

BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of:

AMENDMENT REQUEST NO. 1 TO THE
CHEHALIS GENERATION FACILITY
SITE CERTIFICATION AGREEMENT

CHEHALIS POWER GENERATING
LIMITED PARTNERSHIP

COUNCIL ORDER NO. 752

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND INITIAL ORDER
GRANTING AMENDMENTS, ON
CONDITION

INTRODUCTION

NATURE OF THE PROCEEDING: On September 12, 1994, Chehalis Power Limited Partnership (Chehalis Power or Applicant) filed an application with the Washington State Energy Facility Site Evaluation Council (EFSEC or the Council) to site a 458 megawatt combined-cycle combustion turbine plant near Chehalis, Washington. The Council reviewed the application, held adjudicative hearings on the proposal, and issued Order No. 698 recommending approval of the proposal, on condition, to the Governor. Order No. 698 recommended that the Governor approve the project and sign the proposed Site Certification Agreement (SCA).

On November 6, 1996, Governor Lowry remanded the Order and SCA to the Council for additional deliberations on the issues of the potential effects of the project on water quality and quantity. On December 9, 1996, the Council deliberated and voted to issue Order No. 705 recommending the Governor approve the proposal and SCA as modified by the Applicant. Governor Gary Locke approved and executed the SCA on March 4, 1997.

Chehalis Power now seeks amendments to the SCA granted on March 4, 1997, for the siting, construction, operation and maintenance of the Chehalis Generation Facility (CGF). On January 10, 2000, Chehalis Power filed its amendment request with the Council. EFSEC conducted several prehearing conferences and public hearings on this matter, including a public information meeting pursuant to WAC 463-36-030, an adjudicative hearing pursuant to

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RCW 80.50.090(3), and a public hearing on the draft Prevention of Significant Deterioration (PSD) air permit.

PREHEARING ORDERS: In Prehearing Order No. 1 (Council Order No. 740; April 3, 2000), the Council addressed certain procedural issues, including intervention, hearing guidelines, issue identification, schedule, and scope of the adjudication. The Council ruled that the adjudicative hearing would be “limited to the proposed amendments to the Site Certification Agreement, including direct and indirect impacts of the amendments, and any other matters that the Council may be legally required to consider.” The Council entered Prehearing Conference Order No. 2 (Council Order No. 741; April 24, 2000) addressing certain procedural matters, including discovery and the hearing schedule. The Council entered Prehearing Conference Order No. 3 (Council Order No. 742; May 9, 2000) granting in part Chehalis Power’s motion to exclude certain issues from consideration during the adjudicative hearing and establishing the issues to be heard during the adjudication. The Council entered Prehearing Conference Order No. 4 (Council Order No. 745; May 26, 2000), accepting Stipulation No. 1 Between Chehalis Power and Critical Issues Council¹ and the settlement agreement Between WDFW and Chehalis Power Regarding Natural Resources Impacts². These stipulations were accepted subject to the condition that the Council is not foreclosed from imposing more stringent requirements. The Council also determined that it would not assert jurisdiction over the pretreatment discharge permit for the CGF.

ADJUDICATIVE HEARING: EFSEC conducted an adjudicative hearing from May 24 through 26 and on May 30, 2000 in Olympia, Washington. At the outset of this hearing, the parties agreed that the issues contained in Consolidated Issues List No. 1 comprised all the issues to be resolved during the hearing. Early in the proceedings, the Council accepted a second settlement agreement among Ecology, WDFW, and Chehalis Power³, again subject to the condition that the Council is not foreclosed from imposing more stringent standards. The Council also denied the Department of Community, Trade and Economic Development’s dispositive motion to dismiss Chehalis Power’s proposed amendment to delete Attachment 7 from the SCA. On May 26, 2000, Chehalis Power and the Critical Issues Council submitted Stipulation No. 2 to the Council⁴. The Council accepts the stipulation in this order. The parties presented testimony and exhibits through 17 witnesses. In addition, a number of individuals submitted written comments or testified at the public hearing held in Chehalis, Washington on May 24, 2000. The public hearing was held for the purpose of accepting public comments on the requested amendments. A public hearing on the proposed amended draft PSD air permit was held on June 19, 2000, at the Council’s meeting room in Olympia, Washington.

SUMMARY OF ORDER: In this Initial Order, the Council makes certain findings of fact and conclusions of law. Based on those findings and conclusions, the Council proposes in this Initial Order that a draft Amended SCA containing certain provisions and conditions be

¹ Exhibit 1.

² Exhibit 2.

³ Exhibit 3.

