

AGENDA
EFSEC STANDARDS DEVELOPMENT GROUP

Friday, July 12, 2002

9:00 a.m. – 1:30 p.m.

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

Phone (360) 352-8527

1. Welcome and introductions
2. Review minutes from last meeting
3. Process Discussion – Bud Krogh and Stephany Watson
 - A. Report to EFSEC—Content, organization and schedule for completion
 - B. Review group's objectives and list for discussion as set forth in 4 and 5, below
4. Presentations and Discussion
 - A. Fish & Wildlife / Habitat Proposed Rule – Dave Mudd
 - B. CO2 Proposed Rule – Danielle Dixon
 - C. General Mediation Process Proposed Rule – Liz Thomas and Mike Lufkin
 - D. Noise Proposed Rule – Stephany Watson
5. Status Review
 - A. Socioeconomics – Brian Carpenter and Victoria Lincoln
 - B. Need Test – Liz Thomas, Danielle Dixon, and Mark Anderson*
 - C. Build Window – Liz Thomas
 - D. Air Quality – Mike Lufkin
 - E. Water Quality
 - F. Water Quantity – Chuck Lean*
 - G. Wetlands – Chuck Blumenfeld*
 - H. Effect of Standards – Chuck Lean*
 - I. Other Matters¹ - Stephany Watson
6. Adjourn

¹ In its first meeting, the group identified the following possible additional matters for standards: Cultural resources identified by local land use plans; construction; power supply security; seismic standards; sensitive areas (not covered by existing standards); scenic and aesthetic matters; recreation; soil conditions and de-commissioning plans. Before completing the group's charge, it may be worth reviewing these other matters for possible additional work.

* These people are not able to attend. Tony Usibelli is attending in place of Mark Anderson.

July 12, 2002

EFSEC Standards Development Group

Meeting Minutes

Olympia, Washington

Welcome and Process Discussion

Bud Krogh welcomed meeting participants. There were no corrections to the June 27, 2002, minutes other than those submitted by Rusty Fallis earlier in the week.

Mr. Krogh and Stephany Watson reviewed the group's objectives and schedule for completion of the final report to EFSEC. They said the goal of the process was to gather as much consensus as possible on proposed standards for each of the issues discussed by the group. Jim Luce, EFSEC Chairman, said he hoped alternative proposed standards would be submitted when consensus could not be reached and participants would sign the standards they supported. Mr. Luce reminded participants they were not voting on adopting rules. A public process will follow the report of this group. Additional proposed standards as well as modifications to standards proposed by this group will likely take place.

Ms. Watson will summarize the proposed standards neutrally and describe the purpose and content of the group's discussion process in the narrative portion of the final report. The proposed standards and meeting minutes will also be in the final report. Ms. Watson will distribute a first draft of the report August 1, 2002. The group's next and final meeting will take place August 8, 2002, again at St. John's Episcopal Church. A notice with a meeting time and directions will be sent.

Fish and Wildlife

Dave Mudd presented a draft fish and wildlife standard. He said the mitigation policy of his agency, the Department of Fish and Wildlife, embodied much of what he put in the draft. The draft underwent review from his agency as well as from Bill Frymire in the Attorney General's Office.

Karen McGaffey said she questioned if some of the draft's language provided certainty. She said she felt the substance of the standard was in section (3) and subsequent sections were steps in achieving it. She suggested making section (3) the standard and removing the rest.

Jenene Fenton said her concern was that other sections of the draft explain necessary steps in the process to applicants who are not familiar with the process. She said fish and wildlife had not been a big issue and she did not foresee problems with including the other sections.

Liz Thomas said she was concerned with the level of detail in the draft. She questioned if the provisions in this draft conflicted with those elsewhere in EFSEC and other

regulations. She asked if it would be possible to include some sections as guidance rather than as regulations. Darrel Peeples supported this idea.

Mike Lufkin said he viewed fish and wildlife regulations as inherently gray. He liked Mr. Mudd's draft because it described the process currently utilized and it acknowledged the rules with which EFSEC could make decisions in those gray areas. He felt the draft provided the best certainty in its current form.

Ramona Monroe raised a couple of concerns. First, she pointed out that section (3) included the words "no loss." She said she assumed it was intended to read "no net loss." Second, like Ms. Thomas she was concerned with the level of detail in conjunction with other regulations. She said this raised real issues.

Mr. Fallis said if all sections were intended to be across-the-board requirements, they needed to be in rule form to be legally effective. He asked Mr. Mudd whether he intended the sections to be requirements or guidelines. Mr. Mudd said he initially wanted to be concise. However, he discovered more detail was helpful in creating certainty for applicants not familiar with the process and, therefore, he wrote a detailed draft. He said the decision regarding detail was the group's call.

After further discussion, Ms. Monroe suggested making sections (1), (3), and (4) the primary rule and including the rest as guidelines. Mr. Mudd suggested adding section (10) to the primary rule and volunteered to redraft the proposal by Friday, July 26, 2002. Ms. Monroe, Ms. Fenton, and Carol Jolly offered aid to Mr. Mudd in completing the proposal. Mr. Peeples recommended Chuck Lean work with this group too.

Governor's Letter

Mr. Krogh asked if anyone could provide guidance to the group on the Governor's letter to Mr. Don Brunell, President of the Association of Washington Business (AWB), dated July 10, 2002. Ms. Jolly said the letter put the Governor on record regarding carbon dioxide (CO₂) issues and the AWB's Climate Change Task Force. Mr. Luce said it was very important to keep in mind while reading this letter that the Governor endorses the process this group is engaged in.

