

AGENDA
EFSEC STANDARDS DEVELOPMENT GROUP

Thursday, August 8, 2002

8:30 a.m. – 3:00 p.m.

St. John's Episcopal Church, 114 20th Avenue SE, Olympia, WA 98501

Phone (360) 352-8527

1. Welcome and introductions
 2. Review and approve minutes
 3. Assign final tasks
 - A. Recap of Report Purpose
 - B. Revisions to Report and Proposals
 - C. Dissenting Comments
 - D. Schedule for Completion
 4. Review proposals
 - A. Certificate Expiration (Exhibit C(10)) – Liz Thomas
 - B. Need for Projects
 1. (Exhibit C(12a)) – Liz Thomas
 2. (Exhibit C(12b)) – Mark Anderson
 3. (Exhibit C(12c)) – Danielle Dixon
 - C. Mediation, Stipulations and Settlements (Exhibit C(13)) – Liz Thomas & Mike Lufkin
 - D. Water Quantity (Exhibit C(7)) – Chuck Lean
 - E. Socioeconomics
 1. (Exhibit C(6a)) – Brian Carpenter
 2. (Exhibit C(6b)) – Victoria Lincoln
 - F. Air Quality (Exhibit C(1)) – Mike Lufkin
 - G. Water Quality (Exhibit C(8)) – Karen McGaffey
 - H. Fish & Wildlife
 1. (Exhibit C(2a)) – Ramona Monroe
 2. (Exhibit C(2b)) – Dave Mudd
 - I. Wetlands
 1. (Exhibit C(9a)) – Chuck Blumenfeld
 2. (Exhibit C(9b)) – Andy McMillan
 - J. Greenhouse Gas Mitigation
 1. (Exhibit C(3a)) – Blair Henry
 2. (Exhibit C(3b)) – Linda VerNooy
 3. (Exhibit C(3c)) – Danielle Dixon
 4. (Exhibit C(3d)) – Tony Usibelli & Mark Anderson
 5. (Exhibit C(3e)) – Kristen Sawin & Liz Thomas
 - K. Noise (Exhibit C(4)) – Karen McGaffey
 - L. Seismicity (Exhibit C(5)) – Allen Fiksdal
 - M. Effect of Standards (Exhibit C(11)) – Chuck Lean
 5. Adjourn
- Exhibit B(11)—Report to Jim Luce, Chair, Washington Energy Facility Site Evaluation Council
August 8, 2002 EFSEC Standards Development Group Meeting Materials

August 8, 2002

EFSEC Standards Development Group

Meeting Minutes

Olympia, Washington

Welcome and Process Discussion

Bud Krogh welcomed those in attendance. Meeting participants introduced themselves. Mr. Krogh asked if there were additions or corrections to the July 12, 2002, meeting minutes or any prior minutes. Donna Ewing submitted corrections to the July 12 minutes.

Jim Luce thanked participants for their involvement and work over the past eight months. He also thanked, ahead of time, those people who will contribute to the upcoming public process. Mr. Luce suggested the present group not spend much time considering issues already discussed at length. He felt proposals for such issues could be rolled forward in their present form to the public process. This would also allow the public a fair opportunity to cover all the issues.

Carol Jolly recommended to the Council that if there were multiple proposals for a given issue during the public process, proposal A should not be adopted by the Council over proposal B just because A receives a larger number of supporters. Mr. Luce confirmed he agreed with this recommendation.

Chuck Blumenfeld pointed out that the Council should not be required to adopt only proposals forwarded from this process; he thought there should be the opportunity to propose a rule different from the options contained in the Standards Development Group's report. With helpful input from Rusty Fallis and Scott Merriman, Mr. Luce confirmed that the Council was not bound to choose a rule only from the options in the public process.

Mr. Luce thanked Stephany Watson for her excellent work in drafting and putting together the final report. He said comments on the report will be accepted preferably in the form of a letter and preferably should be short; the opportunity for comments is not an invitation to rewrite the report. To the extent changes and recommendations are appropriate, changes will be made. When the report is submitted to the Council, letters will be attached to the report.

Karen McGaffey said the report struck her as implying a much greater degree of consensus than she saw at meetings. She felt in most cases meeting participants disagreed on draft rules presented. She said she thought the report would outline alternative views presented and acknowledge that the scope of disagreement was narrowed. She suggested the report was not accurate. Ms. McGaffey said that if the report remained in its current form, she felt people would probably want the opportunity to draft more alternative proposals since the report did not explain that there were people with alternative views who did not draft proposals.

Danielle Dixon said she agreed with Ms. McGaffey and while reading the report she also flagged statements about the group's level of consensus. Like Ms. McGaffey, she felt there was a whole spectrum of views on the issues. She felt complete consensus was only reached on one issue.

Mr. Luce said he agreed that the draft rules did not enjoy consensus among all parties, but he did not think the report needed to dwell on disagreement. He said the report needed to acknowledge that the group worked diligently toward consensus. While consensus was not reached on a lot of issues, Mr. Luce said he thought it was a fair statement to say that views were a lot closer at this

meeting than on January 1, 2002. He felt the process was a good opportunity to discuss the issues at length, views were articulated more clearly than before, and significant progress was made.

Mr. Lufkin suggested Ms. Watson review past minutes and try to flesh out more fully the dissenting views for the report. Mr. Krogh reminded the group that all meeting minutes would be included as part of the report; a main reason for including the minutes was to capture all viewpoints. Mr. Krogh recommended that Ms. Watson take Ms. McGaffey and Ms. Dixon's comments and make changes to the report so it would not be inaccurate.

Tim Boyd said he felt the current proposed standards fell short of the Governor's charge for EFSEC, as cited in the Earl Report. He believed most of the standards did not provide the specificity needed to really help improve the siting process in Washington; a lot of things were still vague. Also, he said that it was inappropriate for proposals to be submitted at the group's final meeting without prior discussion; they should not carry the same weight as proposals worked on throughout the eight-month process.

Ms. Dixon said that, on the other hand, four of the "last-minute" proposals dealt with the greenhouse gas issue, an issue that was purposefully removed from discussion until the final meeting. Furthermore, she noted the balancing effect of "last-minute" proposals. She said that while Mr. Boyd felt it was inappropriate for Blair Henry's proposal to be submitted at this meeting, she felt it was inappropriate for Liz Thomas's greenhouse gas proposal to be submitted.

Mr. Luce said he felt these were reasonable comments. However, he said that if "last-minute" proposals were not included in this process, they would only be offered in the rulemaking process. He did not see that rolling these rules forward to the rulemaking process constituted endorsement of any particular option over other options. However, Mr. Luce said he wanted Ms. Watson to distinguish in the report between those proposals submitted at the final meeting and those talked about throughout the process.

Chuck Blumenfeld asked if it would be most efficient for the Council to name a preferred proposal. Without a preferred proposal, he said, it would require people to comment on all proposals since the Council could adopt any proposal. Mr. Luce said this was a good point and the Council would consider it.

In summary, participants are welcome to send Ms. Watson comments on the report in the form of a letter as well as dissenting comments on proposed standards. These comments will be attached to the final report. Also, entirely new proposed standards may be submitted, but they will be distinguished in the report narrative from standards developed throughout the process.

Last, it was agreed that the order of agenda items would be juggled to fit the schedules of participants present at the meeting.

Mediation, Stipulations and Settlements

Agenda Item 4C, Exhibit C(13)

Ms. Thomas explained that this proposal [Exhibit C(13)] was presented at earlier meetings and there appeared to be consensus on it. No one commented to the contrary. It was agreed this proposal would be submitted in the report with complete consensus.

Need for Projects

Agenda Item 4B, Exhibits C(12a), C(12b), and C(12c)

Ms. Thomas explained that her proposal [Exhibit C(12a)], Mark Anderson's proposal [Exhibit C(12b)], and Danielle Dixon's proposal [Exhibit C(12c)] were presented at earlier meetings and consensus was not reached. She suggested including all three proposals in the final report.

Exhibit B(11)—Report to Jim Luce, Chair, Washington Energy Facility Site Evaluation Council
August 8, 2002 EFSEC Standards Development Group Meeting Materials

Ms. Dixon commented that the statute dealing with need for energy facilities was developed during an energy crunch, and need for facilities today might not be as great as then. She said her proposal reflected this.

Mr. Anderson said his only comment was that memoranda previously presented with proposed rules were not distributed at this meeting. He said his and other memoranda dealt with broader concepts than the proposed rules and asked if they would be included in the report. Ms. Watson confirmed that all meeting materials would be attached to the final report.

Mr. Boyd said his concern at ICNU was that Exhibits C(12b) and C(12c) introduced confusion into the process. He felt that if the Council went with either of these two proposals, it would make it more difficult to gain a site certificate. He said he strongly endorsed Exhibit C(12a).

All three proposals will be submitted with the final report.

Certificate Expiration

Agenda Item 4A, Exhibit C(10)

Ms. Thomas explained that her proposed standard for certificate expiration [Exhibit C(10)] would codify the life of a site certificate and the time an applicant had to utilize it.

Ms. Dixon said she had problems with the proposal. In particular, she said the group talked about the difference between an informational “check-in” after five years and something that would really make changes in the site certificate agreement. It seemed to her this proposal did not clarify what the Council could do to really make changes. Also, she was concerned that no changes would be made unless applicants approached EFSEC. She thought a proactive approach, where EFSEC approached applicants to initiate change, should be considered.

Ms. Sawin commented that she felt it was not appropriate for a new bar to be set after five years, requiring an applicant to abide by standards or laws different from those initially agreed to in the site certificate.

Don Brookhyser asked Ms. Thomas if the term “begin construction” could be defined in section (2), part (c), of her proposal. Mr. Luce also asked if this term should be defined in the proposed rule. Ms. Thomas said there could be a definitions section. She also suggested looking at definitions in existing site certificate agreements and seeing if they were mostly the same. Jenene Fenton suggested the group look at existing definitions and use them as a starting point.

Richard Lovely commented on the practical effects of changing things after five years. He said if an applicant is forced to switch from one type of equipment to another more technologically advanced equipment halfway through the life of a certificate (five years), the applicant may have to change all its equipment because everything is designed together. He urged people to not be impractical in their proposed rules and comments. He said the group must ask if what they are proposing is realistic and reliable.

Ms. Jolly said that it was important to remember that EFSEC’s rulemaking process was not going to discard everything EFSEC dealt with. Rather, only some of the issues would be dealt with and existing rules would still apply.

Ms. Watson agreed to revise the language of the proposal according to Mr. Brookhyser’s comments. The proposal will be submitted with the report. As with all proposals, participants may submit dissenting comments to Ms. Watson outlining their alternative views; these comments will be attached to the report. In addition, participants’ views are recorded in meeting minutes, which will be attached with the report.

Wetlands

Agenda Item 4I, Exhibits C(9a) and C(9b)

Exhibit B(11)—Report to Jim Luce, Chair, Washington Energy Facility Site Evaluation Council
August 8, 2002 EFSEC Standards Development Group Meeting Materials

Mr. Blumenfeld spoke on the progress of the wetlands group to this point. The group included Mr. Blumenfeld, Sue Mauermann, Andy McMillan, members of the fish and wildlife group, and wetlands consultants. Mr. Blumenfeld said they took a document currently being developed by the Department of Ecology and the Department of Fish and Wildlife and used it as an outline for both wetlands standards being proposed. Mr. Blumenfeld said the document was not a rule; it was basically a model ordinance written to be adopted and modified by local governments for a number of areas, and wetlands was just one area.

Mr. Blumenfeld said the developer community thought this document was great as a model and recommended modifying it. They felt the document should not be adopted in its entirety as an EFSEC rule. Mr. Blumenfeld said he gave up a lot in his efforts to modify the document and reach consensus.

Mr. Blumenfeld said the difference between his proposal [Exhibit C(9a)] and Mr. McMillan's proposal [Exhibit C(9b)] was that Mr. McMillan's proposal actually set buffer widths and mitigation ratios, and Mr. Blumenfeld's proposal did not. Mr. Blumenfeld's proposal called for biologists to determine buffer widths and mitigation ratios on a case-by-case basis.

Mr. Blumenfeld said Mr. McMillan felt that listing these figures did not preclude the possibility of hiring biologists to determine them on a case-by-case basis. Mr. Blumenfeld said he did not like listing numbers for buffer widths and mitigation ratios in a standard because he felt there was too much of an opportunity for these suggested numbers to be viewed as standards. Consequently, he felt a burden would be placed on developers to justify the use of numbers other than those listed in the standard. Also, he noted that at present there were no standards for buffer widths or mitigation ratios and things worked well up to this point. He said there had been a cooperative relationship between applicants and Ecology and Fish and Wildlife in the past.

After some discussion, Ms. Mauermann said the group was entering a debate of predictability versus flexibility as well as local laws versus state laws. She said that Ecology had thought about these issues for years and she did not know if this group could resolve them. She said Ecology had not gotten involved in standards for wetlands, but the Governor obviously said he wanted standards. She felt it was ultimately a philosophical discussion.

Ms. McGaffey said she was not convinced there was scientific certainty regarding the mitigation ratios in Mr. McMillan's proposal. She said she had not seen a project where these ratios were used. She understood Ecology might often start with these ratios, but she felt it would be a mistake for the Council to endorse the ratios when there was not a strong justification for them.

Mr. Merriman said he was interested in discussing how to control what happens when local district standards differ from the standards EFSEC adopts in this process. He said he was aware EFSEC had statutory authority to trump local laws, but he did not know what should be done to achieve flexibility and predictability. An answer was not reached, but Mr. Luce said discussion on the preemption issue was helpful. The Council must make the final call.

Mr. Merriman asked if there should be changes on page six of Mr. McMillan's proposal. Ms. Watson asked Mr. Merriman to e-mail her edits he found. Ms. Watson suggested that Mr. Blumenfeld do another iteration and send it to her.

There was a 20-minute break. Upon return, Mr. Blumenfeld said he would talk with Mr. McMillan to make sure Mr. McMillan's proposal was in the right form. Mr. Blumenfeld decided he would withdraw his proposal and jointly submit a proposal with Ms. Monroe.

Water Quantity

Agenda Item 4D, Exhibit C(7)

Chuck Lean said the water quantity proposal [Exhibit C(7)] was last discussed at the June 27, 2002, meeting. At that meeting, Ms. Jolly recommended modifying the last sentence in section (I), part (A), "Policy." Ms. Watson modified the sentence and the present draft reflects the change. Mr. Lean said his only other discussion point was the second sentence in section (II), part (E), (3), (c). The sentence read, "Within five working days, Ecology shall notify the applicant . . . [if it can do a report of examination]." Mr. Lean said Ms. Mauermann recently alerted him that the time length should be changed from five working days to 15 calendar days. With these changes, Mr. Lean said the draft was ready to be put in rule form by Ms. Watson.

Ms. McGaffey said she had no problem with the procedures for water use authorization in section (II), but she did have a problem with section (I), part (A), "Policy." She proposed there be an alternative draft without this policy statement.

Ms. Dixon said she would submit to Ms. Watson either a water quantity proposal of her own or comments on Mr. Lean's proposal.

Mr. Boyd said he was not comfortable giving up EFSEC's ability to grant new water rights, as it appeared to him Mr. Lean had done in an effort to find common ground. Mr. Boyd said he might reflect his ideas in comments to be attached to the final report.

Mr. Krogh thanked Mr. Lean for the value of his work during this process. Mr. Krogh noted that, while comments and alternative proposals might be submitted, the group was pretty close to consensus on the fundamentals of Mr. Lean's proposal.

Socio-economics

Agenda Item 4E, Exhibit C(6a) and C(6b)

Victoria Lincoln explained that at the group's last meeting, July 12, she presented her socio-economics proposal and Ms. Watson presented a proposal attempting to join ideas from both Brian Carpenter's socio-economics proposal and Ms. Lincoln's proposal. After some discussion on July 12, it was agreed that Ms. Watson would combine language from her draft and Ms. Lincoln's draft and add this language to the existing socio-economics impact rule, WAC 463-42-535, to create a new rule. The result of this effort was Ms. Lincoln's proposal, Exhibit C(6b).

Mr. Carpenter's proposal [Exhibit C(6a)] will be submitted separately. Ms. Watson said Mr. Carpenter could not attend the meeting, but he made significant changes to his proposal. He removed his prior three-tier approach (major, medium, and minor impacts) and shortened the draft's length considerably.

Ms. Dixon commented on the environmental justice footnote in Ms. Lincoln's proposal. She said it defined environmental justice, but it did not require the government to ensure that meaningful involvement take place. She said she wanted something to be put forth that would require applicants to do more than simply report to the Council.

Don Brookhyser asked Ms. Dixon if she was suggesting there be specific action taken on just one component of the rule, environmental justice, and not other components. Ms. Dixon said she was not suggesting other components of the rule should not also include requirements for specific action. Rather, she simply wanted to ensure that action be taken for the environmental justice component of the rule.

Ms. Lincoln said it was her understanding that Exhibit C(6b) required action on the applicant's behalf, and this included the environmental justice component. She said she felt it was not just a reporting rule. She cited line 15 of section (2), which read, ". . . the Applicant shall work with affected local governments to determine the socioeconomic impacts and the potential need for mitigation of negative socioeconomic impacts."

Ms. Sawin asked for an explanation as to what the socio-economic proposals were trying to solve. She said she was particularly troubled with Mr. Carpenter's proposal. She felt EFSEC could not require an applicant to build housing. Ms. Lincoln said there were a number of issues Mr. Carpenter was attempting to address. Primarily, there was an effort to ensure that applicants and local governments get together and talk. Ms. Lincoln said that if the discussion was already going on, there was nothing to fix. These proposals were written to ensure such discussion takes place.

Mr. Blumenfeld and Ms. Monroe said they believed EFSEC's existing regulation regarding socioeconomics was sufficient.

Further discussion clarified that Exhibit C(6b) referred to only one socioeconomic study, not two. Both Exhibits C(6a) and C(6b) will be submitted and the report will note that a third alternative some group members prefer is to retain the current socioeconomic standard.

Air Quality

Agenda Item 4F, Exhibit C(1)

Mr. Lufkin explained that the draft air quality regulation [Exhibit C(1)] had not been changed since June 25. He said there were two schools of thought. One said that if an applicant gets a PSD permit, the standard is met. The other said that after acquiring a PSD permit, there still might be other issues that could potentially have environmental impacts and cause the standard not to be met. Mr. Lufkin asked if there were ideas on how to meet in the middle.

Ms. McGaffey said she would like to see both sides in the report as draft rules. She offered to draft the second rule, in which an applicant would meet the air quality standard upon acquiring a PSD permit. Mr. Lufkin commented that he drafted the present rule with the idea of giving a little and taking a little. If there were multiple rules, he asked if he should pull the present rule and draft a rule closer to his viewpoint.

Mr. Luce said he thought Mr. Lufkin's present rule was good and it should be submitted with the report. However, since Ms. McGaffey will likely draft an air quality rule, he encouraged Mr. Lufkin to draft an additional rule if he felt it was needed.

Water Quality

Agenda Item 4G, Exhibit C(8)

Ms. McGaffey introduced the proposed water quality standard [Exhibit C(8)] and noted that it involved the same two schools of thought as the air quality proposal.

Mr. Lufkin commented that sections (4) and (6) spoke of "a significant adverse impact." He said he used the phrase "probable significant adverse impacts" in the air quality proposal for the purpose of being consistent with SEPA. He felt it was important to include the word "probable" in the water quality proposal. Ms. McGaffey explained that there were differences between the usage of the phrase in the water quality proposal and its usage in the air quality proposal in relation to SEPA; she felt the word "probable" should not be added.

Ms. Monroe said she was concerned with the words "generally govern" in the first sentence of section (6). Ms. McGaffey agreed that this sentence needed modifications. Ms. Monroe and Mr. Fallis offered to aid Ms. McGaffey if she needed help with modifications. Ms. McGaffey said she would revise her proposal to clarify that EFSEC would adopt Ecology's standards.

