

## **Responses to Letter 152 from Michael Kaufman, Bellingham Resident**

*Note: The responses listed below are numbered to correspond to the numbers shown in the right-hand margin of the preceding comment letter.*

### **1. History of EFSEC**

The Energy Facility Site Evaluation Council (EFSEC or Council) was created in 1970 to provide “one stop” licensing for large energy projects. By establishing the Council, the State Legislature centralized the evaluation and oversight of large energy facilities in a single location within state government. The Legislature called for “balancing” demand for new energy facilities with the broad interests of the public. As part of the balancing process, protection of environmental quality, safety of energy facilities, and concern for energy availability are all to be taken into account by the Council.

### **Regulations Governing EFSEC Operation**

Chapter 80.50 of the Revised Code of Washington (RCW) contains the laws that EFSEC must follow in siting and regulating major energy facilities. Title 463 of the Washington Administrative Code (WAC) contains the regulations by which EFSEC functions under state and federal law.

The Energy Facility Site Evaluation Council reviews all applications for site certification according to the requirements set out in its laws (RCW 80.50) and rules (WAC 463). In addition to the above regulatory requirements, adjudicative proceedings are conducted under the requirements of the Administrative Procedure Act, RCW 34.05.

### **Public Notification for Scoping**

Scoping meetings for the Draft EIS were publicized via mailings to the EFSEC minutes and agendas list, interested Sumas agencies list, and Sumas project mailing list on August 10, 1999, including a notice of public meeting and of the scoping comment period (which ended September 24, 1999).

A revised scoping notice was mailed to the same parties on the lists described above on September 9, 1999. The scoping comment period was extended until October 1, 1999. A public scoping meeting was held on September 19, 1999, in Sumas and an agency scoping meeting was held in Bellingham on September 19, 1999.

A news release was sent September 14, 1999, to the Bellingham Herald, Lynden Tribune, Vancouver Sun, and Abbotsford News. The legal advertisement about the public scoping meeting was published in the Lynden Tribune September 15, the Bellingham Herald September 15, the Abbotsford News September 16, the Blaine Northern Light September 16, and the Vancouver Sun September 15.

## **EFSEC Requirements for Public Notices**

The following are the rules that EFSEC must comply with for notifying the public (WAC 197-11-510 Public Notice):

*(1) When these rules require notice to be given under this section, the lead agency must use reasonable methods to inform the public and other agencies that an environmental document is being prepared or is available and that public hearing(s), if any, will be held. The agency may use its existing notice procedures.*

*Examples of reasonable methods to inform the public are:*

*(a) Posting the property, for site-specific proposals;*

*(b) Publishing notice in a newspaper of general circulation in the county, city, or general area where the proposal is located;*

*(c) Notifying public or private groups with known interest in a certain proposal or in the type of proposal being considered;*

*(d) Notifying the news media;*

*(e) Placing notices in appropriate regional, neighborhood, ethnic, or trade journals; and/or*

*(f) Publishing notice in agency newsletters and/or sending notice to agency mailing lists (either general lists or lists for specific proposals or subject areas).*

*(2) Each agency shall specify its method of public notice in its SEPA procedures, WAC 197-11-904 and 197-11-906. If an agency does not specify its method of public notice or does not adopt SEPA procedures, the agency shall use methods (a) and (b) in subsection (1). [above]*

*(3) Documents which are required to be sent to the Department of Ecology under these rules will be published in the SEPA register, which will also constitute a form of public notice. However, publication in the SEPA register shall not, in itself, meet compliance with this section.*

The applicant is not involved in EFSEC's notification processes.

At EFSEC's request, the applicant has provided the addresses of all property owners within 400 feet of the 115 kV transmission line through Whatcom County. These lines are no longer part of the project.

The applicant has no influence on EFSEC's project mailing list.

## **Public Notification for Draft EIS**

EFSEC sent out general public information notices to state and local agencies as well as the general public on their mailing list as outlined under WAC 197-11-150 Public Notice. Notices for the April 3 and 4, 2000 public comment meetings were published in:

Bellingham Herald: March 23, 2000

Lynden Tribune: March 29, 2000

Abbotsford News: March 23, 2000

In addition to the mailings, EFSEC posted the Draft EIS and extensions of the comment period on their Web site.

## **Availability of Documentation**

All documents received by EFSEC during the review of an application are public records and are available for inspection at the Council offices in Olympia.

## **Timeline for Permitting Process**

The time required for the review of a siting decision by EFSEC typically lasts from 12 to 18 months, usually depending on the number and complexity of contested issues to be addressed in the adjudicative process.