Carbon Dioxide Emissions

Nancy Hirsh presented a proposed carbon dioxide emissions standard, accompanied by a statement of intent, on behalf of the Northwest Energy Coalition (NVEC). She said the proposed standard was based largely on Oregon's 1997 CO₂ standard. While Oregon's standard was much more detailed, she said it was outdated in terms of technology and cost of mitigation. In addition to researching Oregon's standard, Ms. Hirsh said the NVEC circulated a draft concept paper (not a rule) to a number of people to get feedback.

Ms. Hirsh said the draft's standard for emissions is 0.458 pounds CO₂ per kilowatt-hour (kWh). To reduce emission to a level compliant with this standard, three methods were described. One method is with combined heat and power systems. A second is cofiring with biomass. A third is with carbon offsets. Applicants could do their own offsets or take a monetary path with a qualified organization.

Ms. Hirsh said the proposed standard set a five-year review for applicants to gauge with EFSEC whether they were on track or not. The standard also called for EFSEC to review the market trends on what it costs to mitigate projects every two years.

Exhibit B(10)—Report to Jim Luce, Chair, Washington Energy Facility Site Evaluation Council

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Mr. Luce said the draft standard appeared to be modeled after the Oregon standard, but the cost per ton was at variance with the Oregon standard. If a seamless Northwest is an objective, he felt this was not accomplishing the objective. Ms. Hirsh said she would not structure the standard exactly like Oregon's standard. She said Oregon's standard is older and technology has changed since the standard was written. Mitigation costs more per ton than what Oregon's standard accounts for. She said these were the reasons for the differences in the two standards.

Mr. Luce commented that this standard would not apply to facilities under 350 MW. He asked Ms. Hirsh to consider whether or not the NWECC's standard would encourage projects under 350 MW to seek EFSEC review voluntarily. Mr. Luce said the best overall package for the environment would be to encourage people to come to EFSEC because it has a certain and expeditious process. He asked the group to consider this when looking at rules.

Mr. Luce also asked Ms. Hirsh if purchases of offsets at a rate of \$2.00 per short ton (found on lines 29 and 30 of the second page) would be the highest in the country for what is required by rule for mitigation. She said it would be the highest, but the cost of projects found by the City of Seattle ranged between \$1 and \$5 and another study found costs of \$1.87 per ton.

Ms. McGaffey said she appreciated the NWECC contacting her and others about the CO2 proposal, but she felt uncomfortable with the conversation. She was concerned the discussion represented only one side. She and Mr. Peeples said they thought the group agreed not to discuss CO2 again.

Mr. Luce said the group did remove CO2 from discussion at an earlier meeting because consensus was not realistic. On the other hand, the group recognized proposals would be coming near the end of the process and the different views would go into the report. He said the Governor's letter also lent additional guidance on CO2. He felt the discussion was helpful and there was no need for additional discussion among the whole group. However, if people wished to get together on their own, this was still encouraged.

Mr. Krogh said the NWECC's CO2 proposal would go into the final report and others would likely submit alternate points of view to be included in the report as well.

Mediation

Ms. Thomas presented a proposed mediation regulation she drafted with the help of Mr. Lufkin. She noted that in section (4), part (b), she should have ended the first sentence with the words "... guidelines for negotiations" and deleted the rest of the sentence as well as the fifth footnote. Mr. Krogh thanked Ms. Thomas and Mr. Lufkin for their good work in bringing this proposal together. It will be included in the final report.

Noise

Ms. Watson explained the process that led to the proposed noise standard she drafted. At the March 27 meeting, Dave Bricklin presented information on noise regulations in Washington and Oregon. He found Washington's regulations to be outdated and in need of change. He suggested there be a draft standard based on Oregon's standards. Since no one drafted a noise standard thereafter, Ms. Watson drafted one based on Oregon's regulations as Mr. Bricklin recommended.

Allen Fiksdal asked if section (6), “Variances,” applied to the noise standard exclusively or to other standards as well. Ms. Watson said this section was taken from the Oregon noise standard, but she did not know if it was repeated elsewhere.

Ms. Fenton said she felt a noise standard based on Oregon’s was not necessary. She suggested adopting the Department of Ecology’s current regulations. Ms. McGaffey said she agreed with Ms. Fenton.

Mr. Lufkin said the group seemed to be backtracking. He explained that Mr. Bricklin researched this issue and found that Oregon’s standards were more up-to-date and included matters left out of Washington’s regulations. Now, he said, he was hearing people say EFSEC should go back to Washington’s regulations.

Ms. McGaffey said she disagreed with Mr. Bricklin’s position. Mr. Peeples said he agreed with Ms. McGaffey and Ms. Fenton; he felt EFSEC should adopt the Department of Ecology’s existing regulations and have its own variance discussion. Ms. Fenton said it would help if Ms. McGaffey provided language on variance. Ms. McGaffey volunteered to draft this language.

Mr. Fallis said he remembered Mr. Bricklin saying that Ecology did not even have a noise staff. Mr. Fallis said he was not taking a position, but it seemed that if the sole justification for adopting their rules was simply the fact that they were Ecology’s rules for a period of time, then the rationale might be rather thin. Scott Merriman, from the Washington State Association of Counties, said he hoped EFSEC would give this issue due diligence and at least investigate whether Ecology’s existing rules were outdated or not.