Fish and Wildlife

Agenda Item 4H, Exhibits C(2a) and C(2b)

Dave Mudd explained the process involved in producing the fish and wildlife proposals Ms. Monroe [Exhibit C(2a)] and he [Exhibit C(2b)] submitted. At the July 12 meeting, he presented a Exhibit B(11)—Report to Jim Luce, Chair, Washington Energy Facility Site Evaluation Council August 8, 2002 EFSEC Standards Development Group Meeting Materials

fish and wildlife standard. At that meeting the group agreed he would redraft the proposal, incorporating sections (1), (3), (4), and (10) as the standard and other sections as guidelines. Mr. Mudd took a shot at a redraft and received feedback from the fish and wildlife group. Ms. Jolly recommended adding back in the guidelines. Ms. Monroe recommended shortening the proposal and ultimately decided to submit a less detailed proposal of her own, based on Mr. Mudd's proposal. Mr. Mudd incorporated this feedback into his latest proposal.

Ms. Monroe said the goal of her proposal was "to achieve no net loss of habitat functions and values." Her proposal was less specific than Mr. Mudd's proposal. She said she would modify her proposal and send it to Ms. Watson.

Ms. Jolly said the issue boiled down to different goal statements. Ms. Monroe's proposal sought to achieve no net loss and Mr. Mudd's proposal sought a net gain. Ms. Sawin commented that she was uncomfortable with EFSEC seeking a net gain. She felt this was a question of state policy, not a question an implementing agency should be addressing.

Ms. Jolly also said she believed the language in Mr. Mudd's proposal made the guidelines appear mandatory. She felt guidelines should either be part of the rule (mandatory) or non-mandatory guidelines. Both proposals will be submitted.

Noise

Agenda Item 4K, Exhibit C(4)

Ms. McGaffey said her proposed noise standard [Exhibit C(4)] was based on Ecology's existing rules for noise. She said she took Ecology's rules and simply deleted portions not related to noise. The only portion different from Ecology's rules was section (6), part (b), on the last page.

Ms. Jolly suggested the second line of section (6), part (b), be changed to read ". . . to a particular property(ies) if the owner(s) of such property(ies) grants a noise . . ." to account for the possibility of multiple owners and properties. Ms. Monroe suggested that in section (5), part (b), the word "Council" replace the word "department" in the last line.

Ms. Lincoln said there were cities with decibel levels lower than those listed in Ms. McGaffey's proposal. Because of this, she recommended leaving room for different decibel levels among local governments. Ms. McGaffey disagreed with Ms. Lincoln's recommendation. She felt there were advantages to having a statewide rule as opposed to having different decibel levels in each area.

Ms. Fenton asked if there should be an alternative proposal supporting the adoption of whichever decibel level was more restrictive. Ms. Lincoln said she would speak with others and possibly submit comments to this effect.

Mr. Merriman commented that the term "zoning ordinances," referred to in the second sentence in section (3), part (a), was not used anymore. Ms. McGaffey asked if that sentence should be deleted. Mr. Merriman said he would get back to Ms. McGaffey after reviewing this and other concerns further.

Ms. Dixon and Mr. Lufkin said they remembered Dave Bricklin saying in his presentation on March 27 that Ecology's rules were outdated and Ecology no longer had a staff that dealt with noise anymore. Ms. Dixon asked Ms. McGaffey if she considered this in her proposal. Ms. McGaffey said she disagreed with Mr. Bricklin's view of Ecology's rules as outdated.

Ms. Watson reminded the group that she presented a draft that was based on Oregon's noise rules at the last meeting, as Mr. Bricklin recommended in his March 27 presentation. At the last meeting, the group decided against Mr. Bricklin's idea of using Oregon's noise rules. Ms. McGaffey suggested the report say that there was not consensus on her noise proposal since there were obviously varying views.

Mr. Lufkin and Ms. Dixon said they would consider submitting an alternative proposed rule for noise. Ms. McGaffey's proposal will be submitted.

Seismicity

Agenda Item 4L, Exhibit C(5)

Allen Fiksdal, author of the proposed seismicity standard [Exhibit C(5)], could not attend the meeting. There was concern among participants that the standard's language was unclear. Mr. Fallis volunteered to review the language and submit changes to Ms. Watson.

Greenhouse Gas Mitigation

Agenda Item 4J, Exhibits C(3a), C(3b), C(3c), C(3d), and C(3e)

Dave Sjoding introduced the discussion with general comments dealing with greenhouse gas mitigation. He spoke about the role of technology in greenhouse gas mitigation, the determination of what actually gets mitigated in a greenhouse gas standard, and how this relates to determining cost per ton.

Mr. Henry spoke about his proposed standard [Exhibit C(3a)] and the effects of greenhouse gases. He said global warming could not be stopped without reducing greenhouse gases and, unfortunately, fossil fuel power plants put out enormous greenhouse gas emissions. He voiced serious concerns with Oregon's standard. Specifically, he said it allowed 97% of a plant's greenhouse gas emissions to be emitted and unmitigated. While he felt the NWEC's (Northwest Energy Coalition) proposal was better than Oregon's standard, he said it still left 83% of emissions unregulated. Mr. Blair's proposal called for complete mitigation of a plant's emissions. His proposal said that for "[a] typical natural gas plant of 600 MW, selling electricity at \$22 per MW, . . . it would cost the average homeowner an additional \$20 a year or \$1.67 a month" if cost increases for mitigation were passed onto customers. Mr. Henry's position was that mitigation costs were part of an operator's cost of doing business, and taxpayers should not subsidize this.

Mr. Boyd said that to add the sort of financial burdens suggested in Mr. Henry's proposal was significant. He felt the result would be equal to banning thermal generation in the state of Washington.

Mr. Lovely said he felt nuclear technology would be the only technology available for thermal plants if Mr. Blair's proposal was adopted by EFSEC.

Ms. Jolly said she felt the group was not going to come to agreement on whether to mitigate greenhouse gases or not. She recommended the group move on to Linda VerNooy's proposal and see if it was similar to Mr. Blair's proposal.

Ms. VerNooy summarized her proposal [Exhibit C(3b)]. Like Mr. Henry's proposal, hers called for energy facilities to "permanently [mitigate] all of their greenhouse gas emissions at actual market cost." She emphasized the need for people to think about the world effect of global warming. Mr. Blair and Ms. VerNooy agreed to meet and consider combining their proposals.

Ms. Dixon recapped the main points of her proposal [Exhibit C(3c)], which was presented by Nancy Hirsh at the last meeting. Ms. Dixon agreed to submit her proposal separately from the other greenhouse gas proposals.

Mr. Anderson said his proposal [Exhibit C(3d)] was modeled on the Oregon statute developed in a legislative forum. He thought it could be shortened at some point. He said the proposal applied to baseload and non-baseload natural gas power plants. He said Oregon sited six plants under specifications used in the proposal. He felt it was an effective regional standard because it worked with the Oregon standard. Last, he said it still needed to be put in rule form.

Ms. Dixon asked Mr. Anderson if he considered whether adopting large portions of Oregon's standard was the best option, in light of the fact that Oregon's standard became law in 1997. Ms. Dixon said she learned from Oregon's Office of Energy and Oregon's EFSC that there was a significant amount of things they would do differently if they were writing a proposal today. Mr. Anderson said he asked Oregon's David Stewart-Smith that question and his answer included little or no changes to the existing Oregon standard. Ms. Dixon offered to give Mr. Anderson a list of items she was told could be improved.

Ms. Sawin spoke on the proposal [Exhibit C(3e)] submitted by Ms. Thomas and herself. Ms. Sawin said there are a number of public policy decisions that must be made regarding greenhouse gases. However, until legislation is formed requiring EFSEC to adopt greenhouse gas mitigation, she said Ms. Thomas and she believed this was not the right forum to discuss greenhouse gas mitigation.

Mr. Krogh felt the group was at a spot where more consensus could not be reached. He confirmed that Mr. Henry and Ms. VerNooy would work to combine proposals. The other three proposals will be submitted separately.

Effect of Standards

Agenda Item 4M, Exhibit C(11)

No proposal was written on the effect standards will have on the rulemaking process. Ms. Monroe said she felt there was no need for a proposed rule on this issue because most proposals contained procedures such as rebuttable presumptions for guiding EFSEC's application of the proposals. Mr. Lean and others agreed.

Final Work

Mr. Krogh thanked group participants for their much-appreciated work throughout the eight-month process. He said that while complete consensus was not reached, he felt certain that measurable progress was made.

Mr. Luce said the Council would consider whether there should be a preferred alternative for each issue.

It was decided that an additional meeting was not needed. Monday, August 26, was set as the date by which comments and proposed standards must be sent to Ms. Watson to be included in the final report.

Ms. Watson will incorporate all comments and proposals into the final report and distribute these materials electronically for the group's review a final time. Upon the group's review, Krogh & Leonard will submit its report (with accompanying materials) to the Council soon after the Labor Day holiday.

EFSEC Standards Development Group Meeting

August 8, 2002

Attendance

Liz Thomas	ethomas@prestongates.com
Charles Lean	lean@attbi.com
Tim Boyd	thetsbgroup@attbi.com
Don Brookhyser	deb@a-klaw.com
Chuck Blumenfeld	cblumenfeld@perkinscoie.com
Karen McGaffey	kmcgaffey@perkinscoie.com
Lee Faulconer	lfaulconer@agr.wa.gov
Kathryn Crum	kathrync@qwest.net
Jenene Fenton	fentojmf@dfw.wa.gov
Dave Sjoding	sjodingd@energy.wsu.edu
Donna Ewing	suedonoly@aol.com
Toni Potter	antoniapotter@attbi.com
Danielle Dixon	danielle@nwenergy.org
Trina Blake	trina@nwenergy.org
Victoria Lincoln	victorial@awcnet.org
Sue Mauermann	smau461@ecy.wa.gov
Mike Mills	mikem@ep.cted.wa.gov
Rusty Fallis	rustyf@atg.wa.gov
Tony Ifie	tonyifie@aol.com
David Mudd	mudddrm@dfw.wa.gov
Scott Merriman	smerriman@wacounties.org
Carol Jolly	carol.jolly@ofm.wa.gov
Kristen Sawin	kristens@awb.org
Mike Lufkin	michaell@atg.wa.gov
Ramona Monroe	rlmonroe@stoel.com
Richard Lovely	rlovely@ghpud.org
Stu Trefry	strefry@wpuda.org
Jim Luce	jiml@ep.cted.wa.gov
Bud Krogh	ekrogh@serv.net
Stephany Watson	swatson@sagelake.net
Justin Long	justin443long@hotmail.com
Mark Anderson	marka@ep.cted.wa.gov
Blair Henry	blairhenry@msn.com
Linda VerNooy	lvernooy@hotmail.com

August 1, 2002
First Draft

**Report to Jim Luce, Chair, Washington Energy Facility Site Evaluation Council Regarding
EFSEC Standards Development**

I. Summary

This report and attached draft rules propose new Washington Energy Facility Site Evaluation Council (“EFSEC” or the “Council”) air quality, fish and wildlife, greenhouse gas emissions, noise, seismicity, socioeconomic, water quality, water quantity and wetlands standards. New rules are also proposed for site certificate expiration, effect of the new standards, mediation and need for projects. The report and proposed rules are intended to assist the Council in a formal administrative rulemaking for new standards.

Participants in an open, interested-party or “stakeholder” process, known as the EFSEC Standards Development Group, prepared the proposed rules. While many of the rules represent group consensus, several proposed rules contain more than one recommendation, reflecting different views. The Council hired the report’s authors, Krogh and Leonard, to facilitate the standards development process. The process’s objective was to obtain stakeholder input into what standards EFSEC should ultimately adopt in a formal administrative rulemaking. While much common ground was ultimately found among the participants in the EFSEC Standards Development Group, no portion of the report or proposed rules will prevent any of the participants from making any argument or taking any position during EFSEC’s formal rulemaking.

II. Introduction and Background

On April 20, 2001, in response to a request from Washington governor Gary Locke, Charlie Earl, President of Everett Community College, published a report entitled, “Improving Washington Energy Facility Site Evaluation Council.”¹ That report contained thirteen suggestions, including appointing a full-time chair to EFSEC. On September 17, 2001, Governor Locke appointed Jim Luce to that position.

Mr. Luce first met with Bud Krogh and Stephany Watson of Krogh and Leonard on December 5, 2001. Mr. Luce also invited David Stewart-Smith, Administrator, Energy Resources Division, Oregon Office of Energy, to that meeting. Mr. Stewart-Smith was an important resource for the EFSEC Standards Development Group, providing insights into the Oregon energy facility siting process and contacts with members of the Oregon Office of Energy who answered questions and made presentations at group meetings.

One of Governor Locke’s objectives for EFSEC is to develop clear, quantifiable standards for siting energy projects. In an October 25, 2001, memorandum to state agency directors, Governor Locke directed them to: “Work with key stakeholders in crafting quantifiable siting standards for power plant construction to help applicants and interveners better understand our expectations and attain full compliance with environmental laws and rules.” In addition, in remarks before the Washington PUD Association on December 6, 2001, the Governor said, “I have asked Jim Luce, our new EFSEC chair, to develop clear and objective criteria for new [energy] facilities to avoid the uncertainty that has sometimes complicated permitting proceedings in the past.”

Mr. Luce asked Krogh and Leonard to run a stakeholder process to develop recommendations for new EFSEC standards. He suggested topics he thought it to address and provided a preliminary contact list for populating the stakeholder group.

III. Process

¹ The report, referred to in this paper as the “Earl Report” is attached as Exhibit A: Exhibit B(11) – Report to Jim Luce, Chair, Washington Energy Facility Site Evaluation Council August 8, 2002 EFSEC Standards Development Group Meeting Materials
Page 13 of 13

The EFSEC Standards Development Group first met on December 13, 2001. It met eleven times, in half and three-quarter-day sessions. Attendance lists, minutes and meeting materials for each meeting are attached as Exhibits B1 – B11. Each meeting had an average of thirty participants representing energy facility developers, environmental groups, state and local agencies, and business and labor organizations. Overall, 73 people attended the meetings, and 94 received all of the group’s e-mail distributions, which included all meeting materials and proposed rule drafts.

Two of the meetings contained extensive presentations relating to Oregon’s Energy Facility Siting Council (“EFSC”) standards. Margaret Kirkpatrick, a partner in the Stoel Rives law firm’s Portland office and EFSC practitioner, attended the group’s second meeting and gave an extensive presentation on Oregon’s siting process. She answered hours of questions from the group and was available to assist throughout the process. Gail McEwan, Acting Land Resources Program Manager, Habitat Division and Tom Meehan, Environmental Specialist, Facility Siting, Oregon Department of Fish and Wildlife attended one meeting and gave an extensive presentation on Oregon’s habitat rules. Their presentation is included in Exhibit B8.

After the first issue identification meeting on December 13, 2001, group members volunteered to make presentations on topics the group identified as needing standards. The presentations consisted of an explanation of the current law and practice regarding a particular topic, and often called on other states and jurisdictions for ideas for developing standards. The group discussed the issues raised in the presentation, made suggestions for proposed standards and the presenter drafted a proposal for discussion at a subsequent meeting. The group often refined proposed standards throughout multiple meetings, and presenters returned to the group with as many as four drafts. On many topics, the group reached consensus for proposed standards. The group agreed that in the case of failure to find consensus, it would include alternative proposals in this report and identify which parties supported each proposal. Those disagreeing further with Exhibit B(11)—Report to Jim Luce, Chair, Washington Energy Facility Site Evaluation Council August 8, 2002 EFSEC Standards Development Group Meeting Materials
Page 14 of 14

proposed standards will present their comments directly to EFSEC during its administrative rulemaking.

The group agreed that this report would include a description of the Council's directive, a description of the collaborative stakeholder process, the minutes, attendance lists and materials from the group's meetings, proposed rules in an agreed-upon format and a description of each proposed rule and its alternatives, if any.

IV. Proposed Rules

What follows is a description of each rule and its alternatives, if any. The proposed rules are attached as Exhibits C1 – C13.

A. Air Quality

This proposed standard (Exhibit C(1)) creates a rebuttable presumption that when an energy facility site certificate applicant has complied with the state and federal air quality regulations set forth in WAC Chapter 463-39, the applicant has satisfied EFSEC's air quality standard. The presumption is rebutted when the Council reviews all of the relevant evidence before it and determines that the project poses probable significant adverse impacts to the environment or human health or both. If the Council makes such a determination, it may require additional emission controls and mitigation measures necessary to prevent probable significant adverse impacts and to protect the public interest pursuant to its authority under RCW Chapters 43.21C and 80.50 and WAC 197-11-660(1).

B. Fish and Wildlife

The EFSEC Standards Development Group proposes two fish and wildlife standards. Both proposals suggest changing the definition of "natural environment" that an energy facility site certificate applicant must describe in its application, replacing "animal life" with "wildlife", and requiring applicants to describe the effect on instream flows from construction, operation and

Exhibit B(11)—Report to Jim Luce, Chair, Washington Energy Facility Site Evaluation Council
August 8, 2002 EFSEC Standards Development Group Meeting Materials
Page 15 of 15

termination of the proposed project. The first proposed standard (Exhibit C(2)(a)) also proposes a definition of mitigation and a list of information that applicants should consider in developing acceptable fish and wildlife mitigation plans including mitigation monitoring and replacement ratios.

The second proposed standard (Exhibit C(2)(b)) adds the requirement that the application describe the “natural environment” throughout all four seasons of the year. In addition to the goal of no net loss of habitat, this proposed standard states that [EFSEC shall seek a net gain in productive capacity of habitat through restoration, enhancement and creation](#); there is a preference for restoration and enhancement. In addition, this proposal encourages no net loss of habitat functions or values, using the [Habitat Evaluation Procedure \(HEP\) or other method acceptable to EFSEC](#) to measure net loss, expresses a preference for on-site, in-kind mitigation, seeks avoidance of impact on any federally or state listed endangered or threatened species--with mitigation of such impacts required to occur within the habitat supporting the same Evolutionary Significant Unit—requires preserving at-risk, high quality priority habitat as part of an acceptable mitigation plan, basing habitat mitigation measures on best available science using proven mitigation techniques that proceed with project construction and requires additional habitat value (above replacement value) in cases of delayed mitigation. The proposal provides that EFSEC, in consultation with the Washington Department of Fish and Wildlife, determines the significance of impact and the amount of mitigation required and achieved based on the best available information, including the applicant’s application. It provides that the cumulative impacts of projects shall be considered. The project proponent is responsible for all mitigation costs, which are detailed in the proposed rule, and the project owner, proponent, certificate holder or heir remains responsible for site restoration costs until all impacts on fish and wildlife end. The proposal allows EFSEC to require a variety of

financial assurance tools to ensure the project proponent will fulfill mitigation conditions, with the posted credit to equal mitigation costs plus ten percent.

C. Greenhouse Gas Mitigation

There are four greenhouse gas mitigation proposals. The first (Exhibit C(3)(a)) proposes that all new greenhouse gas emitters permanently mitigate all of their greenhouse gas emissions, pay administrative costs associated with mitigation and independently certify mitigation measures. Forestry sequestration is excluded from the proposal's approved mitigation measures.

The second proposal, (Exhibit C(3)(b)) states that new energy facilities are responsible for permanently mitigating all of their greenhouse gas emissions at actual market cost. The Washington State University Climate Center would be responsible for annually determining and publishing actual market cost, and is encouraged to develop a standard formula for calculation of fees derived from the cost per ton of emitted greenhouse gases.

The third proposed greenhouse gas emissions standard (Exhibit C(3)(c)) states that natural gas power plants may not emit more than 0.458 pounds of carbon dioxide per kilowatt-hour, calculated on a thirty-year basis. There are three paths to meet the proposed rule's offset and mitigation requirements: (1) combined heat and power systems that produce at least 20% of their useful energy as electrical or mechanical power and at least 20% as thermal energy, so that eligible systems have an overall efficiency of at least 60%; (2) direct credit for biomass (as defined in RCW 19.29A.090) use against carbon dioxide emissions and (3) provision of a portfolio of qualified offset projects, as defined in the proposed rule, including energy efficiency measures, clean and efficient transportation measures, renewable energy resources and sequestration programs, the last of which is limited to 20% of the applicant's total funds invested to offset carbon dioxide emissions. Applicants would be permitted to arrange their own offsets or pay a qualified organization to do so.

emissions to the Council. The Council will evaluate technology for reducing greenhouse gas emissions and its cost every two years to update energy facility carbon dioxide mitigation requirements.

