantings and to consult with, and seek
27 consensus with WDFW during the development and review of the plan. The parties agree that
28 the plan will include site-specific performance standards that will be in lieu of the vegetation
29 performance standards set forth in the Report.
30
31
32

33 c. SE2 agrees to modify the design of the drainage ditches on the site,
34 including the outlet design, to insure that an adequate supply of water is provided to the
35 wetlands being created and enhanced, and to provide additional habitat features. This
36 modification will include maintaining a vegetative channel east of the forested and shrubbed
37 wetland, and on the north and east sides of the project site, provided that there is adequate
38
39
40
41
42
43
44
45
46
47

1 width on the east side of the property site in conjunction with a landscaped screen. SE2
2
3 agrees to develop a design plan for these modifications and to consult with, and seek
4
5 consensus with, WDFW during development and review of the plan.
6

7
8 **III. Withdrawal of Objections**

9 Based upon the above commitments made by SE2, WDFW agrees that SE2 has
10 mitigated impacts to wetlands regarding wildlife. Therefore, based on this Agreement and the
11 May 12, 2000 Agreement, WDFW stipulates to the withdrawal of its issues from the
12
13 adjudicative hearing, and to the withdrawal of the prefiled testimony of Curt Leigh.
14
15

16
17 DATED: July 17, 2000

18 **PERKINS COIE LLP**

19
20
21
22 By _____

23 Karen M. McGaffey
24 Charles R. Blumenfeld
25 Elizabeth L. McDougall
26 Attorneys for Sumas Energy 2, Inc.
27
28
29

30
31 **WASHINGTON ATTORNEY GENERAL**

32
33
34 By _____

35 William Frymire
36 Mary McCrea
37 Assistant Attorneys General
38 Attorneys for Washington Department of
39 Fish and Wildlife
40
41
42
43
44
45
46
47