After some discussion, Ms. Jolly said one rationale for EFSEC to adopt Ecology’s standards at this time was that it would increase EFSEC’s correspondence with other agencies’ regulations. Another rationale may be found in the reasons Ecology’s regulations were originally adopted. Mr. Krogh asked Mr. Fallis if he and others could review the rationale issue at a later time. It was agreed that, for inclusion in the final report, Ms. McGaffey would draft a proposed noise standard based on existing Ecology regulations and add a variance proposal.

Socio-economics

Victoria Lincoln presented a draft proposed standard (not yet in rule form) and Ms. Watson presented a proposed standard attempting to combine Ms. Lincoln’s and Brian Carpenter’s ideas. Ms. Watson also provided a copy of the existing socio-economic impact rule, WAC 463-42-535.

Mr. Peeples said he objected to putting numbers in proposed standards. He said it would be subjective and an appraiser would be needed. He also asked if Ms. Lincoln’s draft was a proposal or a substantive requirement. She said the part under the “Standard” section was a substantive requirement. However, Ms. Jolly said it was a process requirement, not an outcome requirement.

Ms. McGaffey raised a number of concerns regarding Ms. Lincoln’s draft. First, she was not comfortable with the word “any” in the first line of the “Standard” section. Second, she did not feel it was EFSEC’s role to “seek to promote . . . impacts on local communities,” as found in the second and third lines of the same section. Third, she felt requiring an applicant to “submit a detailed study,” as found in the third sentence of the same section, was not needed in this standard. She did not have a problem with it; she just felt it was out of

place. Lastly, she was concerned with how the final sentence in the “Standard” section (making applicants responsible for paying local governments) would play out in practice.

Mr. Krogh asked if there was language that could be used without being quite as directive, yet still make discussion take place. Ms. Thomas said if applicants were required to pay for local governments and get others involved, it would increase the role of EFSEC and deviate from current practice

Regarding environmental justice, Ms. Watson said she believed it needed to be defined in the standard. She said her first attempt called environmental justice disproportionate effects on minority neighborhoods. She asked the group for feedback. Mr. Peebles said its definition needed to be consistent with NEPA. He also suggested not including environmental justice and just letting it evolve with NEPA.

After further discussion, it was agreed that Ms. Watson would attempt to combine the ideas from her draft and Ms. Lincoln’s draft into language to be added to the existing socio-economic impact rule, WAC 463-42-535. Ms. Lincoln’s second sentence from the “Standard” section will be added as well as a sentence about how applicants and local governments will work out mutually acceptable cost reimbursements. Lastly, language on environmental justice will be constructed consistently with NEPA. Ms. Lincoln, Ms. McGaffey, and Ms. Thomas volunteered to help Ms. Watson. Ms. Watson will contact Mr. Carpenter and attempt to incorporate ideas from his draft as well.

Need Test

Ms. Thomas reported that she and Danielle Dixon’s need papers were put into rule form. Tony Usibelli said Mark Anderson’s paper on need already included an example rule, but it probably would need to be modified according to the specific rule guidelines recently distributed. Mr. Krogh and Mr. Luce agreed all three papers would be included in the final report.

Build Window

Ms. Thomas said she pulled language from Chehalis Power’s Site Certification Agreement and included it in this draft. Ms. Watson said she would draft a rule from Ms. Thomas’s present draft.

Air Quality

Mr. Lufkin presented the most recent air quality draft. He said that at the last meeting in the context of other issues the group talked about including SEPA rules themselves versus including SEPA terminology. He said the group decided on SEPA terminology. This is the main question surrounding the air quality draft, he said. He thought the draft was near the way things operate now.

Ms. McGaffey said she thought the draft was better than previous things the group has seen on air quality and an improvement over the status quo, but she felt it did not guarantee certainty. Ms. Jolly said she concurred with Ms. McGaffey. Ms. Jolly felt it was at a good place to begin public review. Mr. Krogh agreed. He asked Mr. Lufkin and Ms. McGaffey to see if there were minor modifications that could be made to the draft before submittal in the final report.

Water Quality

Ms. McGaffey volunteered to draft something on water quality by Friday, July 26, 2002.

Water Quantity

Mr. Lean's draft standard gathered consensus at the last meeting, June 27, 2002, with the exception of the last sentence in section (A), "Policy." Ms. Watson volunteered to modify this sentence, given the input of Ms. Jolly and others.

Wetlands

Ms. Watson and Ms. McGaffey volunteered to contact Chuck Blumenfeld regarding whether or not a proposed standard could be submitted to Ms. Watson by Friday, July 26, 2002. Ms. Monroe said she did not know if the group could reach consensus. She said in her experience other groups have not been able to reach consensus on this issue.

Effect of Standards

Mr. Lean agreed at an earlier meeting to draft a proposed standard on this issue. Ms. Watson said she would call him Monday, July 15, 2002.

Other Matters

Ms. Watson reviewed issues listed as possible items for review at the group's first meeting, December 13, 2002, in the event issues still need to be addressed. These issues include the following: cultural resources identified by local land use plans; construction; power supply; security; seismic standards; sensitive areas (not covered by existing standards); scenic and aesthetic matters; recreation; soil conditions and de-commissioning plans.

Mr. Lufkin and Ms. McGaffey said that just because these issues were not controversial, it did not mean they should not have standards. Mr. Krogh recommended there be a statement explaining why the group did not write standards for these issues in the final report.

Mr. Luce and Mr. Fiksdal felt there was value in drafting language on a seismicity standard. Mr. Fiksdal volunteered to draft a proposal by Friday, July 26, 2002.

