

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

In re Amendment Request No. 1
To the Chehalis Generation Facility Site
Certification Agreement

Chehalis Power Generation
Limited Partnership

Chehalis Generation Facility

COUNCIL ORDER NO. 741

Order on Scheduling, Identifying dates for Issues
List Development, Discovery, Deposition, and
Hearings

PREHEARING ORDER No. 2

Nature of the Proceeding: This matter involves an application to the Washington State Energy Facility Site Evaluation Council to amend the Chehalis Generation Facility Site Certification Agreement. The Applicant, Chehalis Power Generation Limited Partnership (Chehalis Power) has requested that certain portions of the Site Certification Agreement and attachments be changed from what was approved by the Governor in 1997.

Procedural Setting: The Washington State Energy Facility Site Evaluation Council, (Council or EFSEC), convened a prehearing conference in the adjudication regarding this matter on Monday, March 27, 2000, pursuant to due and proper notice to all interested persons. The Conference was reconvened on Friday, April 21, 2000 before Council members Heather Ballash (Department of Community, Trade & Economic Development) C. Robert Wallis (Utilities and Transportation Commission), Charles Carelli (Department of Ecology), Jenene Ratassepp (Department of Fish & Wildlife), Gayle Rothrock (Department of Natural Resources), Diane Offord (Military Department), Gary Ray (Department of Transportation), Daniel Jemelka (Department of Agriculture), Ellen Haars (Department of Health), Ken Sabine (Lewis County), and Fred Rider (City of Chehalis). Appearances were entered as follows.

Applicant **Chehalis Power**, by Elizabeth Thomas and Tom Backer,
Attorneys, Preston, Gates and Ellis, Seattle

Counsel for the **Melissa Burke-Cain**, Assistant Attorney General, Olympia
Environment

State Agencies **Dept. Of Community, Trade & Economic Development**, by
Marc Defreyn, Assistant Attorney General, Olympia
Dept. Of Ecology, by Mary Sue Wilson, Assistant Attorney
General, Olympia
Dept. Of Fish & Wildlife, by William C. Frymire, Assistant
Attorney General, Olympia

Organizations **Critical Issues Council**, by John Mudge, President, Chehalis

This order addresses and rules on procedural and scheduling matters that were raised at the prehearing conference.

Issue Identification:

The Council has requested that an issues list be developed to clarify what would be adjudicated. Chehalis Power has submitted its list. The remaining parties did not submit their lists of issues prior to or during this Prehearing Conference. Chehalis Power suggested a schedule for identification of an issues list that would fit within the scheduling for the hearing. The intervenors asked for more time. Chehalis power argued that its schedule is needed because they are committed to begin construction of the generation facility in April of 2001. They also argued they must meet EFSEC's deadline for on-site construction as provided in the Prevention of Significant Deterioration (PSD) air permit.

The intervening agencies and Counsel for the Environment (CFE) argued that Chehalis Power could request a delay in the PSD schedule required by EFSEC and that the agencies are at a disadvantage because they have only had a month since the beginning of the adjudicative proceedings for this case.

After consideration by the EFSEC members, the following schedule was determined:

April 19	Chehalis Power files issues list, consisting of all issues submitted by all of the parties, with the company's requests as to which issues should be excluded or possibly the wording amended.
April 26	Intervenors and CFE submit answers to Chehalis Power's issues list
April 28	Chehalis Power replies regarding issues list

EFSEC expects the parties will come prepared to discuss inclusion or exclusion of any issues at the next Prehearing Conference.

Filed Testimony:

The parties discussed whether there should be filed testimony. Chehalis Power did not feel it was necessary to have filed testimony. Intervenor Critical Issues Council (CIC) agreed. The state agencies and the Counsel for the Environment noted that they couldn't say definitively if they would need or desire filed testimony.

EFSEC will address this issue at the next Prehearing Conference, although it is leaning toward having Chehalis Power provide filed direct testimony in order to accommodate the hearing schedule.

Discovery and Witness Identification:

The applicant reported on the two informal discovery workshops it presented to the parties on April 3 and April 6, 2000. At the prehearing conference Chehalis Power filed a report entitled Informal Discovery Status As of April 14, 2000, and a Proposed Discovery Plan with the Council. The parties discussed possible discovery scheduling. The intervening agencies and CFE expressed their concern that Chehalis Power's proposed discovery schedule was overly aggressive and that it would be beneficial to know what the issues were prior to developing a witness list.

After consideration by the EFSEC members, the following schedule was determined:

April 24	Chehalis Power submits witness list
May 1	Chehalis Power submits exhibit list
May 8	Intervenors and CFE submit witness lists. Intervenors designate which Company witnesses they wish to depose
May 10	Intervenors and CFE submit their witness lists and exhibit lists
May 11	Company designates Intervenor and CFE witnesses for deposition
May 11-17	Depositions occur, with the expectation that the Company's witnesses would be deposed first

Hearings Schedule

The parties discussed the dates for the hearings. Chehalis Power agreed to EFSEC's tentative schedule to hold the hearings on May 24 and 25, 2000. The Intervenors and CFE argued that the hearings should not be scheduled before the end of June or early July.

EFSEC ruled that the hearings schedule of May 24 and 25, 2000, would be maintained, with a possible third day, either May 26, 2000, or a day in the following week. EFSEC staff will work with CFE, Chehalis Power, and CIC to schedule a public hearing on the amendment application in conjunction with these scheduled hearings.

Pretreatment Discharge Authority

At the March 27, 2000 prehearing conference the Department of Ecology raised an issue regarding whether EFSEC had authority to issue a Pretreatment Discharge permit. During the April 14th prehearing conference the Department of Ecology agreed to submit a brief on this issue by April 28, 2000. Chehalis Power agreed to respond by May 5, 2000. Ecology will submit a reply brief by May 10, 2000.

Next Scheduled Prehearing Conference:

The next Prehearing Conference will be held at 9 a.m., May 2, 2000 at the Utilities & Transportation Commission Hearing Room, 1300 S. Evergreen Park Drive SW, Olympia, Washington. Items to be discussed include: suggested changes to the Revised Hearing Guidelines, development of an issue list, discussion of the need for prefiled testimony, the need for further discovery, any request for changes to the hearing schedule, and other matters relevant to these proceedings.

Notice to Parties:

Any objection to the provisions of this order must be filed within ten days after the date of service of this order, pursuant to WAC 463-30-270(3). Unless modified, this prehearing conference order shall control further proceedings in this Docket.

DATED at Olympia, Washington and effective this 24th day of April 2000.

WASHINGTON STATE ENERGY FACILITY SITE EVALUATION COUNCIL

By

_____/s/
HEATHER BALLASH
Presiding Officer