⁴ Exhibit 5.

issued together with a report and recommendation to the Governor that the Governor execute the Amended SCA. One application-related matter remains for resolution and is not addressed in this order or this accompanying draft Amended SCA. That matter is the status of the Applicant's PSD air permit in light of the changes proposed for the project. The Council has been awaiting a decision from the Federal Environmental Protection Agency (EPA) regarding this process. The action proposed in this order is not effective until issues regarding the PSD air permit are resolved and a final order of the Energy Facility Site Evaluation Council is entered. Please see the notice to parties about administrative review and transmittal of the final order to the Governor at the end of this order.

APPEARANCES: Counsel for the Environment (CFE) is a statutory party to this proceeding (RCW 80.50.080). State agencies having members on the Council are deemed to be parties under the Council's rules (WAC 463-30-050). State agencies electing to participate in this proceeding included the Washington State Department of Community, Trade & Economic Development (CTED), the Washington Department of Ecology (Ecology), and the Washington Department of Fish and Wildlife (WDFW). The intervenors included the Critical Issues Council (CIC). The CIC is comprised of certain citizens and property owners residing in the vicinity of the CGF. The parties were represented as follows.

Chehalis Power: Elizabeth Thomas, Thomas Eli Backer and Myriam Jaidi, Preston Gates & Ellis LLP, 701 Fifth Avenue, Suite 5000, Seattle, WA 98104-7078.

Counsel for the Environment: Melissa Burke-Cain, Assistant Attorney General, P. O. Box 40109, Olympia, WA 98504-0109.

Department of Community, Trade & Economic Development: Marc Defreyn, Assistant Attorney General, P. O. Box 40109, Olympia, WA 98504-0109.

Washington Department of Ecology: Mary Sue Wilson, Assistant Attorney General, P. O. Box 40117, Olympia, WA 98504-0117.

Washington Department of Fish and Wildlife: William C. Frymire, Assistant Attorney General, P. O. Box 40100, Olympia, WA 98504-0100.

Critical Issues Council: John T. Mudge, President, 190 Sanderson Road, Chehalis, WA 98532.

THE COUNCIL: Council representatives participating in this proceeding are the following: Vice Chair C. Robert Wallis, Utilities and Transportation Commission; Dan Jemelka, Department of Agriculture; Heather Ballash, Department of Community, Trade and Economic Development; Charles J. Carelli, Department of Ecology; Jenene (Ratassepp) Fenton, Department of Fish and Wildlife; Ellen Haars, Department of Health; Gayle Rothrock, Department of Natural Resources; Gary Ray, Department of Transportation; Ken Sabin, Lewis County; and Fred Rider, the City of Chehalis. Heather Ballash was appointed by the Council as the presiding officer and conducted the hearings. Chair Deborah Ross recused herself from participating in the Council's

consideration of these amendments because she participated in drafting the stipulation⁵ that was originally negotiated between the Washington State Energy Office and the Applicant.

MEMORANDUM

The Council sets out its findings and conclusions upon contested issues and the Council's reasons and bases in the memorandum portion of this document.

I. INTRODUCTION

A. The Process

The Council is obliged to follow relevant Washington law in determining whether to recommend a proposed amendment to an existing SCA to the Governor. The Council has conducted its review of the proposed amendments to the existing SCA as an adjudicative proceeding pursuant to Chapter 34.05 RCW.

The Council is also obligated to comply with Chapter 43.21C RCW, the State Environmental Policy Act (SEPA). It has complied with SEPA by issuing an addendum on October 13, 2000, finding that the probable significant environmental impacts of the requested amendments were described in the Environmental Impact Statement (EIS) prepared by the Bonneville Power Administration (BPA) for the Resource Contingency Program (of which the CGF was a part) and other related National Environmental Policy Act (NEPA) documents adopted by EFSEC in 1996.

In conjunction with the adjudicative proceeding, the Council considered an amendment to the CGF's Prevention of Significant Deterioration (PSD) air permit. A draft amended PSD air permit was issued for comment on May 18, 2000. A public hearing on the amended permit was held on June 19, 2000. EFSEC has been awaiting a determination from the federal Environmental Protection Agency (EPA) as to whether Chehalis Power has commenced construction according to EPA guidelines and whether additional analyses addressing PSD air requirements regarding Best Available Control Technology (BACT) will be required.

Based on a May 18, 2000 letter from the EPA, the Council determined that it would not assert jurisdiction over the federal wastewater pretreatment discharge permit under the National Pollutant Discharge Elimination System (NPDES) program for the CGF.

B. The Applicant and the Proposed Amendments

The application to amend the SCA was filed by Chehalis Power Limited Partnership (Chehalis Power), a Delaware Limited Partnership qualified to do business in the state of Washington, on January 10, 2000. Chehalis Power will own the Chehalis Generation

⁵ The removal of the stipulation (Attachment 7) from the SCA is proposed as an amendment in this proceeding.