EFSEC Standards Development Group Meeting

July 12, 2002

Attendance

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EFSEC DRAFT FISH AND WILDLIFE STANDARDS

Prepared by David Mudd

July 8, 2002

- (1) Habitat for and number or diversity of species of plants, fish, or other wildlife – The applicant shall describe all habitat types, vegetation, wetlands, wildlife, fish, and instream flows which might reasonably be affected by construction, operation, or cessation of construction or operation of the energy facility and any associated facilities. Assessment of these factors shall include density, distribution, and migratory route information. Fish and wildlife surveys shall be conducted during all seasons of the year to determine breeding, summer, winter, and migratory usage of the site. The application shall contain a full description of each measure to be taken by the applicant to protect all habitat types, vegetation, wetlands, wildlife, fish, and instream flows from the effects of project construction, operation, abandonment, termination, or cessation of operations.
- (2) Priority species – Any species on the federal or state lists of endangered or threatened species, and Department of Fish and Wildlife priority species or habitat, shall receive special attention. All possible measures shall be taken to avoid impacts to endangered, threatened, and priority species and habitats.
- (3) The goal is to achieve no loss of habitat functions and values – Applicants shall follow the specifications below to achieve this goal.

The goal of EFSEC is to maintain 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.

Mitigation credits and debits shall be based on a scientifically valid measure of habitat function, value, and area. The ratios of replacement habitat to impacted habitat shall 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, shall be replaced at a minimum of a 3:1 ratio. Wetlands shall be replaced at ratios following the wetland standard established by EFSEC (if established) or Department of Ecology guidance.

- (4) EFSEC uses the following definition of mitigation; avoiding impacts is the highest mitigation priority.

“Mitigation” means actions that shall be required to avoid or compensate for impacts to fish, wildlife, or habitat from the proposed project activity. The type(s) of mitigation

required shall be considered and implemented, where feasible, in the following sequential order of preference:

- A. Avoiding the impact altogether by not taking a certain action or parts of an action.
 - B. Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
 - C. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
 - D. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
 - E. Compensating for the impact by replacing or providing substitute resources or environments.
 - F. Monitoring the impact and taking appropriate corrective measures to achieve the identified goal.
- (5) Complete mitigation ensures no loss of habitat functions or values, or populations.

Complete mitigation is achieved when the mitigation elements ensure no 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.

- (6) On-site in-kind mitigation is the highest priority.

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

- A. On-site, in-kind.
- B. Off-site, in-kind.
- C. On-site, out-of-kind.
- D. 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, may be replaced at a level greater than the impacts of the project on those habitats and species.

- (7) 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).

- (8) 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.

- (9) Habitat mitigation measures shall be based on best available science.

- (10) Mitigation plans shall be required for a project with significant impacts.

Mitigation plans shall include the following:

- ? Baseline data
- ? Estimate of impacts
- ? Mitigation measures
- ? Goals and objectives
- ? Detailed implementation plan
- ? Adequate replacement ratio
- ? Performance standards to measure whether goals are being reached
- ? Maps and drawings of proposal
- ? As-built drawings
- ? Operation and maintenance plans (including who will perform)
- ? Monitoring and evaluation plans (including schedules)
- ? Contingency plans, including corrective actions that will be taken if mitigation developments do not meet goals and objectives
- ? Performance bonds or other guarantees that the proponent will fulfill their mitigation, operation and maintenance, monitoring, and contingency plan obligations

- (11) 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.

- (12) 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.

- (13) 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.

- (14) 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.

- (15) Cumulative impacts of projects shall be considered.

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

- (16) Project proponent responsible for all mitigation costs for the duration of impacts.

Mitigation costs may include but are not limited to:

- A. Studies to determine impacts and mitigation needs.
- B. Alteration of project design.
- C. Planning, design, and construction of mitigation features.
- D. Operation and maintenance of mitigation measures for duration of project (including personnel).
- E. Compliance and effectiveness monitoring of mitigation measures.
- F. 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.

- (17) 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.

- (18) Mitigation site shall be protected for the life of the project.

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.

- (19) 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.

- (20) 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 acceptable to EFSEC, such as the Habitat Evaluation Procedure (HEP) or the Instream Flow Incremental Methodology (IFIM). 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).

Proposed Draft Rule for CO2 Emissions Mitigation Standard
Prepared by NW Energy Coalition July 11, 2002

Intent: The global scientific community has reached consensus that the global average temperature record is influenced by human-caused greenhouse gas (GHG) emissions. This critical issue should be addressed by EFSEC in power plant siting proceedings through GHG emissions standards and mitigation requirements. The attached proposed rule establishes a standard for reducing carbon dioxide (CO₂) emissions. This rule is based on Oregon's CO₂ standard, enacted in 1997, but the rule includes updates to reflect the current state of technology and cost of mitigating CO₂ emissions and provides for lessons learned through implementation of Oregon's standard.

Authority: EFSEC has the legal authority to require mitigation of CO₂ emissions from proposed facilities. This authority stems from state law at RCW 80.50.040, and rules WAC 463.42.225, WAC 463.47.110 and WAC 197.11.060 4(b). EFSEC has required varying levels of CO₂ mitigation at new power plants in Sumas, Chehalis and Satsop. According to EFSEC Order 753 (at 27) regarding mitigation of CO₂ emissions in the Chehalis amendment proceeding: "The lack of a state or federal regulation does not preclude us from requiring mitigation for the impacts of the facility. Although the impacts may be global, the emissions that cause the impacts are identifiable, quantifiable, and local, and the impacts are felt locally. We can act locally. While it would be preferable to have national and state standards, mitigation of greenhouse gas emissions must start somewhere and the Council has the authority to address these impacts now."

