

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

**In re Matter of
Application No. 99-1**

**PREHEARING ORDER No. 4
In consideration of Second Revised
Application**

**Second Revised Application
of**

COUNCIL ORDER NO. 763

SUMAS ENERGY 2, INC.

**SUMAS ENERGY 2 GENERATION
FACILITY**

Nature of the Proceeding

This matter involves an application by Sumas Energy 2, Inc. (SE2 or Applicant) to the Washington State Energy Facility Site Evaluation Council (EFSEC or Council) for certification to construct and operate the Sumas Energy 2 Generation Facility (SE2GF), a 660-megawatt combustion turbine natural gas-fired electrical generation facility in Sumas, Washington.

Procedural Setting

Pursuant to due and proper notice, the Council conducted a prehearing conference on October 18, 2001. The hearing was held before, Council Chair James Luce, and Council members Charles Carelli (Department of Ecology), Ellen Haars (Department of Health), Tony Ifie (Department of Natural Resources), Gerald Richmond (City of Sumas), Jenene Fenton (Department of Fish and Wildlife), Linda Crerar (Department of Agriculture), Gary Ray (Department of Transportation), Maillian Uphaus (Military Department), Heather Ballash (Department of Community, Trade, and Economic Development), Dennis Moss (Utilities and Transportation Commission), and Dan McShane (Whatcom County). Also present was Nan Thomas, Senior Administrative Law Judge with the Office of Administrative Hearings, who has been retained by the Council to facilitate and conduct hearings. Appearances of the parties were taken and made part of the record.

Motions to Strike Prefiled Testimony

During the hearing on September 24, 2001, the Applicant informed the Council that it believed that some of the witnesses identified by other parties intended to present evidence beyond the scope of the remaining adjudicative hearings. The Council requested that the Applicant submit, by October 9, 2001, to the Council and to other parties a list of witnesses that the Applicant believed would be presenting testimony outside of the scope of the adjudication, as described in Council Order No. 759, and the Applicant's explanation of why identified testimony exceeded the scope of the adjudication.

The Council received motions from the Applicant to strike portions of the prefiled testimony of: Counsel for the Environment's witnesses, Jim Lazar and Richard Gammon; the Northwest Energy Coalition/Washington Environmental Council's witness, Peter West; and the Province of British Columbia's witnesses, R. Allan Dakin and Yaroslav Shumuk.

On October 11, 2001, the Counsel for the Environment filed a motion to strike a portion of the prefiled testimony of the Applicant's witness, Richard Keefe. Northwest Energy Coalition and Washington Environmental Council also filed a motion on October 16, 2001 to strike portions of Mr. Keefe's testimony.

On October 12, 2001, the Province of British Columbia filed a motion to strike portions of the prefiled testimony of Applicant's witnesses: Sandra Petrovic; Eric Hansen; and Charles Martin.

Parties submitted written motions, written responses to the motions, and the Council heard oral argument regarding all of the motions to strike. After deliberations, the Council verbally announced its decisions on these motions so that parties could effectively continue to prepare for the upcoming hearings. Those decisions and brief rationale are included in the transcripts of the October 18, 2001 prehearing conference. For ease of reference in the future, the Council's decisions are also included in this Order as follows:

The Applicant's motion to strike testimony of Jim Lazar is denied. The change from a dual fuel plant to a solely gas-powered plant could have an impact on the natural gas supplies. This evidence also addressed changes in the power market and implications on this present market's reliance on natural gas. Changes in the power market have previously been allowed as an issue in the remaining hearings.

The Applicant's motion to strike testimony of Jim Lazar regarding the build window (or the term of the permit) is granted. There is nothing in the revisions to

the project concerning the length of time of the “build window” and the Council has already received extensive evidence on this issue in previous hearings. The testimony from Page 18, line 11 through page 20, line 12 is stricken.

The Applicant’s motions to strike testimony of Richard Gammon and Peter West are denied. The Applicant has offered a new greenhouse gas mitigation plan in its revised application. There is a need to understand the problem of global warming to decide if the mitigation offered is adequate and appropriate. Additionally, Dr. Gammon’s testimony is in response to Dr. Montgomery’s opinions that have been offered by the Applicant.

The Applicant’s motion to strike testimony of R. Allan Dakin is denied. The Applicant’s well monitoring program is new with the second revised application. This testimony is a response to the proposed monitoring program and is therefore within the scope of the hearings.