Facility (CGF). All of the partnership interests of Chehalis Power will be owned by CRSS Capital, Inc., a wholly owned subsidiary of Tractebel Power Inc.

The amendments which Chehalis Power is seeking to the SCA are as follows:

1. An increase in generation capacity from 460 to 520 megawatts (MW);
2. The use of air cooling instead of water cooling technology;
3. Revisions to the PSD air permit to allow an increase in short-term, but not annual, nitrogen oxides (NO_x) emission limits to accommodate the increased capacity;
4. The elimination of Attachment 7 to the SCA, which requires Chehalis Power to demonstrate need and consistency prior to construction;
5. An amendment to Article IV.C. as follows: “The steam turbine ~~will~~ may be provided with a steam extraction system to supply steam for a future steam host.”; and
6. An increase in the size of each of the two back up fuel oil tanks from 1,600,000 to 1,700,000 gallons, for a total increase of 200,000 gallons.

C. Public Appearances

The Council scheduled hearing and meeting sessions in Lewis County to hear comments from and provide information to members of the public regarding the proposed amendments to the SCA. These included the initial public information meeting on March 16, 2000, and a session in adjudicative hearing specifically set aside for comment from the members of the public on any matter related to the proposed amendments on May 24, 2000.

At the May 24, 2000, public hearing session in Chehalis, Washington, the Council heard comments from the following: Eugene Dobler, Sr.; Stanford Long; John Paul Williams; Rose Spogan; David Spogan; Patrick Underhill; Sheldon Krieg; Carol Bezy; John Cleary; Don McLeod, Jr.; Bill Lotto, Economic Development Council; Charles Laseurain, International Union of Operating Engineers; Arnold Davis, Lewis County Chamber of Commerce; Glynn Gibson; Gregory Elder; Don McLeod, Sr.; and Karl Carmenzind.

A public hearing was also held in Olympia, Washington, on the proposed amendments to the PSD air permit on June 19, 2000.

The Council received and considered written comments from members of the public on the proposed amendments, including the amendments to the PSD air permit.

The Council has carefully considered both the specific comments of the witnesses and the written comments as indications of matters significant to the public. The Council expresses its appreciation for these comments.

II. CONTESTED ISSUES AND COUNCIL DISCUSSION

A. Standard for Review

A request for amending an existing SCA is addressed in the Council's rules. WAC 463-36-040 requires the Council to consider whether the proposal is consistent with:

- (1) The intention of the original SCA;
- (2) Applicable laws and rules; and
- (3) The public health, safety, and welfare.

In reviewing whether a proposed amendment is consistent with the public health, safety and welfare, the Council is required to consider the short-term and long-term environmental impacts of the proposal. WAC 463-36-050.

B. Summary Arguments

The Departments of Ecology and Fish and Wildlife settled with the Applicant before the hearing. However, CTED, CFE and the CIC remain participants in the proceeding, contesting several aspects of the proposed amendments and the settlement agreements.

The Applicant contends that the proposed amendments to the SCA should be approved because they are consistent with the original SCA and the public will benefit from the increased output of the facility, reductions in water use and wastewater discharge, and limitations on air emissions to existing permit requirements. Chehalis Power argues that CFE and CIC should be barred from objecting to the shift from water to air cooling because they supported the air-cooled alternative in the previous proceeding. In addition, Chehalis Power contends that Attachment 7 should be eliminated from the SCA so that the CGF can operate as a "merchant plant" because the utility market has become more competitive and uncertain, the need and consistency tests cannot be accomplished in the current market, there is a more pressing need for power, and Chehalis Power should not be treated differently than other energy facilities.

Counsel for the Environment argues that the proposed amendments are inconsistent with the original SCA's intention because they disrupt the original SCA's balance between the CGF's environmental burdens and its economic benefits. CFE argues that the proposed amendments should be rejected unless additional mitigation is imposed to safeguard water quality and limited water resources during critical low flows in the Centralia Reach, and to address adverse air quality impacts resulting from nitrogen oxides (NO_x) and carbon dioxide (CO₂) emissions. CFE disagrees with Chehalis Power's assertion that she should be barred from objecting to the shift from water to air cooling because the public has a concern regarding the water and air quality impacts of this proposal.

CTED opposes deletion of Attachment 7 from the original SCA because the requirements to establish need for power and consistency with integrated resource planning conform with current Washington State laws and energy policy.

The Critical Issues Council proposes additional mitigation for water use, wastewater discharge, noise, and air emissions. CIC clarified that it does not object to this air cooling proposal, but urges improvements in required mitigation measures. The CIC supports retention of Attachment 7 absent proof that deletion is in the public interest and is consistent with the intent of the original SCA.

In the memorandum portion of this Initial Order, the Council will individually address the issues raised by the Applicant, Counsel for the Environment, the Department of Community, Trade and Economic Development, and the Critical Issues Council.