Clarifying Notes: In summary, this proposed rule sets standards for net CO₂ emission rates for all new natural gas power plants under Council jurisdiction at 40% beneath CO₂ emissions from state-of-the-art combined cycle combustion turbines (30% below best available technology and 10% accounting for upstream emissions). The rule allows operators of the power plants several ways to meet the standard including combined heat and power, co-firing with biomass, and/or carbon offsets, either through projects they undertake, or through a monetary path administered by a qualified organization with purchases at the rate of \$2.00/short ton, including administrative and contracting fees. This rate is the low end of a range based on the best available current evidence regarding costs, and reflects the minimum amount necessary to secure legitimate and effective mitigation projects. From its most recent request for proposals, the Climate Trust, based in Oregon, was able to contract projects at a cost of \$1.87/ton on average. The City of Seattle found projects costing between \$1 and \$5. However, the carbon mitigation market is still evolving. A biennial review provides the Council the ability to respond to the market and ensure appropriate mitigation. The proposed stakeholder advisory committee provides critical guidance to both the Council and implementers of mitigation projects on the process for selecting mitigation projects and monitoring and verification protocols.

The power plant standard, 0.458 lb CO₂/kWh, is based on the current state of the art performance offered by the Siemens Westinghouse W501G turbine. Calculating a heat rate conversion of 6,530 Btu/kWh (higher heating value) provides an emissions rate of 0.764 lbs

CO₂/kWh. $0.764 \times .6 = 0.458$ lbs [CO₂/kWh](#). The upstream emissions (for example, from pipeline leakage) of 10% are derived from the most recent and definitive study conducted by the National Renewable Energy Laboratory, called “The Life Cycle Assessment of a Natural Gas Combined Cycle Power Generation System” by Spath, P.L.; Mann, M.K. (2000), NICH Report No. TP-570-27715. These emissions are no less real than the emissions from the smokestack of the power plant and should be counted among the emissions for which the plant should mitigate.

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 trued 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.

Draft Mediation Regulation
07/10/2002

WAC 463-30-250 Stipulations Settlement. 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.²

(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.

² 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 jurisdiction³ 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 proceeding⁴ 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

³ 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.

⁴ 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.

(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) **Collaboratives.**⁵ (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.⁶ 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.

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⁵ 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.

⁶ Review WUTC guidelines and consider whether EFSEC should adopt guidelines or whether this portion of the ruled should be deleted.

July 9, 2002
Noise Rule Straw Proposal

463-XX-010 Noise Control

1) Introduction

This rule describes noise control for energy facility construction and operation.

2) Policy

In the interest of public health and welfare, the public policy of the State of Washington is:

- (a) To develop a program for the control of excessive noise sources;
- (b) To provide a coordinated state-wide noise control program to protect the health, safety, and welfare of Washington citizens from the hazards and quality of life deterioration imposed by excessive noise emissions; and
- (c) To facilitate cooperation among state and local government units in establishing and supporting noise control programs consistent with the state program and to encourage local jurisdictions to enforce viable local noise control regulations.

3) Exceptions

- (a) Upon written request from the owner or controller of a noise source, the Council may authorize exceptions as specifically listed in these rules.
- (b) In establishing exceptions, the Council shall consider the health, safety, and welfare of Washington citizens as well as the feasibility and cost of noise abatement, the past, present and future patterns of land use, the relative timing of land use changes and other legal constraints. For those exceptions which it authorizes the Council shall specify the times during which the noise rules can be exceeded and the quantity and quality of the noise generated, and when appropriate shall specify the increments of progress of the noise source toward meeting the noise rules.

4) Definitions

As used in this section:

- (a) "Ambient Noise" means the all-encompassing noise associated with a given environment, being usually a composite of sounds from many sources near and far.
- (b) "Any One Hour" means any period of 60 consecutive minutes during the 24-hour day.
- (c) "Construction" means building or demolition work and shall include land clearing, earthmoving and landscaping, but shall not include the production of construction materials.