The fourth proposed rule (Exhibit C(3)(d)) is essentially identical to that adopted by Oregon's Energy Facility Siting Council. It proposes standards for each of three categories of facilities: baseload gas plants, non-baseload plants and nongenerating facilities. For baseload gas plants and non-baseload plants, the net carbon dioxide emissions rate of the proposed facility cannot exceed 0.675 pounds of carbon dioxide per kilowatt hour. There are specific standards for each of the three categories of facilities together with rules for direct and monetary path offsets. The Council is responsible, through a quasi-judicial, contested-case proceeding, for evaluating the applicant's offset proposal taking into account (1) the certainty that the projected offsets will be achieved (2) the ability of the council to determine what reductions resulted from the projects and (3) the extent to which the carbon dioxide reductions would have occurred in the absence of the offset project. If the applicant chooses the monetary path, it must pay \$0.85 per short ton of carbon dioxide. The Council may adjust the amount once every two years based on evidence of the cost of carbon dioxide offsets. In addition, an applicant choosing the monetary path must pay ten percent of the first \$500,000 of offset funds and 4.286 percent of any offset funds over \$500,000. The proposed rule sets out qualifications for non-profit organizations to administer the monetary path.

D. Noise

This proposed rule (Exhibit C(4)) describes the noise level permitted from the operation of thermal power plants. When plants are located in areas covered by a local zoning ordinance or comprehensive plan, the rule proposes three possible environmental designations for noise abatement ("EDNAs") based upon a plant's property designation as residential, commercial or industrial under the local zoning ordinance or comprehensive plan. When plants are located in

Exhibit B(11)—Report to Jim Luce, Chair, Washington Energy Facility Site Evaluation Council
August 8, 2002 EFSEC Standards Development Group Meeting Materials
Page 18 of 18

areas not covered by a local zoning ordinance or comprehensive plan, the rule describes the three possible EDNAs that would apply to the property based on its use and the existing types of structures and businesses present there. The proposed rule describes the maximum permissible operational noise from thermal power plants, based on the EDNA of the receiving property, the time of day and the length of time of the noise emission. The proposed rule identifies a number of exceptions to the maximum permissible limits, such as emergency vehicle and construction noises. EFSEC may grant variances from the noise requirements when for technological or economic reasons, no viable control methods exist. The Council may enforce its noise rules only upon the complaint of a person who lives, owns property, or works on the property affected by the noise complained of, except when the affected property is a park, recreational area or wildlife sanctuary.

E. Seismicity

The proposed rule (Exhibit C(5)) states that the local building code is the standard for design and construction of an energy facility. If the Council has overwhelming evidence that a maximum probable and maximum credible seismic event may occur, the applicant must conduct a site-specific study to characterize possible ground motion or failure expected during the seismic event, and design and construct the facility to withstand it.

F. Socioeconomics

There are two proposals for a socioeconomic standard in energy facility siting. In the first, (Exhibit C(6)(a)) the goal is to avoid, minimize or mitigate adverse project-related socio-economic impacts on the local community and promote positive project-related socio-economic impacts on the local community. Applicants are directed to work with local government jurisdictions to meet the goal. Specifically, applicants and local governments are required to address significant short and long-term local population increases, housing supply and vacancy rates, inclusion of nearby

workers and businesses for construction, operation and maintenance of the facility and disparities between project-related service demands and project-generated tax revenue on affected local jurisdictions.

The second proposed standard (Exhibit C(6)(b)) requires applicants to submit a detailed socioeconomic impact study to the Council including the impact of the proposed energy facility on population, work forces, property values, housing, traffic, health and safety facilities and services, education facilities and services, local economy and environmental justice. The applicant is directed to work with affected local governments to determine socioeconomic impacts, and if they are negative, to mitigate them. If an applicant requests work from affected local governments beyond ordinary application processing, the applicant and affected local governments are directed to agree on an acceptable cost reimbursement plan before beginning the additional work.

G. Water Quantity

This proposed standard (Exhibit C(7)) sets forth how site certificate applicants request and receive authorization to use water resources for energy facilities. As proposed EFSEC policy, the rule states that water is valuable and must be prudently managed; site certificate applicants are encouraged to conserve water during the construction and operation of their proposed energy facilities. Applicants proposing to use water for an energy facility must specifically identify submitted water rights or other authorization to use water in the application. Applicants must (1) submit water rights or other water use authorizations that the proposed energy facility may use without changes (2) submit water rights that may be changed to meet the points of withdrawal, place of use and purpose of use identified in the application or (3) submit water rights from both categories sufficient to meet the proposed facility's needs.

If an applicant submits water rights that require changes, EFSEC determines whether to authorize water use incorporating the requested changes based on the substantive law applicable to Exhibit B(11)—Report to Jim Luce, Chair, Washington Energy Facility Site Evaluation Council August 8, 2002 EFSEC Standards Development Group Meeting Materials
Page 20 of 20

a water rights change application. The site certificate applicant must provide EFSEC with a report of examination identifying the proposed water rights changes. The Washington Department of Ecology prepares the report of examination and the applicant pays the cost of its preparation. The applicant must notify the Department of Ecology at least six months before submitting its site certificate application that a report of examination is necessary and the department must respond to the applicant within five business days stating whether it can timely complete the report of examination; if not, the applicant may hire a consultant to prepare the report and the Department of Ecology may comment upon it.

EFSEC may condition the applicant's requested water use in the site certification agreement. Applicants must obtain *new* water rights from the Department of Ecology outside the site certificate application procedure.

H. Water Quality

The proposed standard (Exhibit C(8)) creates a rebuttable presumption that for thermal power plants under the Council's jurisdiction that discharge wastewater subject to the National Pollution Discharge Elimination Program ("NPDES"), compliance with the NPDES permitting program as adopted by the Council in WAC Chapter 463-38 satisfies the Council's standard. The presumption is rebutted when the Council reviews all of the relevant evidence before it and determines that the project poses probable significant adverse impacts to the environment or human health or both. If the Council makes such a determination, it may require additional effluent limitations or mitigation measures necessary to prevent significant adverse impacts to the environment and human health.

For wastewater discharged to publicly-owned treatment facilities, the Council's standard is deemed satisfied upon a demonstration that wastewater discharges will not interfere with the ability of the treatment facility to comply with the permits governing its operation.

For energy facilities that discharge wastewater to groundwater, compliance with Washington Department of Ecology regulations governing wastewater discharges to groundwater create a rebuttable presumption that the Council's standard has been satisfied. The presumption is rebutted when the Council reviews all of the relevant evidence before it and determines that the project poses probable significant adverse impacts to the environment or human health or both. If the Council makes such a determination, it may require additional effluent limitations or mitigation measures necessary to prevent significant adverse impacts to the environment and human health.

I. Wetlands

There are two proposed wetlands standards. Both cover wetlands as designated in accordance with the *Washington State Wetland Identification and Delineation Manual*. The first proposal (C(9)(a)) contains a stated goal of avoiding impacts to wetlands in energy facility siting. However, if avoidance is not practicable, the applicant should minimize the impacts and mitigate them. The proposed rule contains compensatory mitigation requirements and they must be consistent with Washington Department of Ecology *Guidelines for Development: Freshwater Wetlands Mitigation Plans and Proposals*, 1994, as revised. The rule contains a preference for on-site and early mitigation. The proposed rule also includes standards for wetland buffers including buffer widths, width averaging, measurement, maintenance and permitted buffer uses including conservation and restoration activities, passive recreation and storm water management facilities. The rule proposes that EFSEC may determine appropriate buffer widths in accordance with a qualified professional biologist's recommendations and the best available science on a case-by-case basis to protect wetland functions and values based on site-specific characteristics.

The second proposed standard (Exhibit C(9)(B)) requires that wetlands be rated according to the Washington Department of Ecology's wetland rating system in the Washington State Wetland

Ecology Publication #91-58) as revised. The rating assigned to a wetland determines the attendant buffers required. The proposed standard contains criteria for EFSEC to use in increasing and decreasing wetland buffer widths. The proposal includes the same permitted buffer uses as the alternative proposal, and adds more specific, quantitative criteria. It contains requirements for signs and fencing related to wetlands. Mitigation requirements are similar to those contained in the other proposal, but specific mitigation ratios are required for each rated category of wetlands. Like the alternative proposal, the propose rule contains a preference for on-site and early mitigation. It allows credits from a Department of Ecology-approved wetland mitigation bank as compensation for unavoidable impacts to wetlands when specified criteria are met.

J. Certificate Expiration

Overall, this proposed standard (Exhibit C(10)) states that if a site certificate holder does not begin construction within ten years of the date set forth in the site certificate, the site certificate expires. During the first five years after the date set forth in the site certificate, at least six months and no more than nine months before the certificate holder begins construction, the certificate holder must identify to the Council any substantial changes--or lack thereof--in environmental, legal and technological conditions relating to the site certificate. During the second five years after the date set forth in the site certificate, the certificate holder must certify to the Council that all of the representations in its application are the same. If they are not, the certificate holder must identify the changed conditions to the Council and propose changes to the site certification agreement to address the changed conditions. When construction begins during the second five years after the date set forth in the site certificate, the Council must affirmatively authorize the beginning of construction. If a site certificate holder begins construction within six months of the date set forth in the site certificate, no additional showing is necessary.

K. Effect of Standards

L. Need for Projects

There are three standards proposed for EFSEC to use when evaluating whether there is a need for a particular energy facility. The first (Exhibit C(12)(a)) refers to RCW 80.50.010, which articulates a state policy that requires EFSEC to recognize the pressing need for more energy facilities. The proposed standard states that applicants for site certificates are not required to make any showing to the Council regarding need for power.

The second proposal (Exhibit C(12)(b)) states that energy projects must be consistent with state energy policy. An applicant may show this consistency in one of three ways. First, an applicant may show need when the region has acquired a threshold of at least 60 percent of annual efficiency resources targeted for acquisition by the Northwest Power Planning Council in the Northwest Conservation and Electric Power Plan. Second, if the threshold calculation indicates that the region has not acquired the necessary efficiency resources to meet the standard, the standard is met if the project is being developed, or at least 70 percent of the project's output is being purchased for at least ten years, with some restrictions including the need to have a Qualifying Integrated Resource Plan developed through a utilities commission or utility board-approved public process that considers efficiency resources to meet electricity demand. Third, an applicant may mitigate the need standard by investing in or paying for the acquisition of energy efficiency according to a proposed formula.

The third proposed standard (Exhibit C(12)(c)) refers to RCW 80.50.010 which directs the Council to balance demand for energy facilities with the broad interests of the public. The proposal states that applicants for site certificates must demonstrate that operating, under-construction and permitted resources in the region are insufficient to meet 115 percent of projected demands at critical water over the ten years following the date of application. There are exceptions for public agencies if they are required to obtain citizen review and approval under RCW 80.52, and for Exhibit B(11)—Report to Jim Luce, Chair, Washington Energy Facility Site Evaluation Council August 8, 2002 EFSEC Standards Development Group Meeting Materials
Page 24 of 24

applicants who can demonstrate that a proposed facility will provide a net benefit to consumers, as defined in the proposed rule.

M. Mediation, Stipulations and Settlement

This proposed rule (Exhibit C(13)) states the Council's preference for stipulations during administrative proceedings and settlement. The Council retains the power to reject stipulations and approve settlements. The Council supports any alternative dispute resolution mechanism to resolve disputes without full contested hearings or litigation. It may direct parties to meet or consult or to engage in a collaborative process. The collaborative process is defined as a Council-sanctioned negotiation in which interested persons work with each other and EFSEC staff to achieve consensus. The proposed rule includes rules for all negotiations, unless otherwise agreed to by all participants.

V. Conclusion

This report and proposed rules reflect dedication to building consensus for proposed new EFSEC standards and a sincere desire to improve the EFSEC process for all interested parties. The EFSEC Standards Development Group hopes that its work is helpful to the Council.

Draft Air Quality Regulation

6/25/02

WAC 463-39-010 Air Quality Standard –

1) Air Quality Standard - An applicant will have satisfied the air quality standard upon a determination by the council that the project's air emissions will not have a probable significant adverse impact on the environment or human health. Compliance with existing state and federal air quality regulations as adopted by the council in Chapter 463-39 WAC shall create a presumption that the air quality standard has been satisfied. This presumption may be overcome, if the council determines, after a review of all the relevant evidence before it, that the project would, despite compliance with existing state and federal standards, continue to have probable significant adverse impacts on the environment and/or human health. If such a determination is made, the council may, pursuant to its authority under Chapter 43.21C RCW, WAC 197-11-660(1), and Chapter 80.50 RCW require additional emission controls and/or mitigation measures necessary to prevent probable significant adverse impacts and to protect the public interest.

2) The provisions of sections (1) above do not apply to issues related to carbon dioxide emissions from a proposed energy facilities.

WAC 463-42-332 shall be amended to read:

(1) Habitat for and number or diversity of species of plants, fish, ~~or other~~ and wildlife – The application shall describe all habitat types, vegetation, wetlands, ~~animal life, wildlife, and~~ aquatic life and instream flows which might reasonably be affected by construction, ~~or operation, or~~ termination of the energy facility and any associates facilities. Assessment of these factors shall include density and distribution information throughout all seasons of the year. The application shall contain a full description of each measure to be taken by the applicant to protect all habitat types, vegetation, wetlands, ~~animal life, wildlife, and~~ aquatic life and instream flows from the effects of project construction, operation, abandonment, termination, or cessation of operations.

WAC 463-XX-010 Fish and Wildlife.

(1) **Introduction.** This rule describes the standards for fish, wildlife, and habitat protection.

(2) Goal. The goal of EFSEC is to achieve no net loss of the functions and values of fish and wildlife habitat in the areas of the state impacted by energy development, including the productive capacity and opportunities reasonably expected of a site in the future. In the long-term, EFSEC shall seek a net gain in productive capacity of habitat through restoration, enhancement, and creation. Restoration and enhancement are preferred over creation of habitats due to the difficulty in successfully creating habitat.

Applicants shall follow the specifications below to achieve this goal.

(3) **Additional Guidelines.** The following factors provide information that applicants shall consider as guidelines in developing fish and wildlife mitigation plans that will be acceptable to EFSEC.

a. Mitigation.

“Mitigation” means actions taken to avoid, minimize, or compensate for impacts to fish, wildlife, or habitat from the proposed project activity; - avoiding impacts is the highest mitigation priority. Mitigation shall continue for the duration of the project’s impacts. EFSEC establishes the following sequential order of preferences for mitigation activities:

- i. Avoiding the impact altogether by not taking a certain action or parts of an action.
- ii. Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- iii. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
- iv. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
- v. Compensating for the impact by replacing or providing substitute resources or environments.

Compliance and effectiveness monitoring, and taking appropriate corrective measures to achieve the identified goal, is a necessary component of all of the above.

e.b. Mitigation Plan.

A mitigation plan for projects with significant impacts should include the following:

i. Baseline data

- ii. Estimate of impacts
- iii. Mitigation measures
- iv. Goals and objectives
- v. Detailed implementation plan
- vi. Adequate replacement ratio
- vii. Performance standards to measure whether goals are being reached
- viii. Maps and drawings of proposal
- ix. As-built drawings
- x. Operation and maintenance plan (including who will perform)
- xi. Monitoring and evaluation plan (including schedules)
- xii. Contingency plan, including corrective actions that will be taken if mitigation developments do not meet goals and objectives
- xiii. Performance bonds or other guarantees that the proponent will fulfill their mitigation for the duration of the project impact, operation and maintenance, monitoring, and contingency plan obligations.

c. Complete mitigation ensures no net loss of habitat functions or values, or populations.

Complete mitigation is achieved when the mitigation elements ensure no net loss of habitat functions or values, or fish and wildlife populations. Habitat loss and mitigation success shall be measured with the Habitat Evaluation Procedure (HEP) or other method acceptable to EFSEC.

d. On-site in-kind mitigation is the highest priority.

EFSEC priorities for mitigation location and type, in the following sequential order of preference, are:

- i. On-site, in-kind.
- ii. Off-site, in-kind.
- iii. On-site, out-of-kind.
- iv. Off-site, out-of-kind.

For off-site mitigation to be accepted, the project proponent must demonstrate to EFSEC's satisfaction that greater habitat function and value can be achieved off-site than on-site.

Combination of the four types may be accepted. "On-site" means on or adjacent to the project impact site. "In-kind" means the same species or habitat that was impacted.

Out-of-kind mitigation is not acceptable for impacts to priority habitats and species, with one exception: priority habitats and species that are at greater risk can be substituted for impacted priority habitats and species. Priority habitats, and habitats of priority species, as defined by WDFW, may be replaced at a level greater than the impacts of the project on those habitats and species.

e. Priority Species.

Impacts shall be avoided to any species on the federal or state lists of endangered or threatened species. All practical measures shall be taken to avoid impacts to priority species and habitats as defined by the Department of Fish and Wildlife.

f. **For off-site fish mitigation, mitigation must occur in the same Water Resource Inventory Area (WRIA) as the impacts.**

For federal endangered or threatened species, mitigation must occur within the habitat supporting the same Evolutionary Significant Unit (ESU).

g. **Replacement Ratios.**

The ratios of replacement habitat to impacted habitat should be greater than 1:1 to compensate for temporal losses, uncertainty of performance, and differences in functions and values. Habitats that are difficult to establish or replace, such as shrub-steppe, oak woodland, etc., should be replaced at a minimum of a 3:1 ratio.

h. **Preserving at-risk, high quality priority habitat may be considered as part of an acceptable mitigation plan.**

When high quality areas of priority habitats or habitats of priority species are at risk, preservation of those habitats may be accepted as part of a mitigation plan, as long as there is no loss of habitat function. Unavoidable impacts to old growth forest are best replaced in this manner.

i. **Habitat mitigation measures shall be based on best available science.**

j. **Proven mitigation techniques must be used**

Experimental mitigation techniques are allowable only if advance mitigation is being performed and will be fully functional prior to the project impacts.

k. **Mitigation shall proceed along with project construction.**

Mitigation measures are an integral part of a construction project and shall be completed before or during project construction, except projects with impacts that have no proven mitigation techniques. Those projects require advance mitigation.

l. **Delayed mitigation shall include replacement that is greater than losses.**

Mitigation that is implemented after project construction, or that requires a long time to reach replacement value, shall include additional habitat value (over and above replacement value) equal to the loss through time.

m. **EFSEC shall determine impacts and mitigation.**

EFSEC, in consultation with WDFW, shall determine the project impact, significance of impact, amount of mitigation required, and amount of mitigation achieved, based on the best available information, including the applicant's plans and specifications.

n. **Cumulative impacts of projects shall be considered**

Cumulative impacts of projects shall be considered and appropriate measures taken to avoid or minimize those impacts.

o. **Project proponent responsible for all mitigation costs for the duration of impacts.**

Mitigation costs may include but are not limited to:

- i. Studies to determine impacts and mitigation needs.
- ii. Alteration of project design.
- iii. Planning, design, and construction of mitigation features.
- iv. Operation and maintenance of mitigation measures for duration of project impact (including personnel).
- v. Compliance and effectiveness monitoring of mitigation measures.
- vi. Contingency plans and adaptive management.