## **Other Projects Considered by EFSEC**

The following lists the fate of other energy project that have been considered by EFSEC over the past three decades. The year listed indicates receipt of application

1971 - WNP2 nuclear facility –Approved  
1974 - WNP 3/5 - Approved  
1974 - WNP 1/4 - Approved  
1976 - Northern Tier Crude Oil Pipeline (PL) - Denied  
1977 - Transmountain Crude Oil Pipeline - Withdrawn by applicant  
1979 - Transmountain Crude Oil Pipeline (again) - Withdrawn  
1974 - Skagit Nuclear – Approved  
1980 - Creston Coal Fired Plant - Approved, SCA terminated in 1989  
1981 - Skagit/Hanford Nuclear Plant – Withdrawn  
1993 - Weyerhaeuser Longview Cogeneration – Approved  
1994 - KVA - Creston Lincoln Co Combustion Turbine (CT) – Approved  
1994 - Satsop CT – Approved  
1994 - Chehalis CT - Approved  
1996 - Olympic Pipeline (petroleum products) – Withdrawn  
1999 - Sumas 2 - In review

## 2. **Planning Documents**

In compliance with the site certification application requirements set out in WAC 463-42-362(1), the applicant did submit copies of Whatcom County and City of Sumas Land Use Plans with their application for EFSEC consideration. County and city land use plans submitted to EFSEC with the Application for Site Certification in January 1999 included:

### Whatcom County:

Whatcom County Comprehensive Plan (May 1997)  
Whatcom County Code, Title 20, Zoning Regulations (August 1998)  
Whatcom County Code, Chapter 16.16, Critical Areas (November 1997)  
Whatcom County Shoreline Management Program (1998 edition)  
Whatcom County Park and Open Space Plan (August 1991)

### City of Sumas

City of Sumas Comprehensive Plan (updated October 1998)  
City of Sumas Municipal Code, Title 20, Zoning Regulations  
City of Sumas Municipal Code, Chapter 15.16, Wetlands Protection Ordinance  
City of Sumas Shoreline Management Plan (May 1996)  
City of Sumas Floodplain Management Plan (1988)

Providing all of the other information requested on laws, comprehensive plans, criteria, and comparisons to other comprehensive plans is beyond the scope of this EIS.

### **Compliance with RCW 80.50.090**

According to Chapter 80.50.090 RCW, EFSEC must hold a land use hearing within 60 days of receipt of an Application for Site Certification. The purpose of the hearing is to determine whether the proposed facility is consistent and in compliance with county or regional land use plans or zoning ordinances. This hearing was held on March 2, 1999, following the procedures set out in EFSEC's rules, WAC 463-26 - Procedure - Initial Public Hearing and Public Information Meeting.

According to WAC 463-26-020 - Notification of Local Authorities, EFSEC notified Mr. David Davidson, City Manager, City of Sumas and Mr. John Guenther, Planning and Development Services, Whatcom County, by mail on January 29, 1999, regarding the public hearing to be held on March 2, 1999. The letter indicated that local authorities would be requested to testify regarding consistency and compliance with county or regional land use plans or zoning ordinances. Mr. James Darling, Executive Director, Port of Bellingham, was notified in the same manner on February 18, 1999.

Notice of the March 2, 1999, land use hearing and public information meeting was given by mailing to EFSEC's interested persons list on February 18, 1999, publication of a legal notice and a display advertisement in the Blaine Northern Light, the Bellingham Herald and the Abbotsford News on February 25, 1999, and of a legal notice in the Lynden Tribune on February 24, 1999.

At the March 2 public land use hearing, Mr. Guenther presented to EFSEC a Statement of Land-Use Consistency (dated February 26, 1999) on behalf of Whatcom County's Planning and Development Services for portions of the project sited in unincorporated county, and Mr. Davidson presented a Certificate of Land Use Consistency on behalf of the City of Sumas for those portions of the project to be sited within Sumas City limits. Additional analyses of land-use consistency were presented on behalf of SE2 by their consultant Dames & Moore. (The City of Sumas Certificate of Land Use Consistency is included in Volume 1, Appendix I of the Final EIS.)

Having accepted the evidence submitted at the hearing, EFSEC indicated that they required time to review the exhibits, determine if there were additional issues related to land use consistency that Council may want to explore, and requested additional information from the City of Sumas with respect to the approval of their Shoreline Management Plan by the Department of Ecology. Council Chair Ross continued the land use consistency hearing for determination at a later date.

The land use hearing was reconvened at the July 25 and 27 public meetings to allow the Council to accept additional testimony from the public. Notice was given by mailing of the Notice of Reconvened Land-Use Hearings to EFSEC's interested persons list on July 10, 2000 including Whatcom County, City of Sumas, and Port of Bellingham officials.

Notice of the reconvened land-use hearing was also published in the following newspapers: the Bellingham Herald on July 12 and 19, 2000, the Abbotsford Times, July 11, and 18, 2000, the Vancouver Sun on July 11, 2000, the Lynden Tribune on July 12 and 19, 2000, and the Abbotsford News on July 11 and 18, 2000.