- (d) "Emergency Equipment" means noise-emitting devices required to avoid or reduce the severity of accidents. Such equipment includes, but is not limited to, safety valves and other unregulated pressure relief devices.
- (e) "Equivalent Noise Level (Leq)" means the equivalent steady state sound level in A-weighted decibels for a stated period of time, which contains the same acoustic energy as the actual time-varying sound level for the same period of time.
- (f) "Existing Industrial or Commercial Noise Source" means any industrial or commercial noise source for which installation or construction was commenced prior to _____, 200__.
- (g) "Impulse Sound" means either a single pressure peak or a single burst (multiple pressure peaks) for a duration of less than one second as measured on a peak unweighted sound pressure measuring instrument or "C" weighted, slow response instrument and specified by dB and dBC respectively.
- (h) "Industrial or Commercial Noise Source" means the source of noise that generates industrial or commercial noise levels.
- (i) "Industrial or Commercial Noise Levels" means those noises generated by an energy facility or from an energy facility site.
- (j) "New Industrial or Commercial Noise Source" means any Industrial or Commercial Noise Source for which installation or construction was commenced after _____, 200__, on a site not previously occupied by the industrial or commercial noise source in question.
- (k) "Noise Level" means weighted sound pressure level measured by use of a metering characteristic with an "A" frequency weighting network and reported as dBA.
- (l) "Noise Sensitive Property" means real property normally used for sleeping, or normally used as schools, churches, hospitals or public libraries. Property is not Noise Sensitive Property unless it meets the above criteria in more than an incidental manner.
- (m) "Octave Band Sound Pressure Level" means the sound pressure level for the sound being measured within the specified octave band. The reference pressure is 20 micropascals (20 micronewtons per square meter).
- (n) "One-Third Octave Band Sound Pressure Level" means the sound pressure level for the sound being measured within the specified one-third octave band at the preferred frequencies. The reference pressure is 20 micropascals (20 micronewtons per square meter).
- (o) "Person" means the United States government and agencies thereof, any state, individual, public or private corporation, political subdivision, governmental agency, municipality, industry, co-partnership, association, firm, trust, estate, or any other legal entity whatever.
- (p) "Preferred Frequencies" means those mean frequencies in Hertz preferred for acoustical measurements which for this purpose shall consist of the following set of values: 20, 25, 31.5, 40, 50, 63, 80, 100, 125, 160, 200, 250, 315, 400, 500, 630, 800, 1000, 1250, 1600, 2000, 2500, 3150, 4000, 5000, 6300, 8000, 10,000, 12,500.
- (q) "Previously Unused Industrial or Commercial Site" means property, which has not been used by any industrial or commercial noise source during the __ years immediately preceding commencement of construction of a new energy facility on that property.
- (r) "Public Roads" means any street, alley, road, highway, freeway, thoroughfare, or section thereof in this state used by the public or dedicated or appropriated to public use.
- (s) "Quiet Area" means any land or facility designated by the Council as an appropriate area where the qualities of serenity, tranquility, and quiet are of extraordinary significance and

serve an important public need, such as, without being limited to, a wilderness area, national park, state park, game reserve, wildlife breeding area, or amphitheater.

(t) "Sound Pressure Level" (SPL) means 20 times the logarithm to the base 10 of the ratio of the root-mean-square pressure of the sound to the reference pressure. SPL is given in decibels (dB). The reference pressure is 20 micropascals (20 micronewtons per square meter).

(u) "Statistical Noise Level" means the noise level that is equaled or exceeded a stated percentage of the time. An $L_{10} = 65$ dBA implies that in any hour of the day 65 dBA can be equaled or exceeded only 10% of the time, or for 6 minutes.

(v) "Warning Device" means any device, which signals an unsafe or potentially dangerous situation.

[Add: "Energy Facility" or "Energy Facilities" means . . . to the list of common definitions for the entire new chapter.]

5) Noise Control Regulations for Energy Facilities

(a) Existing Noise Sources. No person owning or controlling an existing industrial or commercial noise source shall cause or permit the operation of that noise source if the statistical noise levels generated by that source and measured at an appropriate measurement point, specified in subsection (3)(b) of this rule, exceed the levels specified in **Table 7**⁷, except as otherwise provided in these rules.

(b) New Noise Sources:

(A) New Sources Located on Previously Used Site: No person owning or controlling a new industrial or commercial noise source located on a previously used industrial or commercial site shall cause or permit the operation of that noise source if the statistical noise levels generated by that new source and measured at an appropriate measurement point, specified in subsection (3)(b) of this rule, exceed the levels specified in **Table 8**, except as otherwise provided in these rules.

(B) New Sources Located on Previously Unused Site: (i) No person owning or controlling a new industrial or commercial noise source located on a previously unused industrial or commercial site shall cause or permit the operation of that noise source if the noise levels generated or indirectly caused by that noise source increase the ambient statistical noise levels, L_{10} or L_{50} , by more than 10 dBA in any one hour, or exceed the levels specified in **Table 8**, as measured at an appropriate measurement point, as specified in subsection (3)(b) of this rule. (ii) The ambient statistical noise level of a new industrial or commercial noise source on a previously unused industrial or commercial site shall include all noises generated or indirectly caused by or attributable to that source including all of its related activities. Sources exempted from the requirements of section (1) of this rule, which are identified in subsections __ - __ of this rule, shall not be excluded from this ambient measurement.

(c) Quiet Areas. No person owning or controlling an industrial or commercial noise source located either within the boundaries of a quiet area or outside its boundaries shall cause or permit the operation of that noise source if the statistical noise levels generated by that source exceed the levels specified in **Table 9** as measured within the quiet area and not less than 400 feet (122 meters) from the noise source.

⁷ Referenced tables are not contained in the Oregon rules, on which this proposal is modeled. The tables have been requested, as required, from Oregon's Department of Environmental Quality.

(d) Impulse Sound. Notwithstanding the noise rules in **Tables 7 through 9**, no person owning or controlling an industrial or commercial noise source shall cause or permit the operation of that noise source if an impulsive sound is emitted in air by that source which exceeds the sound pressure levels specified below, as measured at an appropriate measurement point, as specified in subsection __ of this rule:

(A) Blasting. 98 dBC, slow response, between the hours of 7 a.m. and 10 p.m. and 93 dBC, slow response, between the hours of 10 p.m. and 7 a.m.

(B) All Other Impulse Sounds. 100 db, peak response, between the hours of 7 a.m. and 10 p.m. and 80 dB, peak response, between the hours of 10 p.m. and 7 a.m.