Mitigation costs are the responsibility of the project owner, proponent, certificate holder, or heir until the site is restored and fish and wildlife impacts cease.

p. **Performance bond or other monetary assurance may be required**

A performance bond, letter of credit, escrow account, or other written financial guarantee may be required to ensure that the project proponent will fulfill mitigation requirements, operation and maintenance, monitoring, and contingency plans. The amount of the bond should cover the costs plus 10 percent.

q. **Mitigation site shall be protected for the duration of the impacts.**

The mitigation site shall be protected permanently, or at a minimum, for the duration of the impacts. This protection shall be through conservation easement, deed restriction, donation, or other legally binding method.

r. **Compliance and effectiveness monitoring shall be performed and reported to EFSEC.**

Compliance monitoring shall be performed to ensure that the required mitigation measures are developed in accordance with the site certification. Effectiveness monitoring of mitigation measures shall be performed to ensure that the mitigation measures achieve the desired results. EFSEC shall analyze the monitoring reports and may require changes in the mitigation activities or the employment of contingency plans.

s. **Mitigation banking may be an acceptable form of mitigation.**

The term “mitigation bank” as used here refers to a habitat creation, restoration, or enhancement project undertaken by a project proponent to act as a bank of credits to compensate for habitat impacts from future development projects. Credits and debits shall be based on area or a scientifically valid measure of habitat function and value such as the Habitat Evaluation Procedure (HEP) or the Instream Flow Incremental Methodology (IFIM), or other method acceptable to EFSEC. The use of credits from a mitigation bank as a form of compensation shall occur only after the standard sequencing of mitigation negotiations (avoid, minimize, rectify, reduce, and then compensate).



The Northwest Council on Climate

4540 – 2nd Avenue NE
Seattle, Washington 98105-4808
206-547-3871 fax 206-634-3192
email
blairhenry@msn.com
fed tax ID 91-1654028
www.nwclimate.org

July 26, 2002

Jim Luce, Director
Washington State Energy Facility Siting Evaluation Council
Olympia, Washington 98504

By email and fax (360) 956-2158

RE: Proposed Greenhouse Gas Mitigation Standard

Dear Jim:

I respectfully request you accept the attached greenhouse gas mitigation proposal on behalf of The Northwest Council on Climate Change, a Washington state, 501c3, non-profit corporation, representing many of the state's leading climate scientists, air quality and public health experts.

First, we strongly object to the use of the "Oregon Standard" of mitigation which, in reality only requires an emitter to pay for the mitigation of approximately 3% of its emissions. This calculation has been acknowledged by EFSEC in Order 768 and allows the operator to emit over 97% of its enormous, new greenhouse gases unchecked and unregulated. (Calculations attached on Excel file.)

Second, while the Northwest Energy Coalition has proposed a better standard, we object to it also, because when compared to the average actual market cost of \$5 per ton for permanent mitigation, in reality, that standard only requires the mitigation of 17% of the emissions - still leaving 83% of the emissions unchecked and unregulated.

We appreciate EFSEC's willingness to address the dangers associated with global warming. However, the plain fact is global warming simply can not and will not be stopped without **REDUCING** greenhouse gas emissions. It is unconscionable to believe the state would allow a private, for-profit business, to create millions and millions of tons of **NEW** greenhouse gases, and then only require the operator to cleanup a miniscule portion of its pollution. I believe EFSEC's has a higher legal obligation to the people of Washington State.

Therefore, we strongly propose and request all new greenhouse gas emitters be required

1. To mitigate, or pay the actual cost to mitigate, all of their new greenhouse emissions. That cost is now near \$5 per US ton.
2. That all mitigation be certified by an independent examiner
3. That all mitigation be permanent, thereby excluding forestry sequestration
4. That the emitter be required to pay all administrative costs

July 26, 2002
Jim Luce
Page 2 of 2

We understand this additional cost may be a burden for an industry that has not historically paid to cleanup this type of pollution. However, it is a fundamental tenet of business that a business is not viable, by definition, unless it can create its product, *pay its costs of doing business*, and sell its product for a profit. The state should not use its authority to allow a polluter to avoid the costs of *any* of its pollution. To do so, is to use the power of the state to subsidize the pollution.

Finally, we are not persuaded the full cost of mitigation price is unduly onerous. The operators will certainly attempt pass the entire cost onto their customers and that cost is minimal. A typical natural gas plant of 660MW, selling electricity at \$22 mWh, will earn annual revenues near \$128 million per year. If the operator permanently mitigates all of its emission at \$5 per ton, it would add a cost of \$12 million, or 9% of revenues. Passing the entire 9% cost increase onto its customers raises the wholesale price of the electricity from 2.2¢ to 2.4¢ kWh. When applied to an average homeowner using 10,000 kWh of 100% natural gas electricity, it would cost the average homeowner an additional \$20 a year or \$1.67 a month.

This is a very, very small cost for ensuring all future electricity is clean and that all dangerous, polluting greenhouse gases have been mitigated.

Thank you.

Sincerely,

Blair C. Henry, JD
BCH/bbb

Understanding the Oregon Standard and the Mitigation of CO2 Emissions

by Blair Henry 206.547.3871, The Northwest Council on Climate Change

Mitigation An emitter of greenhouse gases "mitigates" its emissions when it reduces the net impact of the emissions. This is often accomplished when the emitter finances another, usually unrelated, project which reduces greenhouse gases - thereby "offsetting" all or part of the original emissions.

The Oregon Statute In 1997, The Oregon State Legislature enacted the country's first law requiring the mandatory mitigation of CO2 emissions from new natural gas power plants. The law, however, is unduly complicated which makes it *extremely* difficult to determine exactly how many gases are being mitigated. *But here's how it works...*

1. Amount to be Mitigated First, the law establishes a complicated formula for determining the amount of gases to be mitigated. In reality, the Oregon law only requires an emitter to mitigate between 17 and 22% of its emissions - depending on the efficiency of the plant technology. That means 78% to 83% of emission go unregulated right off the top.

2. "Payment in Lieu" Second, the Oregon law allows an emitter to make a payment in lieu of actually mitigating the emissions themselves. In 1997, before the State knew the actual market cost of permanent mitigation, the State set a payment in lieu price of 57¢ per metric tonne. In actuality, however, the true current market cost of permanently mitigating greenhouse gas emissions is about 9 times that amount - or near \$5.00 per metric tonne. While the State of Oregon did recently raise the price to approximately 87¢ a metric tonne, it still represents only about 17% of the actual market cost.

In total, when an emitter is only required to mitigate 17-22% of its emissions, and then the emitter is allowed to pay a price which is only 11-17% of the actual market cost of mitigating the emissions, the actual, real life reduction of greenhouse gases is less than 3%. This means over 97% of all the new greenhouse gases go unchecked and unregulated under the Oregon statute.

3. "Permanent" Mitigation Finally, the State of Oregon allows a significant portion of the mitigation funds to be invested in forestry projects which do *not* permanently reduce greenhouse gas emissions. Trees simply serve as a short term, temporary carbon storage site because that same carbon returns to the atmosphere once the tree dies or is harvested. Funds spent on these projects further reduce the amount actually spent on permanent mitigation.

[end]

1. **Background for Proposal:** A key consideration in this proposal is that hydropower is currently the major energy source for this state. It is clear from scientific studies that the availability of hydropower is subject to the impacts of climate change. Therefore, it is essential that full mitigation of greenhouse gases by other new energy facilities in this state to protect the long-term viability of existing energy sources.
2. **Proposed Standard:** Every energy facility that submits an application for an energy facility site certification after the effective date of this rule is responsible for permanently mitigating all of their greenhouse gas emissions at actual market cost. To encourage energy efficiency and innovation, as well as provide more accurate forecasting, by July 30 of every year, The Washington State University Climate Center shall review all available greenhouse gas mitigation projects and proposals to determine and publish the fair market cost of permanently mitigating greenhouse gas emissions based on current projects conducted by Washington State energy facilities for the following year. This rate shall be paid by emitters creating emissions during that calendar year. A portion of any fees collected may be used to reimburse the Washington State University Climate Center for any reasonable expenses incurred in the calculation of the fees. The Washington State University Climate Center is encouraged to develop a standard formula for the calculation of fees that can be applied to all new energy facility applications. This formula should include a monetary value that is equivalent to a ton of emitted greenhouse gas. All greenhouse gas mitigation projects must be verified and approved by the Washington State Climate Center before becoming official. The Washington State University Climate Center may delegate this responsibility to any group under its auspices. Energy facilities may conduct their own greenhouse gas mitigation projects, subject to approval by the Washington State Climate Center. “Greenhouse gas” or “greenhouse gases” includes, but is not limited to, carbon dioxide (CO₂), methane and natural gas (CH₄), and nitrous oxide (N₂O).

WAC 463-XX-XXX Carbon Dioxide Emissions Standard

(1) Introduction.

This rule establishes a carbon dioxide (“CO2”) emissions standard for natural gas power plants under council jurisdiction. The rule is divided into a standard for emissions, and three pathways to meet that standard.

(2) Policy.

Mitigation and offset of CO2 emissions, which contribute significantly to global warming, is consistent with the council’s overriding policy as described in WAC 463-47-110. To issue a site certificate, the council must find that the energy facility complies with any applicable CO2 emissions standard adopted by the council or enacted by statute.

(3) Standard for natural gas power plants.

A natural gas power plant shall not emit more than 0.458 pounds CO2 per kilowatt-hour (kWh), taking into account actual emissions from the plant and applicable offsets. New power plants must meet the standard in place at the time the council deems the application complete.

(4) Emissions.

Emissions will be analyzed and calculated based on a 30-year time frame. Based on these projections, offsetting and mitigation requirements will be set.

(5) Offset and mitigation requirements.

Three paths shall be allowed to meet the offset and mitigation requirement. An applicant can use one or more of these paths.

(i) Combined heat and power.

Combined heat and power systems utilize both the electrical and thermal energy generated by a power system using a single fuel source such as natural gas. Qualifying systems would need to produce at least 20% of their useful energy as electrical or mechanical power and at least 20% as thermal energy. Eligible systems must have an overall efficiency of at least 60%. Qualifying combined heat and power will reduce CO2 emissions and shall be credited against emission standards. These reductions shall be part of the initial analysis, and shall be tried up in the five-year reporting process.

(ii) Cofiring.

Cofiring with biomass shall be credited against emission standards. Biomass is defined in accordance with RCW 19.29A.090, which is incorporated here by reference, and shall include the gaseous and liquid forms. To encourage creation of facilities to produce biomass fuels, for the first five years after adoption of this rule, the full amount of biomass use shall be credited against CO2 emission standards, with the percent CO2 emissions reduction equal to the percent biomass cofired.

After that five-year time period, if the applicant elects to follow the direct investment path described in subsection (c)(i) of this section, the cofiring credit shall be based on actual CO2 emissions reductions and quantified by lifecycle analyses conducted by the U.S. Department of Energy or other approved, credible sources. Alternatively, if the applicant elects to follow the monetary path described in subsection (c)(ii) of this section, the cofiring credit shall be based on projected CO2 emissions reductions and quantified by lifecycle analyses conducted by the U.S. Department of Energy or other approved, credible sources.

(c) Offset Projects.

The applicant and/or a qualified organization will conduct offset projects.

(i) If undertaken by the applicant (“direct investment”), the applicant’s CO2 emissions mitigation proposal must be submitted to and approved by the council. At least one

public hearing must be held prior to the council's determination of the adequacy of the proposal. To be considered adequate, the applicant's proposal at a minimum must include a portfolio of different types of offset projects with geographic diversity. Appropriate CO2 emissions offset projects fall into the following categories: energy efficiency measures, clean and efficient transportation measures, renewable energy resources, and sequestration programs. Investment in sequestration is limited to no more than 20 percent of the total funds invested by the applicant to offset CO2 emissions. The applicant can aggregate its investments with other entities pursuing offsets. The applicant must demonstrate that the portfolio of proposed offset projects meets at least the following criteria:

- (a) provides reasonable certainty that carbon reduction goals will be met,
- (b) minimizes the extent to which external events can reduce the amount of CO2 sequestered or offset,
- (c) sequesters or offsets carbon for a period of time not less than 60 years,
- (d) accomplishes carbon dioxide emissions reductions that would otherwise not have taken place,
- (e) enables the applicant to legally claim the CO2 emissions offsets, and
- (f) includes monitoring and verification to determine that reductions are actually made compared to a predetermined baseline.

The applicant will file biennial reports with the council on actual offsets achieved. Before beginning construction, a bond or comparable security must be provided in an amount equal to the amount the applicant would have paid by following the monetary path described in (ii) of this subsection.

- (ii) If conducted by an independent qualified organization ("monetary path"), the council must approve the designated organization. The council shall consult with others and develop and maintain a list of qualified organizations with proven experience in emissions mitigation activities. The applicant will purchase offsets at a rate of \$2/short ton, including an administrative fee of up to 5%. A qualified organization may spend up to 20% of the total funds from the applicant for contracting and selection, monitoring, evaluation, and enforcement of contracts to implement offsets. The applicant shall pay the full amount to the selected qualified organization in equal installments over a five-year period, with the first payment due at the time commercial operation begins. Before beginning construction, the applicant will provide the council with a bond or comparable security equal to the total amount of the CO2 emissions mitigation monetary path requirement.
- (iii) Within six months of adoption of this rule, the council shall establish a stakeholder advisory committee to develop and recommend to the council criteria regarding the process for selecting CO2 emissions mitigation projects and protocols for project monitoring and verification.

(1) Five-year review.

Five years after commencement of plant operation, and every five years thereafter, certificate holders that conduct their own offset projects as described in section (5)(c)(i) must provide the council with reports on actual hours of operation and actual CO2 emissions. At these five-year intervals, the applicant will project future emissions and the council will set offsetting obligations accordingly.

- (a) If actual emissions exceed projections for a five-year time period, certificate holders will be required to offset the excess through the monetary path, at the offset rate for the year in which the facility was permitted.
- (b) If actual emissions are less than projections for a five-year time period, facility owners will be credited against future offsetting obligations on a ton for ton basis.

(7) Process for updating the standard.

The council shall conduct an evaluation of current state-of-the-art natural gas turbine technology every two years, beginning two years after adoption of this standard, and set new standards based on this evaluation no more than nine months later. The council shall conduct an evaluation of the current cost of mitigation per ton of CO₂ every two years, beginning two years after adoption of this standard, and set new costs no more than nine months later.

(8) Modification of a permitted natural gas power plant.

If a permitted natural gas power plant is proposed to be modified in any way that increases CO₂ emissions, these increased emissions must be mitigated according to the current rule in place at the time of the proposed modification.

(9) Other.

The council may adopt CO₂ emissions mitigation standards for other energy facilities under its jurisdiction that emit CO₂.

July 26, 2002

Department of Community, Trade and Economic Development
Office of Trade and Economic Development, Energy Division
Proposed Greenhouse Gases Rule for EFSEC

WAC 463-XX-010 Greenhouse Gases – Carbon Dioxide

(1) Introduction. This rule establishes a carbon dioxide (CO₂) emissions standard for natural gas power plants under Council jurisdiction. The rule is divided into a standard for emissions (for base load gas plants and for non-base load gas plants), and multiple pathways to meet the standard. To issue a site certificate, the Council must find that the energy facility complies with this standard.

(2) Policy. These rules are based on the following principles:

- (a) Promote facility fuel efficiency;
- (b) Promote efficiency in the resource mix;
- (c) Reduce net carbon dioxide emissions;
- (d) Promote cogeneration that reduces net carbon dioxide emissions;
- (e) Promote innovative technologies and creative approaches to mitigating, reducing or avoiding carbon dioxide emissions;
- (f) Minimize transaction costs;
- (g) Include an alternative process that separates decisions on the form and implementation of offsets from the final decision on granting a site certificate;
- (h) Allow either the applicant or third parties to implement offsets;
- (i) Be attainable and economically achievable for various types of power plants;
- (j) Promote public participation in the selection and review of offsets;
- (k) Promote prompt implementation of offset projects;
- (l) Provide for monitoring and evaluation of the performance of offsets;

(m) Promote reliability of the regional electric system.

(3) Standard for Base Load Gas Plants To issue a site certificate for a base load gas plant, the Council must find that the net carbon dioxide emissions rate of the proposed facility does not exceed 0.675 pounds of carbon dioxide per kilowatt hour of net electric power output, with carbon dioxide emissions and net electric power output measured on a new and clean basis. For a base load gas plant designed with power enhancement or augmentation options that increase the capacity and the heat rate of the plant above the capacity and heat rate that the base load gas plant can achieve on a new and clean basis, the Council shall apply the standard for a non-base load power plant, as described in subsection (7), to the incremental carbon dioxide emissions from the designed operation of the power enhancement or augmentation options. The Council shall determine whether the base load carbon dioxide emissions standard is met as follows:

(a) The Council shall determine the gross carbon dioxide emissions that are reasonably likely to result from the operation of the proposed energy facility. The Council shall base such determination on the proposed design of the energy facility. The Council shall adopt site certificate conditions to ensure that the predicted carbon dioxide emissions are not exceeded on a new and clean basis;

(b) For any remaining emissions reduction necessary to meet the applicable standard, the applicant may elect to use any of the means described in subsection (4), or any combination thereof. The Council shall determine the amount of carbon dioxide emissions reduction that is reasonably likely to result from the applicant's offsets and whether the resulting net carbon dioxide emissions meet the applicable carbon dioxide emissions standard;

(c) If the applicant elects to comply with the standard using the means described in subsection (4), the Council shall determine the amount of carbon dioxide emissions reduction that is reasonably likely to result from each of the proposed offsets based on the criteria in subsection

(i) to (iii) below. In making this determination, the Council shall not allow credit for offsets that have already been allocated or awarded credit for carbon dioxide emissions reduction in another regulatory setting. The applicant may not trade or receive any compensation for carbon dioxide offsets produced as a result of this requirement. The fact that an applicant or other parties involved with an offset may derive benefits from the offset other than the reduction of carbon dioxide emissions is not, by itself, a basis for withholding credit for an offset. The Council shall base its determination of the amount of carbon dioxide emission reduction on the following criteria:

(i) Certainty: The degree of certainty that the predicted quantity of carbon dioxide emissions reduction will be achieved by the offset;

(ii) Quantity: The ability of the Council to determine the actual quantity of carbon dioxide emissions reduction resulting from the offset, taking into consideration any proposed measurement, monitoring and evaluation of mitigation measure performance;

(iii) Non Duplication: The extent to which the reduction of carbon dioxide emissions would occur in the absence of the offsets;

(d) Before beginning construction, the certificate holder shall notify the Council in writing of its final selection of a gas turbine vendor and shall submit a written design information report to the Council sufficient to verify the facility's designed new and clean heat rate and its nominal electric generating capacity at average annual site conditions for each fuel type. In the report, the certificate holder shall include the proposed limits on the annual average number of hours of facility operation on distillate fuel oil, if applicable. In the site certificate, the Council may specify other information to be included in the report. The Council shall use the information the certificate holder provides in the report as the basis for calculating, according to the site certificate, the amount of carbon dioxide emissions reductions the certificate holder must provide.

(4) Means of Compliance for Base Load Gas Plants The applicant may elect to use any of the following means, or any combination thereof, to comply with the carbon dioxide emissions standard for base load gas plants. For a base load gas plant designed with power enhancement or augmentation options that increase the capacity and the heat rate of the plant above the capacity and heat rate that the base load gas plant can achieve on a new and clean basis, the applicant shall comply with the standard for a non-base load power plant in the manner as described in subsection (8) for the incremental carbon dioxide emissions from the designed operation of the power enhancement or augmentation options.

(a) Cogeneration or Combined Heat and Power: Designing and operating the facility to produce electrical and thermal energy sequentially from the same fuel source and using the thermal

energy to displace another source of carbon dioxide emissions that would have otherwise continued to occur. The Council shall adopt site certificate conditions ensuring that the carbon dioxide emissions reduction will be achieved;

(b) Offset Projects: Implementing offset projects directly or through a third party. The Council may adopt site certificate conditions ensuring that the proposed offset projects are implemented by the date specified in the site certificate, but shall not require that predicted levels of avoidance, displacement or sequestration of carbon dioxide emissions be achieved;

(c) Offset Funds: Providing offset funds, directly or through a third party, in an amount deemed sufficient to produce the reduction in carbon dioxide emissions necessary to meet the applicable carbon dioxide emissions standard. The applicant or third party shall use the funds as specified in subsection (10). The Council shall deem the payment of the monetary offset rate, pursuant to subsection (6), to result in a reduction of one ton of carbon dioxide emissions. The Council shall determine the offset funds using the monetary offset rate and the level of emissions reduction required to meet the applicable standard. If the Council issues a site certificate based on this section, the Council may not adjust the amount of the offset funds based on the actual performance of offsets;

(d) Any other means that the Council adopts by rule for demonstrating compliance with the carbon dioxide emissions standard;

(e) If the Council or a court on judicial review concludes that the applicant has not demonstrated compliance with the applicable carbon dioxide emissions standard under subsections (3)(a), (3)(b) or (3)(d) of this rule, or any combination thereof, and the applicant agrees to meet the requirements of subsection (3)(c) for any deficiency, the Council or a court shall find compliance based on such agreement.