The Applicant’s motion to strike testimony of Yaroslav Shumuk is denied. Flooding continues to be an issue for these reconvened hearings. The second revised application envisions new modeling to determine the scope of the possible problem and the potential mitigation.

The Council for the Environment’s motion to strike testimony of Richard Keefe is denied. One of the implications of the greenhouse gas mitigation proposal is the effect it will have on the financing of the proposed project. In light of other party’s proposal to require “full offset” of greenhouse gas emissions, the Applicant may demonstrate the effect of mitigation on the viability of the project. The witnesses’s more general explanation of financing simply puts the greenhouse discussion in clearer context.

The Province of British Columbia’s motion to strike testimony of Sonya Petrovic is denied. The project proposes a different fuel use and consequently different air emissions; it also proposes a different offset mitigation strategy. The effect of the project on the health of residents will be a factor to be considered in the Council’s determination about this revised project. The Council has not held that present witnesses may not make any reference at all to facts previously established in the record of this case; such a strict holding would lead to confusion and serve no purpose.

The Province of British Columbia’s motion to strike testimony of Eric Hansen is denied. The Council is aware that the testimony in the prior hearings did not completely conform to the first revised application with regard to changes offered after the application was submitted, such as the change in expected emissions of NOx. While this is not a change which occurred subsequent to the issuance of the Council’s final order No. 754, it is helpful for the clarity of the record to have this information in the current record with other emissions changes that have been offered after the final

order. The fact that in preparing the new second revised application, the Applicant performed new modeling to reflect all of the changes to the project since the prior application also contributes to the clarity of the record. Similarly, the change in proposed exhaust stack height from 150 feet to 180 feet shows a change from the first application to the second application; the Council is aware that this was a topic of discussion in the previous hearings, but it is helpful to have current testimony on all of the changes that are reflected in the current modeling. Mr. Hansen's explanation of his conclusion that "SE2's emissions will have a very small effect on ozone episodes" is within the scope of the hearing on the second revised application. Mr. Hansen's explanation of his opinions regarding "health reference levels" in relation to the revised project is within the scope of the hearings given changes to the project. When read in its totality, the testimony addresses the question of the change in emissions under the new application.

The Province of British Columbia's motion to strike testimony of Charles Martin is denied. With regard to testimony regarding the Applicant's "offset" offer, the Council finds that the more recent offer does differ from the prior offset offer. Therefore, testimony on that subject is within the scope of the upcoming adjudication. With regard to testimony regarding the potential temporary shut-down of the plant on poor air quality days, and with regard to potential sale of power to B.C. Hydro, such evidence could have come in during the rebuttal stage and does concern implications of changes to the project. In light of the Council's directions to the Applicant to be as complete as possible in its direct prefiled so as to allow other parties a chance to respond, the Council declines to strike this testimony.

Status of Stipulations and Settlement Agreements

The Applicant reported that its consultant and Whatcom County's consultant continue to meet regarding flooding issues, but that no settlement agreement is proposed at this time.

Adjudicative Hearings

Adjudicative hearings will convene in Bellingham, Washington at the conference room of the Best Western Heritage Inn, 151 East McLeod Road, Bellingham, WA, 98226 on October 29, 2001 beginning at 9:00 a.m. and are projected to continue through November 2, 2001. If another prehearing conference is necessary, it will be held at the commencement of proceedings on October 29, 2001. Hearings will reconvene in Fife, Washington at the conference room of the at Best Western Executive Inn, 5700 Pacific Hwy E, Fife, WA 98424 on November 13, 2001, at 9:00 a.m. and are scheduled to continue through November 16, 2001.

Schedule for Witness Appearance

Pursuant to a request by the Council, Ms. McGaffey, representing the Applicant, and Ms. Barrett, Counsel for the Environment, have coordinated with other parties to present the Council with a draft of a schedule showing the order and anticipated approximate times for witnesses for the adjudicative hearings. The Applicant provided Council and parties with that schedule for the hearings set to commence on October 29, 2001. That schedule is attached to this Order for the convenience of parties who appeared by telephone at the prehearing conference.