(f) Octave Bands and Audible Discrete Tones. When the Council has reasonable cause to believe that the requirements of subsection (1)(a), (b), or (c) of this rule do not adequately protect the health, safety, or welfare of the public as provided for in WAC Chapter 463, the Council may require the noise source to meet the following rules:

(A) Octave Bands. No person owning or controlling an industrial or commercial noise source shall cause or permit the operation of that noise source if such operation generates a median octave band sound pressure level which, as measured at an appropriate measurement point, specified in subsection (3)(b) of this rule, exceeds applicable levels specified in **Table 10**.

(B) One-third Octave Band. No person owning or controlling an industrial or commercial noise source shall cause or permit the operation of that noise source if such operation generates a median one-third octave band sound pressure level which, as measured at an appropriate measurement point, specified in subsection __ of this rule, and in a one-third octave band at a preferred frequency, exceeds the arithmetic average of the median sound pressure levels of the two adjacent one-third octave bands by:

(i) 5 dB for such one-third octave band with a center frequency from 500 Hertz to 10,000 Hertz, inclusive. Provided: Such one-third octave band sound pressure level exceeds the sound pressure level of each adjacent one-third octave band; or

(ii) 8 dB for such one-third octave band with a center frequency from 160 Hertz to 400 Hertz, inclusive. Provided: Such one-third octave band sound pressure level exceeds the sound pressure level of each adjacent one-third octave band; or

(iii) 15 dB for such one-third octave band with a center frequency from 25 Hertz to 125 Hertz, inclusive. Provided: Such one-third octave band sound pressure level exceeds the sound pressure level of each adjacent one-third octave band;

(iv) This rule shall not apply to audible discrete tones having a one-third octave band sound pressure level 10 dB or more below the allowable sound pressure levels specified in **Table 10** for the octave band, which contains such one-third octave band.

(2) Compliance. Upon written notification from the Council, the owner or controller of an industrial or commercial noise source operating in violation of the adopted rules shall submit a compliance schedule acceptable to the Council. The schedule will set forth the dates, terms, and conditions by which the person responsible for the noise source shall comply with the adopted rules.

(3) Measurement:

(a) Sound measurements procedures shall conform to those procedures which are adopted by the Council and set forth in **Sound Measurement Procedures Manual (NPCS-1)**, or to such other procedures as are approved in writing by the Council;

- (b) Unless otherwise specified, the appropriate measurement point shall be that point on the noise sensitive property, described below, which is further from the noise source:
 - (A) 25 feet (7.6 meters) toward the noise source from that point on the noise sensitive building nearest the noise source;
 - (B) That point on the noise sensitive property line nearest the noise source.
- (4) Monitoring and Reporting:
 - (a) Upon written notification from the Council, persons owning or controlling an industrial or commercial noise source shall monitor and record the statistical noise levels and operating times of equipment, facilities, operations, and activities, and shall submit such data to the Council in the form and on the schedule requested by the Council. Procedures for such measurements shall conform to those procedures, which are adopted by the Council and set forth in **Sound Measurement Procedures Manual (NPCS-1)**;
 - (b) Nothing in this rule shall preclude the Council from conducting separate or additional noise tests and measurements. Therefore, when requested by the Council, the owner or operator of an industrial or commercial noise source shall provide the following:
 - (A) Access to the site;
 - (B) Reasonable facilities, where available, including but not limited to, electric power and ladders adequate to perform the testing;
 - (C) Cooperation in the reasonable operation, manipulation, or shutdown of various equipment or operations as needed to ascertain the source of sound and measure its emission.
- (5) Exemptions: Except as otherwise provided in subparagraph _____ of this rule, the rules in section () of this rule shall not apply to:
 - (a) Emergency equipment not operated on a regular or scheduled basis;
 - (b) Warning devices not operating continuously for more than 5 minutes;
 - (c) Sounds created by the tires or motor used to propel any road vehicle complying with the noise standards for road vehicles;
 - (d) Sounds resulting from the operation of any equipment or facility of a surface carrier engaged in interstate commerce by railroad only to the extent that such equipment or facility is regulated by pre-emptive federal regulations as set forth in **Part 201 of Title 40 of the Code of Federal Regulations**, promulgated pursuant to Section 17 of the Noise Control Act of 1972, 86 Stat. 1248, Public Law 92-576; but this exemption does not apply to any standard, control, license, regulation, or restriction necessitated by special local conditions which is approved by the Administrator of the Environmental Protection Agency after consultation with the Secretary of Transportation pursuant to procedures set forth in Section 17(c)(2) of the Act;
 - (e) Sounds created by bells, chimes, or carillons;
 - (f) Sounds not electronically amplified which are created by or generated at sporting, amusement, and entertainment events, except those sounds, which are regulated under other noise standards. An “event” is a noteworthy happening and does not include informal, frequent, or ongoing activities;
 - (g) Sounds that originate on construction sites; [*Is this exemption needed?*]
 - (h) Sounds created in construction or maintenance of capital equipment;
 - (i) Sounds created by lawn care maintenance and snow removal equipment;
 - (j) Sounds created by the operation of road vehicle auxiliary equipment.

- (6) Exceptions: Upon written request from the owner or controller of an industrial or commercial noise source, the Council may authorize exceptions to section __ of this rule, pursuant to Section __, for:
- (a) Unusual and/or infrequent events;
 - (b) Industrial or commercial facilities previously established in areas of new development of noise sensitive property;
 - (c) Those industrial or commercial noise sources whose statistical noise levels at the appropriate measurement point are exceeded by any noise source external to the industrial or commercial noise source in question;
 - (d) Noise sensitive property owned or controlled by the person who controls or owns the noise source;
 - (e) Noise sensitive property located on land zoned exclusively for industrial or commercial use.