(5) Modification of the Standard for Base Load Gas Plants Notwithstanding the net carbon dioxide emissions rate in subsection (3), no sooner than two years after January 1, 2003, the Council may by rule modify the carbon dioxide emissions standard for base load gas plants if the Council finds that the most efficient stand-alone combined cycle, combustion turbine, natural gas-fired energy facility that is commercially demonstrated and operating in the United States has a net heat rate of less than 6,955 Btu per kilowatt hour higher heating value adjusted to ISO conditions. In modifying the carbon dioxide emission standard, the Council shall determine the rate of carbon dioxide emissions per kilowatt hour of net electric output of such energy facility, adjusted to ISO conditions and reset the carbon dioxide emissions standard at 17 percent below this rate.

(6) Monetary Offset Rate The monetary offset rate is 85 cents per ton of carbon dioxide emissions. After two years from January 1, 2003, the Council may by rule increase or decrease the monetary offset rate. The Council shall base any change to the monetary offset rate on empirical evidence of the cost of carbon dioxide offsets and the Council's finding that the standard will be economically achievable with the modified rate for natural gas-fired power plants. The Council may increase or decrease the monetary offset rate no more than 50 percent in any two-year period.

(7) Standard for Non-Base Load Power Plants To issue a site certificate for a non-base load power plant, the Council must find that the net carbon dioxide emissions rate of the proposed facility does not exceed 0.675 pounds of carbon dioxide per kilowatt hour of net electric power output, with carbon dioxide emissions and net electric power output measured on a new and clean basis. For a base load gas plant designed with power enhancement or augmentation options that increase the capacity and the heat rate of the plant above the capacity and heat rate that the base load gas plant can achieve on a new and clean basis, the Council shall apply this standard to the Exhibit B(11)—Report to Jim Luce, Chair, Washington Energy Facility Site Evaluation Council August 8, 2002 EFSEC Standards Development Group Meeting Materials
Page 43 of 43

incremental carbon dioxide emissions from the designed operation of the power enhancement or augmentation options. The Council shall determine whether the carbon dioxide emissions standard is met as follows:

(a) The Council shall determine the gross carbon dioxide emissions that are reasonably likely to result from the operation of the proposed energy facility. The Council shall base such determination on the proposed design of the energy facility, the limitation on the hours of generation for each fuel type and the average temperature, barometric pressure and relative humidity at the site during the times of the year when the facility is intended to operate. For a base load gas plant designed with power enhancement or augmentation options that increase the capacity and the heat rate of the plant above the capacity and heat rate that the base load gas plant can achieve on a new and clean basis, the Council shall base its determination of the incremental carbon dioxide emissions on the proposed design of the facility, the proposed limitation on the hours of generation using the power enhancement or augmentation options and the average temperature, barometric pressure and relative humidity at the site during the times of the year when the facility is intended to operate. The Council shall adopt site certificate conditions to ensure that the predicted carbon dioxide emissions are not exceeded on a new and clean basis; however, the Council may modify the parameters of the new and clean basis to accommodate average conditions at the times when the facility is intended to operate and technical limitations, including operational considerations, of a non-base load power plant or power enhancement or augmentation options or for other cause;

(b) For any remaining emissions reduction necessary to meet the applicable standard, the applicant may elect to use any of the means described in subsection (8) or any combination thereof. The Council shall determine the amount of carbon dioxide emissions reduction that is reasonably

likely to result from the applicant's offsets and whether the resulting net carbon dioxide emissions meet the applicable carbon dioxide emissions standard;

(c) If the applicant elects to comply with the standard using the means described in subsection (8)(b), the Council shall determine the amount of carbon dioxide emissions reduction that is reasonably likely to result from each of the proposed offsets based on the criteria in subsection (i) to (iii) below. In making this determination, the Council shall not allow credit for offsets that have already been allocated or awarded credit for carbon dioxide emissions reduction in another regulatory setting. The applicant may not trade or receive any compensation for carbon dioxide offsets produced as a result of this requirement. The fact that an applicant or other parties involved with an offset may derive benefits from the offset other than the reduction of carbon dioxide emissions is not, by itself, a basis for withholding credit for an offset. The Council shall base its determination of the amount of carbon dioxide emission reduction on the following criteria:

(i) The degree of certainty that the predicted quantity of carbon dioxide emissions reduction will be achieved by the offset;

(ii) The ability of the Council to determine the actual quantity of carbon dioxide emissions reduction resulting from the offset, taking into consideration any proposed measurement, monitoring and evaluation of mitigation measure performance;

(iii) The extent to which the reduction of carbon dioxide emissions would occur in the absence of the offsets;

(d) Before beginning construction, the certificate holder shall notify the Council in writing of its final selection of an equipment vendor and shall submit a written design information report to the Council sufficient to verify the facility's designed new and clean heat rate and its nominal electric generating capacity at average annual site conditions for each fuel type. For a base load gas

heat rate of the plant above the capacity and heat rate that the base load gas plant can achieve on a new and clean basis as defined in WAC 345-XXX-XXX(5), the certificate holder shall include in the report information sufficient to verify the facility's designed new and clean heat rate, tested under parameters the Council orders pursuant to subsection (a) above, and the nominal electric generating capacity at average annual site conditions for each fuel type from the operation of the proposed facility using the power enhancement or augmentation options. The certificate holder shall include the proposed limit on the annual average number of hours for each fuel used, if applicable. The certificate holder shall include the proposed total number of hours of operation for all fuels, subject to the limitation that the total annual average number of hours of operation per year is not more than 6,600 hours. In the site certificate, the Council may specify other information to be included in the report. The Council shall use the information the certificate holder provides in the report as the basis for calculating, according to the site certificate, the gross carbon dioxide emissions from the facility and the amount of carbon dioxide emissions reductions the certificate holder must provide;

(e) Every five years after commencing commercial operation, the certificate holder shall report to the Council the facility's actual annual hours of operation by fuel type. If the actual gross carbon dioxide emissions, calculated using the new and clean heat rate and the actual hours of operation on each fuel during the five-year period, exceed the projected gross carbon dioxide emissions for the five-year period calculated under subsection (d) above, the certificate holder shall offset any excess emissions for that period and shall offset estimated future excess carbon dioxide emissions using the monetary path as described in subsection (8)(c) and (d) or as approved by the Council.

(f) For a base load gas plant designed with power enhancement or augmentation options that increase the capacity and the heat rate of the plant above the capacity and heat rate that the base

Exhibit B(11)—Report to Jim Luce, Chair, Washington Energy Facility Site Evaluation Council
August 8, 2002 EFSEC Standards Development Group Meeting Materials
Page 46 of 46

load gas plant can achieve on a new and clean basis, every five years after commencing commercial operation, the certificate holder shall report to the Council the facility's actual hours of operation using the power enhancement or augmentations options for each fuel type. If the actual gross carbon dioxide emissions, calculated using the new and clean heat rate, tested under parameters the Council orders pursuant to subsection (a) above, and the actual hours of operation using the power enhancement or augmentations options on each fuel during the five-year period exceed the projected gross carbon dioxide emissions for the five-year period calculated under subsection (d) above, the certificate holder shall offset any excess emissions for that period and shall offset estimated future excess carbon dioxide emissions using the monetary path as described in subsections (8)(c) and (d) or as approved by the Council.

(8) Means of Compliance for Non-Base Load Power Plants The applicant may elect to use any of the following means, or any combination thereof, to comply with the carbon dioxide emissions standard for non-base load power plants or for the incremental carbon dioxide emissions from the operation of a base load gas plant with power enhancement or augmentation options in a manner that increases the capacity and the heat rate of the plant above the capacity and heat rate that the base load gas plant can achieve on a new and clean basis:

(a) Designing and operating the facility to produce electrical and thermal energy sequentially from the same fuel source and using the thermal energy to displace another source of carbon dioxide emissions that would have otherwise continued to occur. The Council shall adopt site certificate conditions ensuring that the carbon dioxide emissions reduction will be achieved;

(b) Implementing offset projects directly or through a third party. The Council may adopt site certificate conditions ensuring that the proposed offset projects are implemented by the date

specified in the site certificate, but shall not require that predicted levels of avoidance, displacement or sequestration of carbon dioxide emissions be achieved;

(c) Providing offset funds, directly or through a third party, in an amount deemed sufficient to produce the reduction in carbon dioxide emissions necessary to meet the applicable carbon dioxide emissions standard. The applicant or third party shall use the funds as specified in subsection (10). The Council shall deem the payment of the monetary offset rate, pursuant to subsection (6), to result in a reduction of one ton of carbon dioxide emissions. The Council shall determine the offset funds using the monetary offset rate and the level of emissions reduction required to meet the applicable standard. If the Council issues a site certificate based on this section, the Council may not adjust the amount of the offset funds based on the actual performance of offsets;

(d) Notwithstanding subsections (a), (b) or (c) above, if the certificate holder exceeds the projected gross carbon dioxide emissions calculated under subsection (7)(d) during any five-year reporting period described in subsection (7)(e), the certificate holder shall offset excess emissions for the specific reporting period according to subsection (i) below and shall offset the estimated future excess emissions according to subsection (ii) below. The certificate holder shall offset excess emissions using the monetary path as described in subsection (10) or as approved by the Council;

(i) In determining the excess carbon dioxide emissions that the certificate holder must offset for a five-year period, the Council shall credit the certificate holder with offsets equal to the difference between the carbon dioxide emissions allowed by the site certificate in previous periods and actual emissions, if actual emissions were lower than allowed. Once a certificate holder has used a credit, the certificate holder shall not use it again. The certificate holder shall pay for the excess emissions at a rate per ton of carbon dioxide emissions that has the same present value per

final order applying the carbon dioxide standard. The Council shall specify in the site certificate the methodology for calculating the present value per ton of carbon dioxide and the qualified organization. The Council shall calculate excess carbon dioxide emissions and notify the certificate holder of the amount of payment required, using the monetary path, to offset them;

(ii) The Council shall specify in the site certificate a methodology for estimating future excess carbon dioxide emissions. The Council shall calculate estimated future excess emissions and notify the certificate holder of the amount of payment required, using the monetary path, to offset them, according to the site certificate. To estimate excess emissions for the remaining period of the deemed life of the facility, the Council shall use the annual average number of hours of operation during the five-year period in which the certificate holder exceeded the estimated gross carbon dioxide emissions described in subsection (7)(e) and the new and clean heat rate and capacity for the facility, adjusted for the average temperature, barometric pressure and relative humidity at the site during the times of the year when the facility is intended to operate. If the annual average hours exceed 6,600, the Council shall estimate emissions at 100 percent capacity for the remaining period of a deemed 30-year life of the facility. In estimating future excess carbon dioxide emissions, the Council shall not credit lower emissions from earlier reporting periods. However, the Council shall credit offsets already provided when it estimated base load operation for the hours being adjusted. The certificate holder shall pay for the remaining excess emissions at a rate per ton of carbon dioxide emissions that has the same present value per ton of carbon dioxide as the monetary path offset rate of the year in which the Council issued the final order applying the carbon dioxide standard. The Council shall specify in the site certificate the methodology for calculating the present value of the offset fund rate. At the request of the certificate holder, the Council may, by amendment of the site certificate, use an alternative methodology to estimate future excess carbon dioxide emissions;

(e) Any other means that the Council adopts by rule for demonstrating compliance with the carbon dioxide emissions standard;

(f) If the Council or a court on judicial review concludes that the applicant has not demonstrated compliance with the applicable carbon dioxide emissions standard under subsections (a), (b) or (e) of this rule, or any combination thereof, and the applicant agrees to meet the requirements of sections (c) and (d) for any deficiency, the Council or a court shall find compliance based on such agreement.

(9) Modification of the Standard for Non-Base Load Power Plants Notwithstanding the net carbon dioxide emissions rate specified in subsection (7), the Council may by rule modify the carbon dioxide emissions standard for non-base load power plants so that the standard remains equivalent to the standard for the net carbon dioxide emissions rate of a base load gas plant, subject to the principles described in subsection (2).

(10) Monetary Path Payment Requirement (a) If the applicant elects to meet the applicable carbon dioxide emissions standard in whole or in part under subsections (4)(c) or (7)(c), the applicant shall provide a bond or letter of credit in a form reasonably acceptable to the Council to ensure the payment of the offset funds and the additional funds required under subsection (d). The applicant shall provide such security by the date specified in the site certificate. In the site certificate, the Council shall specify a date no later than the commencement of construction of the facility for base load gas plants and non-base load power plants. In no case shall the applicant diminish the bond or letter of credit or receive a refund from a qualified organization based on the calculations of the facility's emissions on a new and clean basis for a fossil-fueled power plant. A qualified organization shall not refund any offset funds to a certificate holder based on the

operation or performance of a non-base load power plant during any five-year period reported under subsection (7)(e).

(b) In the site certificate, the Council shall require the certificate holder to disburse the offset funds and other funds required as specified in subsection (c) and (d), unless the Council finds that no qualified organization exists, in which case the Council shall require the certificate holder to disburse the offset funds as specified in subsection (11)(b).

(c) When the certificate holder receives written notice from the qualified organization certifying that the qualified organization is contractually obligated to pay any funds to implement offsets using the offset funds, the certificate holder shall make the requested amount available to the qualified organization unless the total of the amount requested and any amounts previously requested exceeds the offset funds, in which case the certificate holder shall make available only the remaining amount of the offset funds. The qualified organization shall use at least 80 percent of the offset funds for contracts to implement offsets. The qualified organization may use up to 20 percent of the offset funds for monitoring, evaluation, administration and enforcement of contracts to implement offsets.

(d) At the request of the qualified organization and in addition to the offset funds, the certificate holder shall pay the qualified organization an amount equal to 10 percent of the first \$500,000 of the offset funds and 4.286 percent of any offset funds in excess of \$500,000. The certificate holder for a base load gas plant shall pay not less than \$50,000, unless the Council specifies a lesser amount in the site certificate. In the site certificate, the Council may specify a minimum amount that other fossil-fueled power plants or nongenerating energy facilities must pay. This payment compensates the qualified organization for its costs of selecting offsets and contracting for the implementation of offsets.

(e) Notwithstanding any provision to the contrary, a certificate holder subject to this rule has no obligation with regard to offsets, the offset funds or the funds required by subsection (d) other than to make available to the qualified organization the total amount required under subsections (4)(c), (8)(c) and (d) and subsection (d) of this rule. The Council shall not base a revocation of the site certificate or any other enforcement action with respect to the certificate holder on any nonperformance, negligence or misconduct by the qualified organization.

(f) For monetary path payments a certificate holder must make before beginning construction, the certificate holder shall make all offset fund payments and all payments required by subsection (d) to the qualifying organization in real dollars of the year in which the Council issues a final order applying the carbon dioxide emissions standard to the energy facility. In the site certificate, the Council shall specify an appropriate inflation index for calculating real dollars. For a non-base load power plant, if a certificate holder must make a payment as described in subsection (8)(d), the certificate holder shall make a payment that has the same present value per ton of carbon dioxide as the monetary path offset rate of the year in which the Council issued the final order applying the carbon dioxide standard. In the site certificate, the Council shall specify the methodology for calculating present value.

(11) Qualified Organization (a) If the applicant elects to meet the applicable carbon dioxide emissions standard in whole or in part under subsections (4)(c) and (8)(c) and (d), the applicant shall identify the qualified organization. The applicant may identify an organization that has applied for, but has not received, an exemption from federal income taxation, but the Council may not find that the organization is a qualified organization unless the organization is exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code as amended and in effect on December 31, 1996.

(b) If the Council finds there is no qualified organization, the certificate holder shall disburse the offset funds according to one or more contracts for implementation of offsets as determined by the following process:

(i) The Council shall establish criteria for selection of offsets, based on the reduction of net carbon dioxide emissions and the criteria set forth in subsection (3)(c) for base load plants, and subsection (7)(c) for non-base load plants. The Council may consider the costs of particular types of offsets in relation to the expected benefits of such offsets. In establishing criteria, the Council shall not require the certificate holder to select particular offsets and shall allow the certificate holder a reasonable range of choices in selecting offsets;

(ii) Based on the criteria established by the Council, the certificate holder shall select one or more offsets. The certificate holder shall give written notice of its selections to the Council and to any person requesting notice. For the purposes of this rule, the date of notice is the date the certificate holder places the notice in the United States mail, with first-class postage prepaid;

(iii) On petition by the Council or by any person adversely affected or aggrieved by the certificate holder's selection of offsets, or on the Council's own motion, the Council may review the selection. The petition must be received by the Council within 30 days of the date of notice;

(iv) The Council shall approve the certificate holder's selection unless it finds that the selection is not consistent with criteria established under subsection (i);

(v) The certificate holder shall execute one or more contracts to implement the selected offsets within 18 months after commencing construction of the facility unless the Council allows additional time based on a showing of good cause by the certificate holder. If a certificate holder would have made a payment to a qualified organization as described in subsections (8)(d), the certificate holder shall instead execute one or more contracts to implement the selected offsets, by a

(7)(e) or within 18 months after the Council notifies the certificate holder that the certificate holder must replenish the offset credit account. The certificate holder shall, under such contracts, obligate the expenditure of at least 85 percent of the offset funds for the implementation of offsets. The certificate holder may spend no more than 15 percent of the offset funds on monitoring, evaluation and enforcement of such contracts;

(vi) Notwithstanding any provision to the contrary, the certificate holder shall have no financial liability for implementation, monitoring, evaluation and enforcement of offsets under this section beyond the amount contractually obligated and the amount of any remaining offset funds not already contractually obligated. The Council shall not base a revocation of the site certificate or any other enforcement action with respect to the certificate holder on any nonperformance, negligence or misconduct by the person or persons implementing, monitoring or evaluating the selected offsets.

(c) Every qualified organization that has received funds under this rule shall, at five-year intervals beginning on the date of receipt of such funds, provide the Council with the information the Council requests about the qualified organization's performance.

Special Definitions

(1) "Adjusted to ISO conditions" means carbon dioxide emissions and net electric power output as determined at 59 degrees Fahrenheit, 14.7 pounds per square inch atmospheric pressure and 60 percent humidity.

(2) "Base load gas plant" means a generating facility that is fueled by natural gas, except for periods during which an alternative fuel may be used and when such alternative fuel use shall not exceed 10 percent of expected fuel use in Btu, higher heating value, on an average annual basis, and where the applicant requests and the Council adopts no condition in the site certificate for the generating facility that would limit hours of operation other than restrictions on the use of alternative fuel. The Council shall assume a 100-percent capacity factor for such plants and a 30-year life for the plants for purposes of determining gross carbon dioxide emissions.

(3) "Gross carbon dioxide emissions" means the predicted carbon dioxide emissions of the proposed energy facility. The Council shall measure the gross carbon dioxide emissions of a fossil-fueled power plant on a new and clean basis.

(4) "Net carbon dioxide emissions" means gross carbon dioxide emissions of the proposed energy facility, less carbon dioxide emissions avoided, displaced or sequestered by any combination of cogeneration or offsets.

(5) "New and clean basis" means the average carbon dioxide emissions rate per hour and net electric power output of the energy facility, without degradation. The site certificate holder shall determine the new and clean basis:

(a) By a 100-hour test at full power that the site certificate holder completes during the first 12 months of commercial operation of the energy facility, unless the Council specifies a different testing period for a non-base load power plant;

(b) With the results adjusted for the average annual site condition for temperature, barometric pressure and relative humidity and use of alternative fuels;

(c) Using a rate of 117 pounds of carbon dioxide per million Btu of natural gas fuel; and

(d) Using a rate of 161 pounds of carbon dioxide per million Btu of distillate fuel, if such fuel use is proposed by the applicant.