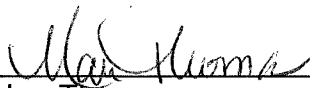
Status of Flood Modeling

The Applicant and Whatcom County are working toward resolution of issues regarding new flood modeling. The Applicant reported that it has been determined that unsteady state modeling could be accomplished for the site. However, the Applicant reported that it does not currently anticipate that the flood modeling can be completed prior to the commencement of adjudicative hearings. The Applicant proposed that after the modeling was complete, it evaluate the results and evaluate the issue with the County. If mitigation was appropriate, the Applicant would provide a detailed proposed mitigation plan to the Council with the anticipation that other interested parties would have an opportunity to present their positions to the Council on the adequacy of mitigation before any Council decision on the issue. David Grant, for Whatcom County, expressed the opinion that it would be preferable for the Council to have information on the flooding issue and any mitigation plan prior to making any final decision on site certification. The Council will defer any decision on this issue pending further report of the progress of the modeling.

Notice to Participants: Unless modified, this prehearing order will control the course of the hearing. 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 and effective at Olympia, Washington, the 29th day of October, 2001.

WASHINGTON STATE ENERGY FACILITY SITE EVALUATION COUNCIL



Nan Thomas
Senior Administrative Law Judge

WEEK ONE – BELLINGHAM

Revised Project/Application

Charles Martin (SE2)

CFE (10); BC (5); Whatcom(20); Hoag (15);
Aford (10) [Energy policy cx in Olympia]

Katy Chaney (SE2)

CFE (30); BC (20); Hoag (10)

Air Quality

Eric Hansen (SE2)

CFE (45); BC (60); Whatcom (15); Abbot. (10)
Sumas (10)

Sanya Petrovic (SE2)

CFE (45); BC (40); Whatcom (20); Abbot (10)
Sumas (10)

Jane Koenig (Whatcom)

CFE (10); SE2 (30) n/a **Tues 10/30**

Robert Caton (BC)

CFE 30; Whatcom (5); SE2 (60)

David Bates (BC)

CFE (15); SE2 (45)

Michael Lepage (BC)

CFE (30); Whatcom (5); SE2 (60)

Water

Burt Clothier (SE2)

CFE (20); What. (15); BC (10); Abbot. (5); Hoag (5)

Allan Dakin (BC)

CFE (15); Whatcom (10); SE2(30)

Stormwater

Margaret Curtis (SE2)

CFE (20); Whatcom (5)

Wetlands

Dave Every (SE2)

CFE (15); Sumas (10); Hoag (5)

Flood Impacts

Doug Sovern (SE2)

CFE (30); Whatcom (30); Abbot. (5); BC (5)

Hsueh-Ju Chang (SE2)

Whatcom (30); CFE (20); BC (10)

Paula Cooper (Whatcom)

CFE (15); SE2 (30) n/a **Wed. 11/1**

Yaroslav Shumuk (BC)

CFE (15); Whatcom (10); SE2 (30)

David Davidson (Sumas)

CFE (5); Whatcom (5); SE2 (15)

Noise

Frank Britten (SE2)

CFE (20); BC (20); Abbot (10); Hoag (5); Whatcom (5)

Jerry Lilly (BC)

CFE 10; Whatcom (5); SE2 (30)

Seismic Issues

Mark Molinari (SE2)

CFE (45); Whatcom (45); BC (15); Abbot. (10);
Sumas (10); Hoag (2)

Allan Porush (SE2)

CFE (60); Whatcom (45); BC (5); Abbot. (5);
Hoag (5) n/a **week two**

David Engebretson (What.)

SE2 (45) n/a **Tues 11/13**

WEEK TWO - OLYMPIA

Greenhouse Gas Mitigation

David Montgomery (SE2) CFE (30); NWECE (45); OTED (30); Whatcom (10); BC (5)

Richard Keefe (SE2) CFE (30); Whatcom (30); NWECE (20); OTED (15); BC (5)

Richard Gammon (CFE) NWECE (10); OTED (10); SE2 (45) Whatcom (10)
prefer p.m.

Nancy Hirsh (NWECE) OTED (10); SE2 (45) CFE 10; Whatcom (5)

KC Golden (NWECE) OTED (15); SE2 (45) CFE 10; Whatcom (5)

Peter West (NWECE) OTED (20); SE2 (45) CFE10; Whatcom (5)

Seismic (cont.)