3. The location of the facility is based on size, proximity to available utilities and gas pipeline easement, compliance with City of Sumas zoning and comprehensive plans, access to the site, and availability of the property.

In addition, the Washington Administrative Code states:

*“When a proposal is for a private project on a specific site, the lead agency shall be required to evaluate only the no action alternative plus other reasonable alternatives for achieving the proposal's objective on the same site.” (WAC 197-11-440 (5)d).*

Conservation is part of all electric utilities' energy programs and is, in fact, a component of the state's energy policy (Chapter 43.21F RCW). Emphasis has been placed on conservation programs for nearly two decades. However, conservation alone has not met and cannot meet the growing electrical energy needs of the region. Conservation in combination with new generating resources provides the greatest certainty and flexibility for meeting new electrical energy demand.

4. EFSEC retained Jones & Stokes as the independent environmental consultant for this project. Jones & Stokes has been preparing EISs and other environmental documentation for over three decades.

Use of applicant-provided data is acceptable and common for SEPA assessments. Use of such data complies with SEPA and EFSEC environmental review procedures. (See WAC 197–11–100, information required of applicants). Data was independently reviewed by the EIS authors and impacts, significance, and mitigation measures were prepared independently by the EIS authors.

5. The project area is not a major wildlife viewing area, so this is not included in the EIS. No evidence has been found or presented in the comment that the project would affect funding for such activities. Impacts on human “habitat” are addressed in EIS Sections 3.3 (Noise), 3.6 (Visual Resources), 3.8 (Socioeconomics), and 3.12 (Health and Safety).
6. The 115 kV power lines that run through Whatcom County are no longer part of the project. Only the 230 kV line to Canada is included in the project. A specific power marketing plan has not been developed at this time.
7. This site was previously approved by the City of Sumas and the Northwest Air Pollution Authority as the location of a recycled paper mill, but that project was abandoned.

The project would use much of the existing infrastructure. The selected site already has City of Sumas industrial water supply lines in place. The selected site is accessed from roads built to industrial standards for heavy hauling from the U.S./Canadian border. All but 2,175 feet of the natural gas supply line easement already exists through 4.5 miles of agricultural land from the site to the U.S./Canadian border. Additional water, sewer, and electric transmission lines are located within industrial land, railroad ROW, or City of Sumas ROW for a heavy haul arterial road (Bob Mitchell Avenue). Operation of the facility would not require rail transport except for the rare need to replace a major piece of equipment. The centerline of the track is more than 250 feet to the nearest site property line.

The City of Sumas encourages industrial development at the site and already has in place most of the public infrastructure required for the project (water, sewer, transportation, fire protection). The City has issued a Certificate of Land Use Consistency for the project (see Volume 1, Appendix I).

8. Costs and benefits of the proposal are discussed in General Response A. The City of Sumas, in its 1999 Water System Comprehensive Plan, indicates that in the event of a water shortage, residential customers would have first priority to receive water from the municipal water supply. SE2 understands that the water supply to the plant could be reduced or curtailed in the event of reduced capacity from City wells. The applicant has also agreed that they would mitigate any impairment of water quantity to private wells and water rights within a one-mile radius of the Sumas municipal well field south of the Canadian border that results from the increased pumping required for the S2GF project (Adjudicative Hearing Transcript, testimony by Ms. McGaffey, pages 906-910). These provisions are discussed in Section 3.2.5.2 of the FEIS.

As discussed in the EIS, the City of Sumas intends to put its full water rights to beneficial use. A City of Sumas official indicated that the City determined there is sufficient water available for the next 20 years for other new businesses in addition to SE2. After that, additional water availability is not as certain (Adjudicative Hearing Transcript, testimony by David Davidson, pages 946-957).

9. The results of not building the project (that is, implementing the No Action Alternative) are described in the EIS for each resource in Chapter 3.
10. Applicant-provided data is acceptable and common for SEPA assessments. Use of such data complies with SEPA and EFSEC environmental review procedures. (See WAC 197-11-100, information required of applicants). Data was independently reviewed by the EIS authors and conclusions regarding impacts and mitigation measures were prepared independently by the EIS authors.
11. Thank you for your comments.
12. EFSEC reviewed and accepted the Draft EIS that they released for public comment in March 2000. The EIS has been revised to reflect written comments and comments given at public meetings held on April 3 and 4, 2000.

Comments on the Draft EIS stimulate discussion and thoughts about how to change or condition the proposal to further protect the environment. Lead Agency review (EFSEC in this case) of the comments on the Draft EIS offers the opportunity to improve the completeness, accuracy, and objectivity of the environmental analysis of a proposal. Improvements can then be made in the Final EIS that will provide information to the decision makers. In some cases the proponent may choose to modify the proposal based on comments made during the Draft EIS comment period. In that instance, the modifications would also be described and evaluated in the Final EIS. (SEPA Handbook, page 49)