(e) Notwithstanding subsection (a) and including subsections (b) through (d), for a facility that employs major power generating equipment that has previously been used, the new and clean basis shall mean average carbon dioxide emissions rate and net electric power output for the first use of the equipment at the site, as determined by historical data from the previous usage or by testing on site.

(1) "Non-base load power plant" means a fossil-fueled generating facility that is limited by the site certificate to an average number of hours of operation per year of not more than 6,600 hours. The Council shall assume a 30-year life for the plants for purposes of determining gross carbon dioxide emissions, unless the applicant requests and the Council approve a shorter operational life in the site certificate. If the Council approves a shorter operational life, the certificate holder shall operate the facility for no longer than the approved operational life or, before the expiration of the approved operational life, shall request an amendment of the site certificate to extend the operational life.

(2) "Qualified organization" means an organization that:

(a) Is exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code as amended and in effect on December 31, 1996;

(b) Either is incorporated in the State of Washington or is a foreign corporation authorized to do business in the State of Washington;

(c) Has in effect articles of incorporation that:

(A) Require that offset funds received under EFSEC administrative code are used for offsets that will result in the direct reduction, elimination, sequestration or avoidance of carbon dioxide emissions;

(B) Require that decisions on the use of such funds are made by a body composed of seven voting members of which three are appointed by the Council, three are Washington residents appointed by an environmental nonprofit organization named by the body, and one is appointed by

the applicants for site certificates that are subject to WAC 463-XXX-XXX and the holders of such site certificates; and

(C) Require nonvoting membership on the decision-making body for holders of site certificates that have provided funds not yet disbursed under WAC 463-XXX-XXX.

(D) Has made available on an annual basis, beginning after the first year of operation, a signed opinion of an independent certified public accountant stating that the qualified organization's use of funds pursuant to WAC conforms with generally accepted accounting procedures except that the qualified organization shall have one year to conform with generally accepted accounting principles in the event of a nonconforming audit;

(E) Has to the extent applicable, except for good cause, entered into contracts obligating at least 60 percent of the offset funds to implement offsets within two years after the commencement of construction of the facility; and

(F) Has to the extent applicable, except for good cause, complied with WAC 345-XXX-XXX subsection (10)(c).

WAC 463-XX-XXX Noise

(1) Introduction.

This rule describes the level of noise permitted from the operation of thermal power plants under the Council's jurisdiction.

(2) Definitions.

- (a) "dBA" means the sound pressure level in decibels measured using the "A" weighting network on a sound level meter.
- (b) "EDNA" means the environmental designation for noise abatement.
- (c) "Existing" means a process, event or activity producing sound subject to or exempt from this chapter, prior to _____ *[Fill in effective date of rule]*
- (d) "Facility" means a thermal power plant under the Council's jurisdiction.
- (e) "Local Government" means the county or city government having jurisdiction over the property at issue.
- (f) "Noise" means the intensity, duration and character of sounds emitted from the facility.
- (g) "Person" means any individual, corporation, partnership, association, governmental body, state agency or other entity whatsoever.
- (h) "Property boundary" means the surveyed line at ground surface that separates the real property owned by one or more persons from that owned by one or more other persons, and its vertical extension.
- (i) "Sound level meter" means a device that measures sound pressure levels and conforms to Type 1 or 2 as specified in the American National Standards Institute Specification S1.4-1971.

(3) Environmental Designations for Noise Abatement (EDNA).

The environmental designation for noise abatement (EDNA) of a particular parcel of property shall be determined as follows:

- (a) In areas covered by a zoning ordinance or a comprehensive plan adopted by a local government, properties shall have the following EDNAs based upon their designations under the

zoning ordinance or comprehensive plan. For purposes of this rule, the designation under a zoning ordinance shall take precedence if it conflicts with the designation under a comprehensive plan.

- (i) Residential zones or areas – Class A EDNA
- (ii) Commercial zones or areas – Class B EDNA
- (iii) Industrial zones or areas – Class C EDNA

(b) In areas that are not covered by a local zoning ordinance or an adopted comprehensive plan, properties shall have the following EDNAs based upon their typical usage, taking into consideration the historical, present and future use of the property, as well as the use of adjacent and other properties in the vicinity.

(i) Class A EDNA – Lands where human being reside and sleep. Typically, the Class A EDNA will be the following types of property for human habitation: residential; multiple family living accommodations; recreational and entertainment (e.g., camps, parks, camping facilities, and resorts); and community service (e.g., orphanages, homes for the aged, hospitals, health and correctional facilities).

(ii) Class B EDNA – Lands involving uses requiring protection against noise interference with speech. Typically, the Class B EDNA will be the following types of property: commercial living accommodations; commercial dining establishments; motor vehicle services; retail services; banks and office buildings; miscellaneous commercial services, property not used for human habitation; recreational and entertainment, property not used for human habitation (e.g., theaters, stadiums, fairgrounds, and amusement parks); and community services, property not used for human habitation (e.g., educational, religious, governmental, cultural and recreational facilities).

(iii) Class C EDNA – Lands involving economic activities of such a nature that higher noise levels than experienced in other areas are normally to be anticipated. Persons working in these areas are normally covered by noise control regulations of the department of labor and industries. Uses typical of the Class A EDNA are generally not permitted

within such areas. Typically, the Class C EDNA will be the following types of property:

storage, warehouse and distribution facilities; industrial property used for the production and fabrication of durable and nondurable man-made goods; and agricultural and silvicultural property used for the production of crops, wood products or livestock.

(4) Maximum Permissible Noise Levels.

(a) Except as provided in subsections (4)(c), (5) and (6) below, operational noise from thermal power plants under the Council's jurisdiction shall not exceed the following levels at receiving properties:

EDNA of Receiving Property		
Class A	Class B	Class C
60 dBA	65 dBA	70 dBA

(b) Between the hours of 10:00 p.m and 7:00 a.m., the noise limitations of the foregoing table shall be reduced by 10 dBA for receiving properties within Class A EDNAs.

(c) At any hour of the day or night the applicable noise limitations in (a) and (b) above may be exceeded for any receiving property by no more than:

- (i) 5 dBA for a total of 15 minutes in any one-hour period; or
- (ii) 10 dBA for a total of 5 minutes in any one-hour period; or
- (iii) 15 dBA for a total of 1.5 minutes in any one-hour period.

(5) Exemptions.

(a) The following shall be exempt from the provisions of subsection (4)(a) above between the hours of 7:00 a.m. and 10:00 p.m.:

- (i) Sounds created by blasting.
- (ii) Sounds created by the installation or repair of essential utility services.

(b) The following shall be exempt from the provisions of subsection (4)(b) above:

- (i) Noise from electrical substations and existing stationary equipment used in the conveyance of water, wastewater, and natural gas by a utility.
 - (ii) Noise from existing industrial installations that exceed the standards contained in this rule and which, over the previous three years, have consistently operated in excess of 15 hours per day as a consequence of process necessary and/or demonstrated routine normal operation. Changes in working hours, which would affect exemptions under this regulation require approval of the department.
- (c) The following shall be exempt from the provisions of subsection (4) above, except insofar as such provisions related to the reception of noise within Class A EDNAs between the hours of 10:00 p.m. and 7:00 a.m.
- (i) Sounds originating from temporary construction sites as a result of construction activity.
 - (ii) Sounds originating from forest harvesting and silvicultural activity.
- (d) The following shall be exempt from the provisions of subsection (4) above:
- (i) Sounds created by motor vehicles when regulated by chapter 173-62 WAC.
 - (ii) Sounds created by warning devices not operating continuously for more than five minutes, or bells, chimes, and carillons.
 - (iii) Sounds created by safety and protective devices where noise suppression would defeat the intent of the device or is not economically feasible.
 - (iv) Sounds created by emergency equipment and work necessary for health, safety or welfare of the community.
 - (v) Sounds caused by natural phenomena and unamplified human voices.
 - (vi) Sounds created by motor vehicles, licensed or unlicensed, when operated off public highways except when such sounds are received in Class A EDNAs.
 - (vii) Sounds originating from existing natural gas transmission and distribution facilities.
- However, in circumstances where such sounds impact EDNA Class A environments and

complaints are received, the Council may take action to abate by application of EDNA Class C source limits to such facilities under the Council's jurisdiction.

(6) Variances and Waivers.

(a) The Council may grant variances to any person from any particular requirement of this chapter, if findings are made that immediate compliance with such requirement cannot be achieved because of special circumstances rendering immediate compliance unreasonable in light of economic or physical factors, encroachment upon an existing noise sources, or because of nonavailability of feasible technology or control methods. Any such variance or renewal thereof shall be granted only for the minimum time period found to be necessary under the facts and circumstances.

(b) The Council shall grant a waiver of the applicable noise limit established by subsection (4) above with respect to a particular receiving property if the owner of such property grants a noise easement or otherwise agrees to be subject to noise from the facility that exceeds the limits established by subsection (4) above.

(7) Compliance.

For purposes of complying with this rule, noise from the facility shall be measured in dBA by a sound level meter at any point within the receiving property. The Council shall undertake enforcement of the limits established in this rule only upon receipt of a complaint made by a person who resides, owns property, or is employed on the property affected by the noise complained of, except for parks, recreational areas, and wildlife sanctuaries.

WAC 463-XX-XX Seismic Standard

(1) **Purpose**

This rule describes the seismic standard for energy facilities.

(2) **Standard**

The local building code shall be the standard for design and construction of an energy facility, unless the Council finds that the overwhelming evidence that a maximum probable and maximum credible seismic event may occur is greater than that referenced in the local building code. If such a finding is made, prior to construction, the applicant shall conduct a site-specific study to characterize possible ground motion or ground failure expected during a maximum credible and maximum probable seismic event and design and construct the energy facility to withstand that event.

- (1.) **Introduction**--This rule describes how an applicant that proposes to construct an energy facility may meet the standard for socio-economic impacts.
- (2.) **Statement of Intent**--The Council's goal is to avoid, minimize or mitigate adverse project-related socio-economic impacts on the local community and promote positive project-related socio-economic impacts on the local community.
- (3.) **Definitions**—
- (1) "Socio-economic impacts" refers to the following areas of impact for purposes of this section.
 - i. Impacts on the local population;
 - ii. Impacts on the local housing supply and vacancy rate;
 - iii. Environmental justice;
 - iv. Impacts on local government services, both in terms of revenues and demands;
 - v. Impacts on the local workforce and economy;
 - (2) "Council" or "EFSEC" refers to the energy facility site evaluation council created pursuant to chapter 80.50 RCW and, where appropriate, to the staff of the council.
 - (3) "Applicant" means the person or entity making application for a certification or permit covered in this title.
 - (4) "Adjudicative proceeding" means a proceeding conducted pursuant to RCW 80.50.090(3) and the state Administrative Procedure Act.
 - (5) "Certificate holder" means a person or entity who is signatory to a site certification agreement, which has been approved by the council and signed by the governor, and who is bound by the terms herein.
 - (6) "Environmental Justice" refers to the concept that energy facilities should not disproportionately impact communities in which a majority of the residents are either low-income or members of ethnic minorities.
 - (7) "Low income" means a person or family whose annual income is less than the federally-designated poverty level.
 - (8) "Local government" or "local jurisdiction" refers to, but is not limited to, cities, counties, water and sewer districts, conservation districts, fire protection districts and any other government organization engaged in providing services to the community near the proposed facility.
 - (9) "Local worker" or "local business" refers to a person or business residing within the State of Washington or within a 100-mile radius of the energy facility.
- (4) **Standard**--The applicant will work with local government jurisdictions to avoid, minimize or mitigate any negative project-related socioeconomic impacts and to promote any positive project-related socioeconomic impacts.
- (1)**Population**--The applicant and local governments will address, if necessary, the impacts of significant short term or long term increases in local population due to the project.
 - (2)**Housing**--The applicant and local governments will address, if necessary, the impacts on the local housing supply and vacancy rate. Particular emphasis should be given to the possible need for short term housing if the project is located in a remote area.

(3)**Environmental Justice**—The council, the applicant and local jurisdictions will identify, seek out and take extra measures to include nearby minority and/or low-income populations in the permitting process.

(4)**Local workforce and economy**--The applicant and local jurisdictions will seek ways of maximizing the use of local workers and local businesses for construction, operation and maintenance of the facility.

(5)**Local government services**-- The applicant will address any disparities between project-related service demands on the affected jurisdiction(s) and project-generated tax revenue to the affected jurisdiction(s).

WAC 463-XX-XXX
Socioeconomic Impact

1. Introduction.

This rule describes the socioeconomic study required for energy facility siting, including the requirements for Applicants to work with affected local governments and provide cost reimbursement to them in some circumstances.

2. Socioeconomic Study.

The Applicant shall submit a detailed socioeconomic impact study that identifies primary and secondary and positive as well as negative impacts on the socioeconomic environment with particular attention and analysis of impact on population, work forces, property values, housing, traffic, health and safety facilities and services, education facilities and services, local economy and environmental justice.² In preparing the application, the Applicant shall work with affected local governments to determine the socioeconomic impacts and the potential need for mitigation of negative socioeconomic impacts. If the Applicant requests additional work from affected local governments (apart from ordinary matters incident to application processing) the Applicant and affected local governments shall agree on acceptable cost reimbursement before such additional work is begun.

² Environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, culture, education, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Fair Treatment means that no group of people, including racial, ethnic, or socioeconomic groups, should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal environmental programs and policies. Meaningful Involvement means that: (1) potentially affected community residents have an appropriate opportunity to participate in decisions about a proposed activity that will affect their environment and/or health; (2) the public's contribution can influence the regulatory agency's decision; (3) the concerns of all participants involved will be considered in the decision-making process; and (4) the decision-makers seek out and facilitate the involvement of those potentially affected.

WAC 463-XX-XXX Water Quality

(1) Introduction.

This rule describes the standard the Council will apply to waste water discharges from thermal power plants under the Council's jurisdiction.

(2) Definitions

(a) "National Pollution Discharge Elimination System" or "NPDES" means the water quality permitting system established pursuant to 33 U.S.C. §§ 1301, 1342.

(3) Policy

Waste water discharges from thermal power plants under the Council's jurisdiction should not result in a significant adverse impact on the environment or human health. Compliance with this policy shall be determined based on the standards outlined in subsections (4), (5) and (6) below.

(4) Wastewater Discharges Subject to the National Pollution Discharge Elimination System (NPDES) Permitting Program.

For thermal power plants under the Council's jurisdiction that discharge wastewater subject to the NPDES permitting program, compliance with existing state and federal regulations concerning the NPDES permitting program, as adopted by the Council in Chapter 463-38 WAC, shall create a presumption that the Council's standard has been satisfied. This presumption may be overcome only if the Council determines, after a review of all the relevant evidence before it, that the discharges would, despite compliance with existing state and federal standards, have a significant adverse impact on the environment or human health. If such a determination is made, the Council may, require additional effluent limitations or mitigation measures necessary to prevent significant adverse impacts to the environment and human health.

(5) Wastewater Discharges to Publicly Owned Treatment Facilities.

For thermal power plants under the Council's jurisdiction that discharge wastewater to publicly owned treatment facilities, the Council's standard shall be deemed satisfied upon a demonstration that waste water discharges will not interfere with the ability of the treatment facility to comply with the permits governing its operation.

(6) Wastewater Discharges to Ground Water.

For thermal power plants under the Council's jurisdiction that discharge wastewater to groundwater, compliance with existing regulations adopted by the Washington Department of Ecology that generally govern discharges of waste water to groundwater in Washington shall create a presumption that the Council's standard has been satisfied. This presumption may be overcome only if the Council determines, after a review of all the relevant evidence before it, that the discharges would, despite compliance with existing state standards, have a significant adverse impact on the environment or human health. If such a determination is made, the Council may, require additional effluent limitations or mitigation measures necessary to prevent significant adverse impacts to the environment and human health.

WATER RIGHTS POINTS FOR CONSIDERATION

Draft June 27, 2002

I. EFSEC Water Resources Policy and Purpose

A. Policy. Water is a finite and valuable natural resource and its prudent management is necessary to promote the health and welfare of all citizens. It shall be EFSEC's policy to promote the use of the state's water resources in a manner that maximizes the net benefits to the natural environment and the state's need for energy facilities. Consistent with this policy, EFSEC encourages Applicants to conserve water during the construction and operation of their proposed energy facilities.

B. Purpose. The purpose of this rule is to set forth how applicant's proposing to use water resources for an energy facility may request and receive authorization for their intended use.

II. Procedures for water use authorization

A. Submission of Water Rights. Applicants proposing to use water for an energy facility must either (1) submit water right(s) or other water use authorizations suitable for use by the proposed energy facility without change, (2) submit water right(s) which are approvable to be changed to meet the point(s) of withdrawal, place of use and purpose of use identified in the application, or (3) submit water rights from both categories sufficient to meet the needs of the proposed facility. Submitted water rights or other authorizations to use water must be specifically identified in the application. In no event will EFSEC authorize the use of a larger quantity of water than authorized by the water rights or water use authorizations submitted by the applicant and identified in the application.

B. Beneficial Use Requirement. Water rights submitted by the applicant and identified in the application shall have been beneficially used and not subject to relinquishment for nonuse.

C. Water Use Authorizations. The term "water use authorization," as used herein, is any right to use water for a proposed power plant which is not based directly upon a water right permit or certificate issued by the State. It is anticipated that such an authorization will usually consist of a contractual right to use water supplied by a municipal corporation or other water purveyor, but it can consist of any lawful right to use water for an energy facility.

D. Water Rights Suitable for Use Without Change. An applicant may identify in the application water right(s) or water use authorizations sufficient to meet the requirements of the proposed energy facility without the necessity of any change to a water right permit or certificate issued by the State. In such event, EFSEC shall determine whether the applicant holds, or will hold, sufficient legal authority to water in a quantity sufficient to meet the requirements of the proposed energy facility.

E. Water Rights Which Require Changes.

(1) If the applicant submits water right(s) that require changes to: (a) the point(s) of withdrawal and/or diversion; (b) the place of use; and/or (c) the purpose and time of use, in order to make the water right(s) suitable for use by the proposed energy facility, then EFSEC shall determine whether to authorize water use incorporating the requested change(s).

(2) EFSEC's determination shall be based on the substantive law applicable to a water rights change application, including but not limited to chapters 43.21A, 90.03, 90.14, 90.44, and 90.54 RCW, together with implementing regulations and judicial decisions, but not including requirements for priority processing of applications.

(3) (a) As part of its application, the applicant must provide EFSEC with a report of examination, identifying the water rights changes to be made, the quantities of water (both in gallons per minute and acre feet per year) which are eligible to be changed, together with any limitations on the use, including time of year; the report of examination shall also include comments by the Department of Fish and Wildlife with respect to the proposed changes. (b) The report of examination shall normally be prepared by Ecology and submitted to EFSEC. Ecology's cost for preparation of the report shall be borne by the applicant. (c) At least six months prior to submitting an application, the applicant shall notify Ecology of its intent to submit an application and the water rights changes which will be necessary. Within five working days, Ecology shall notify the applicant in writing whether it will be able to complete a report of examination for inclusion in the application. If Ecology's response is affirmative, the applicant and Ecology shall work together to develop a schedule and exchange information preparatory to completing the report of examination. Ecology's preparation of a report of examination shall not make Ecology a sponsor of the proposal or preclude Ecology from taking a position with regard to the proposed energy facility. In the event that Ecology notifies the applicant that it will be unable to prepare a report of examination for submittal with the application, then the report of examination may be prepared by a consultant retained by the applicant. If the report of examination is prepared by a consultant, Ecology may provide EFSEC with any comments related to the requested changes that it deems appropriate.

(4) If EFSEC authorizes the applicant's requested water use in the site certification agreement, it may specify the terms and conditions of water use. EFSEC will not change the water rights submitted by the applicant. Rather, those water rights will be identified in the site certification agreement and form the basis for the water use authorized by EFSEC. No other use shall be made of those water rights during the life of the site certification agreement.