Don Easterbrook (What.) SE2 (60) n/a week 1 and 11/13

Natural Gas Supply

Jim Lazar (CFE) OTED (20); NWECE (10); SE2 (45); ; Whatcom (10)

Power Market

Jim Litchfield (SE2) CFE (60); OTED (30); NWECE (30); Whatcom (20)
BC (20)

Ronald Eachus (CFE) NWECE (30); OTED (20); SE2 (45) Whatcom (10)
avail. Fri. 11/16 only

Reappearance for energy policy cx

Charles Martin (SE2) NWECE (45); OTED (30); CFE (50); BC (40);
Aford (5); Whatcom (?)

**Sumas Energy 2 Generation Facility
Application No. 99-1
Service List 10/24/01**

EFSEC

Allen Fiksdal, EFSEC Manager
Energy Facility Site Evaluation Council
925 Plum Street SE, Building 4
PO Box 43172
Olympia, WA 98504-3172
Ph: (360) 956-2152
Fax (360) 956-2158
allenf@ep.cted.wa.gov

Serve an electronic version of all documents to both:

allenf@ep.cted.wa.gov
irinam@ep.cted.wa.gov

Robert Fallis, Assistant Attorney General
Highways-Licenses Building
PO Box 40100
Olympia, WA 98504-0100
Ph: (360) 664-0459
Fax (360) 664-0229
rustyfa@atg.wa.gov

Nan Thomas, Law Judge
Office of Administrative Hearings
2420 Bristol Court SW
PO Box 42489
Olympia, WA 98504-2489
Ph.: (360) 664-0521
Fax: (360) 586-6563
nthom@oah.wa.gov

Sumas Energy 2, Inc., Applicant

Charles Martin
National Energy Systems Co. (NESCO)
335 Parkplace, Suite 110
Kirkland, WA 98033
Ph.: (425) 889-1000
Fax: (425) 803-6902

Karen McGaffey
Charles Blumenfeld
Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, WA 98101
Ph: (206) 583-8888
Fax: (206) 583-8500
blumc@perkinscoie.com
mcgak@perkinscoie.com

Please e-mail: MCGAK@perkinscoie.com
and Rolf Johnson JOHNO@perkinscoie.com

Counsel for the Environment

Ms. Mary Barrett
Assistant Attorney General
Office of the Attorney General
Highways-Licenses Building
1125 Washington Street
PO Box 40100
Olympia, WA 98504-0100
Ph: (360) 664-2475
Fax: (360) 664-0174
maryb@atg.wa.gov

Department of Fish & Wildlife

Dr. Jeff Koenings, Director
Department of Fish and Wildlife
PO Box 43135
Olympia, WA 98504-3135

William Frymire, Assistant Attorney General
Department of Fish and Wildlife
Highways-Licenses Building
PO Box 40100
Olympia, WA 98504-0100
Ph: (360) 586-2428
Fax: (360) 586-2756
billf@atg.wa.gov

Department of Ecology

Tom Fitzsimmons, Director
Department of Ecology
300 Desmond Drive
PO Box 47600
Lacey, WA 98504-7600

Joan M. Marchioro, Assistant Attorney General
PO Box 40117
Olympia, WA 98504-0117
Ph.: (360) 586-4615
Fax: (360) 586-6760
joanm2@atg.wa.gov

Department of Community, Trade & Economic Development

Tony Usibelli
Assistant Director Energy Policy Division
PO Box 43173
Olympia, WA 98504-3173
Ph.: (360) 956-2125
Fax: (360) 956-2180
Tonyu@ep.cted.wa.gov

Washington Utilities and Transportation Commission (WUTC)

Dennis Lloyd
WUTC
1300 S Evergreen Park Drive SW
PO Box 47250
Olympia, WA 98504-7250
Ph.: (360) 664-1319
Fax: (360) 586-1150

Sally G. Johnston, Assistant Attorney General
1400 S Evergreen Park Drive SW
PO Box 40128
Olympia, WA 98504-0128
Ph.: (360) 664-1193
Fax: (360) 586-5522
sjohnston@wutc.wa.gov

Whatcom County

Whatcom County Council
Pete Kremen, County Executive
311 Grand Avenue
Bellingham, WA 98225
Ph: (360) 676-6717