6) Variances

- (a) Conditions for Granting. The Council may grant specific variances from the particular requirements of any rule, regulation, or order to such specific persons or class of persons or such specific noise source upon such conditions as it may deem necessary to protect the public health and welfare, if it finds that strict compliance with such rule, regulation, or order is inappropriate because of conditions beyond the control of the persons granted such variance or because of special circumstances which would render strict compliance unreasonable, or impractical due to special physical conditions or cause, or because strict compliance would result in substantial curtailment or closing down of a business, plant, or operation, or because no other alternative facility or method of handling is yet available. Such variances may be limited in time.
 - (b) Procedure for Requesting. Any person requesting a variance shall make his request in writing to the Council for consideration by the Council and shall state in a concise manner the facts to show cause why such variance should be granted.
 - (c) Revocation or Modification. A variance granted may be revoked or modified by the Council after a public hearing held upon not less than 20 days notice. Such notice shall be served upon the holder of the variance by certified mail and all persons who have filed with the Council a written request for such notification.
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DRAFT - SocioEconomic Standard

Statement of Intent

The Council's goal is to avoid, minimize or mitigate adverse project-related socioeconomic impacts on the local community and promote positive project-related socioeconomic impacts for the local community.

The following areas of impact are considered "socioeconomic impacts" for purposes of this section:

- local population,
- local housing supply and vacancy rate,
- property values,
- traffic,
- health and safety facilities and services,
- environmental justice,
- local government facilities and services,
- local workforce and economy.

Standard:

The applicant will work to avoid, minimize or mitigate any negative project-related socioeconomic impacts and seek to promote positive project-related socioeconomic impacts on local communities. In preparing the application, applicants shall consult with local governments to determine the socioeconomic impacts and the potential need for mitigation. The applicant shall submit a detailed study which identifies primary and secondary positive and negative impacts on the socioeconomic environment, with particular attention and analysis of the impact on: population, housing, property values, traffic, "environmental justice", health and safety facilities and services, local government facilities and services, local work force and economy.

Local governments include, but are not limited to: cities, counties, school districts, fire districts, sewer districts, water districts, irrigation districts, and other special purpose districts.

The applicant will be responsible for any financial impact on local governments related to assisting the applicant with the preparation of the application or socioeconomic impact study.

463-XX-XXX

1) Introduction

This rule describes the socioeconomic standards for energy facility siting.

2) Policy

When siting energy facilities, the public policy of the state of Washington is to have positive effects on local populations, housing, property values, traffic, health, safety and education facilities, government services, workers and economies. To the extent that energy facilities have negative effects on these matters, including without limitation disproportionately negative effects on particular neighborhoods, the Applicant shall work with Local Governments and make good faith efforts to avoid, minimize or mitigate such negative effects.

3) Definitions

a) “Local Governments” means cities, counties, school, fire, sewer, water, irrigation and other special purpose districts.

4) Detailed Study Requirement

The Applicant shall submit an independent socioeconomic report of the geographic area surrounding the proposed energy facility. For purposes of this report, the Applicant and affected Local Governments shall agree on the geographic area to be addressed in the study. The report will describe the positive and negative effects of the matters set forth in subsection 2, above, and shall propose means to avoid, minimize or mitigate any identified negative socioeconomic effects.

5) Reimbursement of Local Governments’ Expenses

Upon a Local Government’s application to the Council, the Council may require the Applicant to reimburse Local Governments for expenses related to site certificate and permit applications, including without limitation out-of-pocket, additional staff and overtime expenses.

July 11, 2002

Existing Socioeconomic impact rule

“WAC 463-42-535 Socioeconomic impact. The applicant shall submit a detailed socioeconomic impact study which 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, and local economy.”

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.

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.

EFSEC STANDARDS COMMITTEE: NEED/BUILD WINDOW

TEXT FROM CHEHALIS POWER'S SCA

From Article II.B:

This Site Certification Agreement authorizes construction of either or both units of the CGF to begin within ten (10) years from the date of signing of this Agreement. Construction may begin separately or simultaneously for each unit within that 10-year period. Construction is deemed to begin upon the start of construction of a unit's major components, excluding site preparation, upon a schedule and with the intention of completing construction within twenty-seven months after commencement. If construction of either unit's major components has not commenced within ten (10) years of the signing of this Agreement, rights under this Agreement to construct and operate the combustion turbine unit that has not commenced construction shall cease.

Six months before commencement of construction, Chehalis Power (a) during the first five years after execution of this Site Certification Agreement shall identify to the Council any substantial relevant change or certify the lack of substantial change in relevant environmental conditions, regulatory environment, or economically available technology, and (b) during the second five years shall certify that the representations of the Application, environmental conditions, pertinent technology, and regulatory conditions remain current, or identify any changes and propose appropriate resulting changes in the Site Certification Agreement to deal with changes. Construction may begin only upon prior Council authorization, upon the Council's finding that no changes to the Site Certification Agreement are necessary or appropriate, or upon the effect of any necessary or appropriate changes.

Attachments

The attachments to the SCA require Chehalis Power to submit a number of plans and to conduct certain surveys prior to construction. The text of these provisions is not set forth here, as it is much more detailed and could be expected to vary on a project-by-project basis, depending on which species are of concern, and what elements of project construction are felt to pose the most significant risks.

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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 proposed energy facilities.