F. **Options for Applicant.** Nothing in this section shall prevent an applicant from seeking to obtain new water rights from Ecology, or from applying to change a water right to either Ecology or a Water Conservancy Board, but any such application shall be separate and distinct from an application for site certification.

WETLANDS

The goal is to avoid impacts to wetlands. However, if avoidance is not practicable, then the project should minimize the impacts and compensate for the impacts by providing mitigation.

I. DESIGNATION AND RATING WETLANDS

- A. **Designating wetlands.** Wetlands are those areas, designated in accordance with the *Washington State Wetland Identification and Delineation Manual*, that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances to support, a prevalence of vegetation adapted for life in saturated soil conditions.
- B. **Wetland ratings.** Wetlands shall be rated according to the Department of Ecology wetland rating system found in the Washington State Wetland Rating System documents (Western Washington, *Ecology Publication #93-74*, Eastern Washington, *Ecology Publication 91-58*), as revised.

II. COMPENSATORY MITIGATION REQUIREMENTS

- A. **Compensatory mitigation.** In cases where avoidance is not practicable, impacts should be minimized and compensatory mitigation should be provided.
- B. **Mitigation shall achieve equivalent or greater functions.** Compensatory mitigation for alterations to wetlands shall achieve equivalent or greater wetland functions. Mitigation plans shall be consistent with the Department of Ecology *Guidelines for Development Freshwater Wetlands Mitigation Plans and Proposals*, 1994, as revised.
- C. **Compensation for wetland area.** Wetland mitigation actions shall not result in a net loss of wetland area except when the following criteria are met:
 - 1. The lost wetland area provides minimal functions and the mitigation action(s) results in a net gain in wetland functions as determined by a site-specific function assessment; or
 - 2. The lost wetland area provides minimal functions as determined by a site-specific function assessment and other replacement habitats provide greater benefits to the functioning of the watershed, such as riparian habitat restoration and enhancement.
- D. **Compensation for wetland functions.** Mitigation actions shall address functions affected by the alteration to achieve equal or greater hydrologic and biological functions, and shall provide similar wetland functions as those lost, except when:
 - 1. The lost wetland provides minimal functions as determined by a site-specific function assessment and the proposed mitigation action(s) will provide functions shown to be limiting within a watershed through a formal watershed assessment plan or protocol; or
 - 2. Out-of-kind replacement will best meet formally identified regional goals, such as replacement of historically diminished wetland types.
- E. **Preference of compensatory mitigation actions.** Mitigation actions that require compensation shall be approved according to the following order of preference:
 - 1. Restoring wetlands on upland sites that were formerly wetlands.

2. Creating wetlands on disturbed upland sites such as those with vegetative cover consisting primarily of exotic introduced species.
3. Enhancing significantly degraded wetlands.
4. Preserving high-quality wetlands that are under imminent threat.

F. Wetlands enhancement as mitigation

1. Impacts to wetlands may be mitigated by enhancement of existing significantly degraded wetlands. Applicants proposing to enhance wetlands must identify how enhancement will increase the functions of the degraded wetland and how this increase will adequately mitigate for the loss of wetland area and function at the impact site. An enhancement proposal must also show whether existing wetland functions will be reduced by the enhancement actions.

G. Wetland preservation as mitigation. Impacts to wetlands may be mitigated by preservation of wetland areas, protected in a separate tract or easement, when used in combination with other forms of mitigation such as creation, restoration, or enhancement at the preservation site or at a separate location. Preservation may also be used by itself, if the following conditions are met:

1. Preservation is used as a form of mitigation only after the standard sequencing of mitigation (avoid, minimize, and then compensate) has been applied;
2. Creation, restoration, and enhancement opportunities have also been considered, and preservation is the best mitigation option;
3. Preservation of a high quality system occurs in the same Water Resource Inventory Area (WRIA) or a watershed where the wetland impact occurs;
4. Preservation sites include buffer areas adequate to protect the habitat and its functions from encroachment and degradation;
5. The preservation site is determined to be under imminent threat, specifically, sites with the potential to experience a high rate of undesirable ecological change due to on- or off-site activities. (“Potential” includes permitted, planned, or likely actions that are not adequately protected under existing regulations [for example, logging of forested wetlands]); and
6. The area proposed for preservation is of high quality and critical for the health of the watershed or basin. Some of the following features may be indicative of high quality sites:
 - a. Category I or II wetland rating;
 - b. Rare wetland type (for example, bogs, mature forested wetlands, estuaries);
 - c. Habitat for threatened or endangered species;
 - d. Wetland type that is rare in the area;
 - e. Provides biological and/or hydrological connectivity;

- f. High regional or watershed importance (for example, listed as priority site in watershed plan); and
- g. Large size with high species diversity (plants and/or animals) and/or high abundance.

H. Preference for location of mitigation. Mitigation actions shall be conducted in an appropriate location to adequately replace lost functions as determined above. The following sequence of steps should be undertaken to determine if a location will have a high likelihood of success due to an adequate source of water, ability to control invasive species, appropriate adjacent land uses and development pressures, adequate buffers, connectivity to other habitats and other relevant factors.:

1. An evaluation of on-site opportunities;
2. An evaluation of opportunities within the same sub-basin or Watershed Assessment Unit;
3. An evaluation of opportunities within the same Water Resource Inventory Area (WRIA)
4. Mitigation actions shall not be located outside of the same WRIA unless
 - a. Regional or watershed goals for water quality, flood or conveyance, habitat or other wetland functions have been formally established and strongly justify location of mitigation at another site; or
 - b. Credits from a state certified wetland mitigation bank are used as mitigation and the use of credits is consistent with the terms of the bank's certification.

I. Mitigation timing. Where feasible, mitigation projects shall be completed prior to activities that will disturb wetlands. In all other cases, mitigation shall be completed immediately following disturbance and prior to use or occupancy of the activity or development. Construction of mitigation projects shall be timed to reduce impacts to existing wildlife and flora.

The Council may authorize temporary delay, in completing minor construction and landscaping when environmental conditions could produce a high probability of failure or significant construction difficulties. The delay shall not create or perpetuate hazardous conditions or environmental damage or degradation, and the delay shall not be injurious to the health, safety and general welfare of the public.

III. WETLAND BUFFERS

- A. Standard buffer widths.** The Council shall require appropriate buffer widths in accordance with the recommendations of a qualified professional biologist and the best available science on a case-by-case basis to protect wetland functions and values based on site-specific characteristics.
- B. Wetland buffer width averaging.** The Council may allow modification of a uniform wetland buffer width in accordance with the recommendation of a qualified professional biologist and the best available science on a case-by-case basis by averaging buffer widths. Averaging of buffer widths may only be allowed where a qualified wetlands professional demonstrates that:

1. It will not reduce wetland functions or values;
 2. The wetland contains variations in sensitivity due to existing physical characteristics or the character of the buffer varies in slope, soils, or vegetation, and the wetland would benefit from a wider buffer in places and would not be adversely impacted by a narrower buffer in other places.
 3. The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer.
- C. Measurement of wetland buffers.** All buffers shall be measured from the wetland boundary as surveyed in the field. The width of the wetland buffer shall be determined according to the wetland category and the proposed land use.
- D. Buffer conditions shall be maintained.** Wetland buffers shall be retained in an undisturbed condition.
- E. Buffer uses.** The following uses may be permitted within a wetland buffer, provided they are conducted in a manner so as to minimize impacts to the buffer and adjacent wetland:
1. **Conservation and restoration activities.** Conservation or restoration activities aimed at protecting the soil, water, vegetation, or wildlife;
 2. **Passive recreation.** Passive recreation facilities including:
 - a. Walkways and trails;
 - b. Wildlife viewing structures and fishing access areas, provided that these facilities and their access trails are the minimal necessary to provide access and only if they are consistent with protecting the functions and values of the wetland.
 3. **Stormwater management facilities.** Stormwater management facilities, limited to stormwater dispersion outfalls and bioswales, may be allowed within wetland buffers, provided that
 - a. No other location is feasible; and
 - b. The location of such facilities will not degrade the functions or values of the wetland.

Proposed EFSEC Wetland Standards

Designation, rating and mapping wetlands

A. **Designating wetlands.** Wetlands are those areas, designated in accordance with the *Washington State Wetland Identification and Delineation Manual*, that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation adapted for life in saturated soil conditions. All areas meeting the wetland designation criteria in the *Identification and Delineation Manual*, regardless of any formal identification, are hereby designated critical areas and are subject to the provisions of this Title, except those artificial wetlands intentionally created from non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands include those artificial wetlands intentionally created from non-wetland areas to mitigate the conversion of wetlands. Wetland delineations conducted by a qualified professional are considered valid for five years.

B. **Wetland ratings.** Wetlands shall be rated according to the Department of Ecology wetland rating system found in the Washington State Wetland Rating System documents (Western Washington, *Ecology Publication #93-74*, Eastern Washington, *Ecology Publication #91-58*) or as revised by Ecology. These documents contain the criteria, definitions and methods for determining if the criteria below are met.

1. Wetland rating categories

- a. **Category I.** Category I wetlands are those that 1) represent a rare wetland type; 2) are highly sensitive to disturbance; 3) are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; 4) provide a very high level of functions; or are designated as high value wetlands of local significance.
- b. **Category II.** Category II wetlands are those that 1) are sensitive to disturbance, 2) are difficult to replicate, 3) wetlands with a moderately high level of functions or are designated as wetlands of local significance. These wetlands are difficult, though not impossible, to replace, and provide high levels of some functions. These wetlands occur more commonly than Category I wetlands, but still need a high level of protection.
- c. **Category III.** Category III wetlands are wetlands with a moderate level of functions. These wetlands generally have been altered in some ways, or are smaller, less diverse and/or more isolated in the landscape than Category II wetlands.
- d. **Category IV.** Category IV wetlands have the lowest levels of functions, and are often heavily altered. These are wetlands that we should be able to replace, and in some cases be able to improve. These wetlands do provide some important functions, and should to some degree be protected.

2. **Date of wetland rating.** Wetland rating categories shall be applied as the wetland exists on the date of adoption of the rating system by the local government, as the wetland naturally changes thereafter, or as the wetland changes in accordance with permitted activities including compensatory mitigation actions. Wetland rating categories shall not change due to illegal modifications.

C. **Function Assessment.** When an assessment of wetland functions is determined to be necessary the applicant must provide an assessment conducted by a qualified professional. For certain wetland types where it is available, the Washington State Function Assessment Method is the preferred method. For other wetland types, a description of type and degree of wetland functions shall be provided by a qualified professional along with the rationale for all conclusions.

Wetland buffers

1. **Standard buffer widths.** The standard buffer widths presume the existence of a relatively intact native vegetation community in the buffer zone adequate to protect the wetland functions and values at the time of the proposed activity. If the vegetation is inadequate, then the buffer width shall be increased or the buffer shall be planted to maintain the standard width. Required standard wetland buffers, based on wetland category and land use intensity, are as follows:

- | | | |
|--------------------|----------|--|
| a. Category I | | |
| High intensity | 300 feet | |
| Moderate intensity | 250 feet | |
| Low intensity | 200 feet | |
| b. Category II | | |
| High intensity | 200 feet | |
| Moderate intensity | 150 feet | |
| Low intensity | 100 feet | |
| c. Category III | | |
| High intensity | 100 feet | |
| Moderate intensity | 75 feet | |
| Low intensity | 50 feet | |
| d. Category IV | | |
| High intensity | 50 feet | |
| Moderate intensity | 35 feet | |
| Low intensity | 25 feet | |

Standard buffer widths have been developed by the Department of Ecology as statewide standards for Category I

2. **Measurement of wetland buffers.** All buffers shall be measured from the wetland boundary as surveyed in the field. The width of the wetland buffer shall be determined

according to the wetland category and the proposed land use. The buffer for a wetland created, restored, or enhanced as compensation for approved wetland alterations shall be the same as the buffer required for the category of the created, restored, or enhanced wetland.

3. **Increased wetland buffer widths.** EFSEC may require increased buffer widths in accordance with the recommendations of a qualified professional biologist and the best available science on a case-by-case basis when a larger buffer is necessary to protect wetland functions and values based on site-specific characteristics. This determination shall be based on one or more of the following criteria:
 - a. A larger buffer is needed to protect other critical areas;
 - b. The buffer or adjacent uplands has a slope greater than fifteen percent (15%) or is susceptible to erosion and standard erosion-control measures will not prevent adverse impacts to the wetland; or
 - c. The buffer area has minimal vegetative cover. In lieu of increasing the buffer width where existing buffer vegetation is inadequate to project the wetland functions and values, implementation of a buffer planting plan may substitute. Where a buffer planting plan is proposed, it shall include provisions for monitoring and maintenance to ensure success.
4. **Reduction of wetland buffer widths**
 - a. EFSEC may allow the standard wetland buffer width to be reduced in accordance with an approved critical area report and the best available science on a case-by-case basis when it is determined that a smaller area is adequate to protect the wetland functions and values based on site-specific characteristics.
 - b. This determination shall be supported by documentation showing that a reduced buffer is adequate based on all of the following criteria:
 - i. The critical area report provides a sound rationale for a reduced buffer based on the best available science;
 - ii. The existing buffer area is well-vegetated with native species and has less than ten percent (10%) slopes; and
 - iii. No direct or indirect, short-term or long-term, adverse impacts to wetlands will result from the proposed activity.
 - c. Long-term monitoring of the buffer and wetland may be required for reduced buffers. Subsequent corrective actions may be required if adverse impacts to wetlands are discovered during the monitoring period.

£

- d. In no case shall the standard buffer width be reduced by more than twenty-five percent (25%), or the buffer width be less than fifty (50) feet except for buffers between Category IV wetlands and low or moderate intensity land uses.
5. **Wetland buffer width averaging.** EFSEC may allow modification of the standard wetland buffer width in accordance with an approved critical area report and the best available science on a case-by-case basis by averaging buffer widths. Averaging of buffer widths may only be allowed where a qualified wetlands professional demonstrates that:
 - a. It will not reduce wetland functions or values;
 - b. The wetland contains variations in sensitivity due to existing physical characteristics or the character of the buffer varies in slope, soils, or vegetation, and the wetland would benefit from a wider buffer in places and would not be adversely impacted by a narrower buffer in other places;
 - c. The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer; and
 - d. The buffer width is not reduced to less than fifty percent (50%) of the standard width or fifty (50) feet, whichever is greater, except for buffers between Category IV wetlands and low or moderate intensity land uses.
6. **Buffers for mitigation shall be consistent.** All mitigation sites shall have buffers consistent with the buffer requirements of this section based on the planned or predicted category of the mitigation site.
7. **Buffer conditions shall be maintained.** Wetland buffers shall be retained in an undisturbed condition.
8. **Buffer impacts.** Where impacts to buffers cannot be avoided and where buffer reduction and averaging are not sufficient or appropriate to offset buffer impacts, compensatory mitigation shall be provided.
9. **Buffer uses.** The following uses may be permitted within a wetland buffer, provided they are not prohibited by any other applicable law and they are conducted in a manner so as to minimize impacts to the buffer and adjacent wetland:
 - a. **Conservation and restoration activities.** Conservation or restoration activities aimed at protecting the soil, water, vegetation, or wildlife;
 - b. **Passive recreation.** Passive recreation facilities designed and in accordance with an approved critical area report, including:

- i. Walkways and trails, provided that those pathways are roughly parallel to the perimeter of the wetland and are located in the outer twenty-five percent (25%) of the buffer area;
 - ii. Wildlife viewing structures and fishing access areas, provided that these facilities and their access trails are the minimal necessary to provide access and only if they are consistent with protecting the functions and values of the wetland.
- c. **Stormwater management facilities.** Stormwater management facilities, limited to stormwater dispersion trenches and bioswales, may be allowed within the outer twenty-five percent (25%) of the buffer of Category III or IV wetlands only, provided that:
- i. No other location is feasible, and
 - ii. The location of such facilities will not degrade the functions or values of the wetland.

Stormwater management facilities are not allowed in buffers of Category I or II wetlands.

Signs and fencing of wetlands

1. **Temporary markers.** The outer perimeter of the wetland or buffer and the limits of those areas to be disturbed pursuant to an approved permit or authorization shall be marked in the field in such a way as to ensure that no unauthorized intrusion will occur. This temporary marking shall be maintained throughout construction, and shall not be removed until permanent signs, if required, are in place.
2. **Permanent signs.** Applicants may be required to install permanent signs along the boundary of a wetland or buffer.

Permanent signs shall be made of a metal face and attached to a metal post, or another material of equal durability. Signs must be posted at an interval of one per lot or every fifty (50) feet, whichever is less, and must be maintained by the property owner in perpetuity. The sign shall be worded as follows or with alternative language approved by the director:

“Protected Wetland Area”
Do Not Disturb
Contact [Local Jurisdiction]
Regarding Uses and Restriction”

3. **Fencing**
 - a. EFSEC may condition any permit or authorization issued pursuant to this Chapter to require the applicant to install a permanent fence at the edge of the wetland buffer, when fencing will prevent future impacts to the wetland.

- b. The applicant shall be required to install a permanent fence around the wetland or buffer when domestic grazing animals are present or may be introduced on site.
- c. Fencing installed as part of a proposed activity or as required in this Subsection shall be design so as to not interfere with species migration, including fish runs, and shall be constructed in a manner that minimizes impacts to the wetland and associated habitat.

Compensatory mitigation requirements

A. Mitigation shall achieve equivalent or greater functions. Compensatory mitigation for alterations to wetlands shall be required for all unavoidable impacts that remain after mitigation sequencing has been applied. Compensatory mitigation actions shall achieve equivalent or greater functions. Mitigation plans shall be consistent with the Department of Ecology *Guidelines for Developing Freshwater Wetlands Mitigation Plans and Proposals*, 1994, as revised.

B. Preference of compensatory mitigation actions. Mitigation actions that require compensation shall occur in the following order of preference:

1. Restoring wetlands on upland sites that were formerly wetlands.
2. Creating wetlands on disturbed upland sites such as those with vegetative cover consisting primarily of exotic introduced species.
3. Enhancing significantly degraded wetlands.
4. Preserving high-quality wetlands that are under imminent threat.

C. Compensation for wetland area. Wetland mitigation actions shall not result in a net loss of wetland area except when the following criteria are met:

1. The lost wetland area provides minimal functions and the mitigation action(s) will clearly result in a net gain in wetland functions as determined by a site-specific function assessment; or
2. The lost wetland area provides minimal functions as determined by a site-specific function assessment and other replacement habitats provide greater benefits to the functioning of the sub-basin, such as riparian habitat restoration.

D. Compensation for wetland functions Mitigation actions shall address functions affected by the alteration to achieve equal or greater hydrologic and biological functions, and shall provide similar wetland functions as those lost, except when:

1. The lost wetland provides minimal functions as determined by a site-specific function assessment and the proposed mitigation action(s) will provide functions shown to be limiting within a watershed through a formal watershed assessment plan or protocol; or

2. Out-of-kind replacement will best meet formally identified regional goals, such as replacement of historically diminished wetland types.

E. Preference for Location of mitigation. Mitigation actions shall be conducted in an appropriate location to adequately replace lost functions as determined above. The following sequence of steps should be undertaken to determine if a location will have a high likelihood of success due to an adequate source of water, ability to control invasive species, appropriate adjacent land uses and development pressures, adequate buffers, connectivity to other habitats and other relevant factors.:

1. An evaluation of on-site opportunities;
2. An evaluation of opportunities within the same sub-basin or Watershed Assessment Unit;
3. An evaluation of opportunities within the same Water Resource Inventory Area (WRIA)
4. Mitigation actions shall not be located outside of the same WRIA unless
 - a. Regional or watershed goals for water quality, flood or conveyance, habitat or other wetland functions have been formally established and strongly justify location of mitigation at another site; or
 - b. Credits from a state certified wetland mitigation bank are used as mitigation and the use of credits is consistent with the terms of the bank's certification.