David M. Grant
Whatcom County Prosecutor's Office
Courthouse
311 Grand Avenue
Bellingham, WA 98225
Ph.: (360) 676-6784
Fax: (360) 738-2532
dgrant@co.whatcom.wa.us

City of Sumas

David Davidson, City Administrator
City of Sumas
PO Box 9
Sumas, WA 98295
Ph.: (360) 988-2057
Fax: (360) 988-8855
sumas@gte.net

James J. Wright
Smith & Kosanke
105 Fifth St., Suite 201
PO Box 632
Lynden, WA 98264
Ph: (360) 354-4482
Fax: (360) 354-4483
smithkos@gte.net

City of Abbotsford & Abbotsford Chamber of Commerce

Patricia Ross
c/o City of Abbotsford
32315 South Fraser Way
Abbotsford, B.C.
Canada V2T 1W7

Helen Secco
Executive Director
Abbotsford Chamber of Commerce
2462 McCallum Road
Abbotsford BC Canada V2S 3P9
acoehelen@telus.net
(604) 859-9651 ext. 305
www.abbotsfordchamber.com

Peter Andzans
Manager of Environment and Community Planning
City of Abbotsford
32315 South Fraser Way
Abbotsford, B.C.
Canada V2T 1W7
Ph.: (604) 864-5529
Fax.: (604) 853-4981
pandzans@city.abbotsford.bc.ca

N.W. Energy Coalition & Washington Environmental Council

Danielle Dixon
N. W. Energy Coalition/Washington Environ. Council
219 1st Ave. South, Ste. 100
Seattle, WA 98104
Ph.: (206) 621-0094
Fax.: (206) 621-0097
danielle@nwenergy.org

Roger M. Leed
Roger M. Leed, P.S.
2003 Western Ave., Ste. 600
Seattle, WA 98121-2161
Ph.: (206) 443-9911
Fax: (206) 448-0573
rmllead@pipeline.com

Bonneville Power Administration

Anthony G. White
Bonneville Power Administration - PGPL-5
905 NE 11th Avenue
Portland, OR 97232
Ph.: (503) 230-4525
Fax: (503) 230-3939
agwhite@bpa.gov

Keshmira R. McVey - LC-7
Bonneville Power Administration
905 NE 11th Avenue
Portland, OR 97232
Ph.: (503) 230-4201
Fax: (503) 230-7405
krmcvey@bpa.gov

Constance Hoag

Constance Hoag
2633 Halverstick Rd
Lynden, WA 98264
Ph.: (360) 988-0166
Fax: (360) 988-0166
hoagacres@juno.com

- **PLEASE SERVE BY E-MAIL AND SURFACE MAIL**
- **USE FAX IF E-MAIL DOWN**

Province of British Columbia

Paul Jarman
Ministry of Attorney General
4th floor 1001 Douglas St
Victoria, B.C.
Canada V8W 9J7
Ph.: (250) 356-8899
Fax: (250) 356-0064
paul.jarman@ag.gov.bc.ca

Claudia Newman/David A. Bricklin
Bricklin & Gendler, LLP
Suite 1015 Fourth & Pike Building
1424 Fourth Avenue
Seattle, WA 98101
Ph.: (206) 621-8868
Fax: (206) 621-0512
bricklin@winstarmail.com
cnewman@winstarmail.com

Please serve single hard copy of papers to attention of D. Bricklin only; e-mail to both Bricklin and Newman.

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

In the Matter of: Application No. 99-1

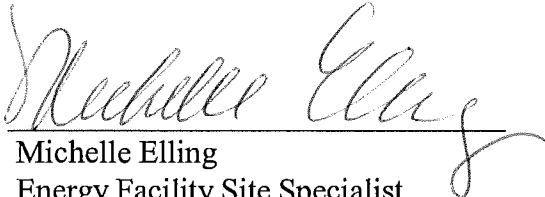
Second Revised Application
of
Sumas Energy 2, Inc.

Sumas Energy 2 Generation Facility

CERTIFICATE OF SERVICE

I, Michelle Elling, hereby certify that on October 30, 2001, I served, by U.S. Mail and/or Campus Mail, the following documents upon each person designated on the official service list in this proceeding.

1. Council Order No. 763, Prehearing Order No. 4 in consideration of Second Revised Application.



Michelle Elling
Energy Facility Site Specialist,
Energy Facility Site Evaluation Council