F. Mitigation timing. Where feasible, mitigation projects shall be initiated prior to activities that will disturb wetlands. In all other cases, mitigation shall be initiated concurrently with, or immediately following, disturbance and prior to use or occupancy of the activity or development. Construction of mitigation projects shall be timed to reduce impacts to existing wildlife and flora.

EFSEC may authorize a one-time temporary delay, up to one-hundred-eighty (180) days, in completing minor construction and landscaping when environmental conditions could produce a high probability of failure or significant construction difficulties. The delay shall not create or perpetuate hazardous conditions or environmental damage or degradation, and the delay shall not be injurious to the health, safety and general welfare of the public. The request for the temporary delay must include a written justification that documents the environmental constraints that preclude implementation of the mitigation plan.

G. Mitigation ratios

1. **Acreage replacement ratios.** The following ratios shall apply to creation or restoration that is in-kind, on-site, the same category, timed prior to or concurrent with alteration, and has a high probability of success. These ratios do not apply to remedial actions resulting from unauthorized alterations; greater ratios shall apply in those cases. These ratios do not apply to the use of credits from an approved wetland mitigation bank. When credits from an approved bank are used, replacement ratios should be consistent with the requirements of the banking instrument. The first number specifies the acreage of replacement wetlands and the second specifies the acreage of wetlands altered.

Category I 6-to-1

Category II	3-to-1
Category III	2-to-1
Category IV	1.5-to-1

2. **Increased replacement ratio.** The ratios may be increased under the following circumstances:
 - a. Uncertainty exists as to the probable success of the proposed restoration or creation; or
 - b. A significant period of time will elapse between impact and establishment of wetland functions at the mitigation site; or
 - c. Proposed mitigation will result in a lower category wetland or reduced functions relative to the wetland being impacted; or
 - d. The impact was an unauthorized impact.

3. **Decreased replacement ratio.** The ratios may be decreased under the following circumstances:
 - a. Documentation by a qualified wetlands specialist demonstrates that the proposed mitigation actions have a very high likelihood of success;
 - b. Documentation by a qualified wetlands specialist demonstrates that the proposed mitigation actions will provide functions and values that are significantly greater than the wetland being impacted; or
 - c. The proposed mitigation actions are conducted in advance of the impact and have been shown to be successful.

H. Wetlands enhancement as mitigation

1. Impacts to wetlands may be mitigated by enhancement of existing significantly degraded wetlands. Applicants proposing to enhance wetlands must produce a critical area report that identifies how enhancement will increase the functions of the degraded wetland and how this increase will adequately mitigate for the loss of wetland area and function at the impact site. An enhancement proposal must also show whether existing wetland functions will be reduced by the enhancement actions.

2. At a minimum, enhancement acreage shall be double the acreage required for creation or restoration under Subsection G. The ratios shall be greater than double the required acreage where the enhancement proposal would result in minimal gain in the performance of wetland functions and/or result in the reduction of other wetland functions currently being provided in the wetland.

I. **Wetland preservation as mitigation.** Impacts to wetlands may be mitigated by preservation of wetland areas, protected in a separate tract or easement, when used in combination

Exhibit B(11)—Report to Jim Luce, Chair, Washington Energy Facility Site Evaluation Council
 August 8, 2002 EFSEC Standards Development Group Meeting Materials
 Page 82 of 82

with other forms of mitigation such as creation, restoration, or enhancement at the preservation site or at a separate location. Preservation may also be used by itself, but more restrictions, as outlined below, will apply.

1. **Preservation in combination with other forms of compensation.** Preservation as mitigation is acceptable when done in combination with restoration, creation, or enhancement providing that a minimum of 1-to-1 acreage replacement is provided by restoration or creation and the criteria below are met.
 - a. The impact area is small, and/or impacts are to a Category III or IV wetland;
 - b. Preservation of a high quality system occurs in the same Water Resource Inventory Area (WRIA) or watershed basin as the wetland impact;
 - c. Preservation sites include buffer areas adequate to protect the habitat and its functions from encroachment and degradation; and
 - d. Mitigation ratios for preservation in combination with other forms of mitigation shall range from 10-to-1 to 20-to-1, as determined by the [director], depending on the quality of the wetlands being mitigated and the quality of the wetlands being preserved.

2. **Preservation as the sole means of mitigation for wetland impacts.** Preservation of at-risk, high-quality habitat may be considered as the sole means of mitigation for wetland impacts when all of the following criteria are met:
 - a. Preservation is used as a form of mitigation only after the standard sequencing of mitigation (avoid, minimize, and then compensate) has been applied;
 - b. Creation, restoration, and enhancement opportunities have also been considered, and preservation is the best mitigation option;
 - c. The impact area is small and/or impacts are to a Category III or IV wetland;
 - d. Preservation of a high quality system occurs in the same Water Resource Inventory Area (WRIA) or a watershed where the wetland impact occurs;
 - e. Preservation sites include buffer areas adequate to protect the habitat and its functions from encroachment and degradation;
 - f. The preservation site is determined to be under imminent threat, specifically, sites with the potential to experience a high rate of undesirable ecological change due to on- or off-site activities. (“Potential” includes permitted, planned, or likely actions that are not adequately protected under existing regulations [for example, logging of forested wetlands]); and

- g. The area proposed for preservation is of high quality and critical for the health of the watershed or basin. Some of the following features may be indicative of high quality sites:
 - i. Category I or II wetland rating;
 - ii. Rare wetland type (for example, bogs, mature forested wetlands, estuaries);
 - iii. Habitat for threatened or endangered species;
 - iv. Wetland type that is rare in the area;
 - v. Provides biological and/or hydrological connectivity;
 - vi. High regional or watershed importance (for example, listed as priority site in watershed plan); and
 - vii. Large size with high species diversity (plants and/or animals) and/or high abundance.
3. **Mitigation ratios for preservation as the sole means of mitigation.** Mitigation ratios for preservation as the sole means of mitigation shall be 20-to-1.

J. Wetland mitigation banks

- 1. Credits from a wetland mitigation bank may be approved for use as compensation for unavoidable impacts to wetlands when:
 - a. The bank is approved by the Department of Ecology;
 - b. It is determined that the wetland mitigation bank provides appropriate compensation for the authorized impacts; and
 - c. The proposed use of credits is consistent with the terms and conditions of the bank's certification.
- 2. Replacement ratios for projects using bank credits shall be consistent with replacement ratios specified in the bank's certification.
- 3. Credits from a certified wetland mitigation bank may be used to compensate for impacts located within the service area specified in the bank's certification. In some cases, bank service areas may include portions of more than one Water Resource Inventory Area (WRIA) for specific wetland functions.

Draft Proposed Certificate Expiration (“Build Window”) Rule

463-XX-XXX

1) Introduction

This rule describes the expiration rules for Site Certificates.

2) Site Certificate Expiration Rules

a) If the Certificate Holder does not begin construction within ten years from the effective date of the Site Certification Agreement, the Site Certificate shall expire. “Begin construction” has the meaning set forth in the Site Certification Agreement.

b) During the first five years after the effective date of the Site Certification Agreement, the Certificate Holder shall identify to the Council (at least six months and no more than nine months before beginning construction) any substantial changes, or certify the lack of substantial changes, in environmental, legal and technological conditions relating to the Site Certificate.

c) During the second five years after the effective date of the Site Certification Agreement, the Certificate Holder shall certify to the Council (at least six months and no more than nine months before beginning construction) that the representations of the Application, including without limitation the environmental, legal and technological conditions relating to the Site Certificate are the same. If such conditions are not the same, the Certificate Holder shall identify the changed conditions to the Council and if appropriate, propose changes in the Site Certification Agreement to address the changed conditions.

d) When c, above, applies, construction may begin only upon prior Council authorization. Such authorization may include the Council’s finding that no changes to the Site Certification Agreement are necessary or appropriate, or that the Site Certification Agreement has been amended to the extent necessary to address the changed conditions.

e) The provisions of subsections b, c, and d , above, shall not apply when a Certificate Holder begins construction less than six months after the execution of the Site Certificate Agreement.

WAC 463-XX-010 -- NEED FOR POWER.

(1) Introduction. The purpose of this chapter is to clarify application of the provisions of RCW 80.50.010 relating to the role of need for power in the Council's siting procedures.

(2) Policy. RCW 80.50.010 articulates a state policy that requires EFSEC to recognize the pressing need for increased energy facilities.

(3) Application for site certification – thermal generating facilities. An applicant for site certification for a thermal generating facility is not required to make any showing regarding need for power. In deciding whether to grant an application for site certification, and if so, upon what conditions, the Council shall exclude consideration of whether, when or by whom project power may be needed.

July 26, 2002

Department of Community, Trade and Economic Development
Office of Trade and Economic Development, Energy Policy Division
Proposed “Need and Consistency” Rule for EFSEC

WAC 463-XX-XXX Standards - Consistency with State Energy Policy.

(1) Introduction: This rule establishes a standard for siting natural gas power plants under Council jurisdiction consistent with state energy policy. To issue a site certificate, the Council must find that the proposed energy facility complies with this standard. There are three paths to compliance.

(2) Policy: The siting of major energy facilities like large natural gas fired power plants is a state responsibility that should be conducted consistent with state energy policy. The legislature has found and declared that it is the continuing purpose of state government to foster wise and efficient energy use (RCW 43.21F.010). If large thermal plants are sited in lieu of cost effective efficiency resources, state policy can be thwarted. This standard would ensure that large gas plants will not be sited irregardless of the acquisition of efficiency resources in the region.

(3) Consistency with State Energy Policy: Energy projects must be consistent with state energy policy. The applicant must demonstrate consistency by meeting the following standards, or mitigate if the standards are not met.

Thermal Generating Projects:

(a) The standard is met, if the region has acquired a threshold of at least 60 percent of annual efficiency resources targeted for acquisition by the Northwest Power Planning Council in the Northwest Conservation and Electric Power Plan. By January 1 of each year, the Council (EFSEC) shall adopt a threshold calculation that shall apply to all applications made during the year.

(b) If the threshold calculation indicates that the region has not acquired the necessary efficiency resources to meet the standard, the standard is met if the project is being developed, or at least 70 percent of the output of the project is being purchased for at least ten years, by an entity that has a qualifying integrated resource plan, and the project is of the type and scope recommended by the plan for imminent acquisition.

(c) If neither (a) nor (b) are met, mitigation shall be required in the following manner:

(i) The applicant may invest in or pay towards the acquisition of efficiency resources according to the following formula: Project Estimated Average Annual Generation in kWh x 2.5 percent x \$0.025.

(d) Mitigation for the acquisition of efficiency resources can be applied to mitigation for greenhouse gases.

Example:

?? Project Estimated Average Annual Generation in kWh equals: Capacity in MW (600) x Availability at 80% (.80) x 1000 (change to kilowatts) x 8760 (change to kWh) = 4,204,800,000 kWh.

?? 2.5 percent (0.025) is the percentage of project generation that will be acquired as efficiency.

?? \$0.025/kWh is the cost at which the NWPPC estimates 1500 MW of regional efficiency resources are available.

?? $4,204,800,000 \times .025 \times .025 = \$2,628,000.00$

The standard may require some definitions, for example:

WAC 324-XXX-XXX (1) “Qualifying Integrated Resource Plan” means a resource plan developed through a Utilities Commission or Utility Board approved public process (or equivalent) that considers efficiency resources to meet electricity demand.

WAC 463-XX-XXX Need Standard

(1) Introduction.

This rule establishes a need standard for thermal generating facilities under council jurisdiction.

(2) Policy.

Requiring applicants to meet a need standard is consistent with the council's mission to balance demand for energy facilities with the broad interests of the public, as expressed in RCW 80.50.010.

(3) Standard for thermal generating facilities.

An applicant for site certification for a thermal generating facility must demonstrate that operating, under construction, and permitted supply and demand-side resources in the Pacific Northwest region, as defined in 16 United States Code Chapter 12H (1994 & Supp. I 1995) 839a(14), are insufficient to meet 115% percent of projected demands at critical water over the ten years following the date of application.

(4) Application of the standard.

Except as provided in subsection (a) and (b) below, an applicant must demonstrate to the council that it meets the need standard described in (3).

(a) An applicant who meets the definition of a public agency in RCW 80.52.030 is exempt from the need standard if the applicant is required to obtain citizen review and approval for the thermal generating facility under RCW 80.52.

(b) As an alternative to demonstrating that it meets the need standard in (3), an applicant may demonstrate to the council that the proposed facility will provide a net benefit to consumers. In this case, the application must be consistent with the policies expressed in subsections one through four of RCW 43.21F.015. Specifically, the council will consider:

(i) whether and to what extent the energy and capacity from the proposed facility will benefit consumers,

(ii) whether the applicant has offered commitments to increase the diversity of resources, including but not limited to demonstration that the proposed facility itself is consistent with goals of diversity or preferred resource acquisition strategies, or if the facility is not consistent with these goals, a commitment to procure additional resources such as energy conservation or renewable sources of energy; and

(iii) whether, and to what extent, the proposed generating facility will mitigate environmental impacts consistent with the environmental policies and requirements articulated in state land use and environmental statutes and other relevant statutory criteria in individual cases.

WAC 463-30-250 Stipulations, Settlement and Mediation

(1) **Stipulations.** Stipulations are strongly encouraged by the council. The parties to any adjudicative proceeding before the council may, by stipulation in writing filed with the council or entered into the record, agree upon the facts or any portion thereof involved in the proceeding. This stipulation, if accepted by the council, shall be binding upon the parties thereto and may be used by the council as evidence at the hearing. The council may reject the stipulation or require proof by evidence of the stipulated facts, notwithstanding the stipulation of the parties.

(2) **Settlement.** The council favors the voluntary settlement of disputes between parties to adjudication. Parties may enter into settlement discussions at any time they deem appropriate. In furtherance of a voluntary settlement, the council may invite the parties to confer among themselves or with a designated person. Settlement conferences shall be informal and without prejudice to the rights of the parties. Any resulting settlement or stipulation shall be stated on the record or submitted in writing to the council. All settlements are subject to approval by the council. No statement, admission, or offer of settlement made at a settlement conference shall be admissible in evidence in any formal hearing before the council.

(3) **Alternate dispute resolution.** The council supports parties' efforts to resolve disputes without the need for litigation when doing so is lawful and consistent with the public interest. Alternate dispute resolution (ADR) includes any mechanism to resolve disagreement without full contested hearings or litigation.³

(a) The council will not delegate to parties the power to make final decisions, but will retain the authority to approve any proposed settlement or agreement.

³ As presently drafted, these rules would apply to all EFSEC proceedings, not just those involving the siting of thermal power projects.

(b) Parties to a dispute or disagreement on a matter that is under the council's jurisdiction⁴ may agree to negotiate with any other parties at any time without council oversight. The council may direct parties to meet or consult under WAC 463-***-006(1) and may establish a collaborative process under WAC 463-***-007. The council encourages parties to use and experiment with other forms of ADR subject to the council's approval.

(c) The council may direct parties to a proceeding⁵ to enter negotiations aimed at resolving issues in the proceeding.

(d) In any negotiation, the following apply unless all participants agree otherwise:

(i) The parties, as their first joint act will consider any council's guidelines for negotiations, and shall determine the ground rules governing the negotiation; such ground rules shall address at a minimum allocation of costs associated with the negotiations, qualifications of any mediator or other facilitator, and admissibility or other use of statements made in the course of negotiations, and decision-making authority of persons participating in the negotiations; and provision for termination of negotiations and reporting of results.

(ii) No statement, admission, or offer of settlement shall be admissible in evidence in any formal hearing before the council without the consent of the participants or unless necessary to address the process of the negotiations;

(iii) Parties may agree that information be treated as confidential to the extent provided in a council protective order; and

(iv) Participants should advise each other, any mediator or facilitator, and the council, if the negotiation is sanctioned by the council, if the negotiation is without substantial prospects of resolving the issue or issues under negotiation.

⁴ In this subsection, "parties" may not have to be "parties to a proceeding" and accordingly, this subsection could be used prior to the initiation of adjudicative proceedings.

⁵ This section, which authorizes the council to "order" negotiations, requires that parties be "parties to a proceeding." Until a party has become a party to a particular proceeding, the council may lack jurisdiction over that party sufficient to require the party to participate in negotiations. Thus it may be impossible for the council to mandate ADR for anyone other than the Applicant until the council has taken interventions in a proceeding.

(4) **Collaboratives.**⁶ (a) A collaborative is a negotiation sanctioned by the council in which interested persons work with each other and representatives of council staff to achieve consensus on one or more issues assigned to or identified by the collaborative participants. Membership in the collaborative must reflect the interests reasonably expected to be substantially affected by the result of the collaborative.

(b) When beginning a collaborative, participants must address procedural guidelines for negotiations that the council has set out in a policy statement. Communication between the council and the collaborative participants may be made through the council secretary. Changes in the orientation or membership of the collaborative, the issues it will address, or similar matters, may be made with council knowledge and consent by letter from the secretary or by other means with the agreement of collaborative participants and the council.

K:\99980\40000\ET\ET__O21M2 10/1/02 1:03 PM

⁶ These rules relating to collaboratives could be used in the pre-intervention phase of a proceeding, although there would be a risk that parties later seeking intervention would assert that their interests were not adequately represented by the participants in the collaborative.

WAC 463-XX-XXX

EFSEC shall not adopt any requirement for mitigation of carbon dioxide or other greenhouse gases unless and until the United States or the State of Washington adopts legislation that requires such mitigation.

GARY LOCKE
Governor



STATE OF WASHINGTON
OFFICE OF THE GOVERNOR

P.O. Box 40002 • Olympia, Washington 98504-0002 • (360) 753-6780 • www.governor.wa.gov

July 10, 2002

Mr. Don Brunell, President
Association of Washington Business
PO Box 658
Olympia, WA 98507-0658

Dear Mr. Brunell:

I understand the Association of Washington Business (AWB) has scheduled a meeting of its Climate Change Task Force this week to develop legislation to address carbon dioxide (CO₂) mitigation for energy production and the authority of the Energy Facility Site Evaluation Council (EFSEC) to promulgate rules regarding CO₂ mitigation. I appreciate AWB's continued interest in these matters. As you develop this legislation, I want to inform you of my views on global warming and current EFSEC rulemaking.

First, global warming is a real threat to our environment and economy. We already see evidence of climate change in the Northwest with reduced snowpack, insect infestation threats, greater danger of forest fires, and increased erosion from flooding. With the absence of meaningful federal action to address global warming, it is especially appropriate that state government take necessary steps to address the matter.

Second, I believe the state possesses clear and full authority under existing law to establish standards for CO₂ mitigation.

Third, I directed EFSEC to undertake the current rulemaking because of my concern that it lacked clear standards for mitigation of CO₂ and other air pollutants. Currently, power plant siting applicants often lack certainty regarding their obligations to mitigate, resulting in ad hoc and inconsistent requirements and prolonged approval processes. The goal of the current rulemaking is to remove uncertainty from the EFSEC processes and speed up permitting timelines while still providing appropriate environmental safeguards.

This is consistent with the Competitiveness Council's recommendation that permitting processes be improved without weakening environmental protections provided by state regulation, which the council "strongly believes...are needed and beneficial to every resident and business in Washington."



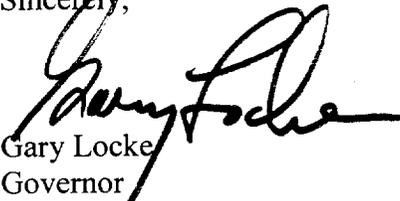
Mr. Don Brunell

July 10, 2002

Page 2

I hope these points will be helpful to AWB as it develops its draft legislation, and that your final product will be consistent with them. Like you, I believe it is important to streamline permitting processes and shorten the timelines for new power facilities, and I look forward to working with you to address these matters. However, I want to make clear that I will not support or sign any legislation that I believe limits or undermines my authority or the authority of any future governor to protect the environment.

Sincerely,



Gary Locke
Governor

cc: Grant Nelson, AWB
Collins Sprague, Avista
Jim Luce, Chair, EFSEC