C. “Need and Consistency” Requirements

In the previous proceeding on the initial application for the SCA, Chehalis Power entered into a settlement agreement with the Washington State Energy Office (predecessor to the CTED Energy Division). The Council approved the settlement agreement and incorporated it into the SCA as Attachment 7, which provides in pertinent part as follows:

1. **Need.** Prior to beginning each generating unit of the CGF, Chehalis Power will enter one or more power purchase agreements that provide the aggregate for the purchase and sale of at least 60% of the design capacity of that unit or units. Any such power purchase agreement shall have a term of at least five (5) years.
2. **Consistency.** Chehalis Power will ensure that at least one of the following conditions is satisfied prior to beginning construction of the CGF. For purposes of this provision, “Purchaser” means any entity that has entered a power purchase agreement with Chehalis Power providing for the purchase and sale of more than 40% of the CGF’s design capacity for each generation unit:
 - a. If the Purchaser has adopted an integrated resource plan: a) the project is of the type included in the Purchaser’s preferred resource acquisition strategy, b) the plan has reviewed commercially available supply and demand side resources and evaluated them on a consistent basis, c) the plan was developed with public participation, and d) the plan was reviewed by the utility’s regulatory body.
 - b. If the Purchaser has not formally adopted an integrated resource plan: The Purchaser has reviewed commercially available supply and demand side resources, or is located in the service territory of a utility that has an integrated resource plan meeting the criteria set forth in section B.1, or the project is consistent with the priorities and principles expressed in the relevant Northwest Conservation and Electric Power Plan.

Notice: At least 60 days prior to beginning construction of the CGF, Chehalis Power shall provide EFSEC with sufficient evidence to enable EFSEC to determine that Chehalis Power has satisfied its obligations under this agreement relating to need and consistency. Within 30 days after receiving such evidence,

EFSEC shall determine whether such obligations have been satisfied. EFSEC's failure to make an express determination within 30 days shall be deemed to be a determination that the obligations have been satisfied.

Chehalis Power seeks an amendment to delete Attachment 7 and its requirements from the SCA. Chehalis Power proposes to become a merchant plant⁶ free of any requirement to demonstrate a need for power prior to construction. Chehalis Power argues that the need test in Attachment 7 is irrelevant to current energy markets because the market has changed since the stipulation was signed. Chehalis Power asserts that it has found customers unwilling to make a commitment to purchase power prior to construction of the plant because they have no reason to make a commitment that far out and to take on that uncertainty. The Applicant also argues that the need test provides no benefit to Washington, elimination of the need and consistency tests would promote reduction of carbon dioxide (CO₂) and other greenhouse gases by encouraging construction of efficient gas-fired facilities, renewable and conservation resources are not adequate to meet the state's growing energy needs, and the consistency requirement in Attachment 7 does not promote the state policy of integrated resource planning. Finally, Chehalis Power believes that it has been treated differently than other developers of power in Washington State.

CTED argues that the need and consistency requirements in Attachment 7 should be retained as part of the SCA because they implement state energy policies relating to diversity of resources, encouragement of development of renewable energy resources, encouragement of the development of energy conservation, wise use of resources, and support of integrated resource planning. CTED asserts that the intent of the need requirement was to mitigate against the uncertainty or changing nature of energy markets at the time. In an effort to demonstrate need in the ever-changing market, both parties entered into an agreement that need would be clearly established by having the applicant enter into contracts to demonstrate the need. CTED contends that the argument the market has changed since signing the agreement does not hold up because the significant changes occurred prior to the 1995 settlement. Finally, CTED does not believe that the applicant has been treated differently from other power generation facilities.

CFE supports retaining Attachment 7 because otherwise Washington citizens would have no reasonable assurance that CGF's product will be available if needed.

⁶ See Paul Margartis' testimony regarding the definition of a merchant plant, Exhibit 26 (page 5, lines 1-6): "A merchant plant is a generating facility that is not subject to rate regulation. One helpful definition comes from the EPRI Journal, Summer 1999 edition:

Merchant power plants, built on speculation for competing aggressively in wholesale power markets, are already operating in a few areas, with many more planned in several regions of the United States. The new competitive electricity producers include unregulated subsidiaries of traditional utilities, other established energy companies, and new entrants to the electricity generating business. In the purest form, a merchant producer serves only the open market for electricity forgoing the financial comfort of long-term power supply contracts and their dependable cash flow...."

CIC argues that Attachment 7 should be retained absent proof that the market has changed and that the deletion is consistent with the public interest and the intent of the original SCA.

Early in these proceedings CTED made a dispositive motion to dismiss Chehalis Power's amendment to delete Attachment 7 on the basis that there were no facts to support its elimination and because it is a binding agreement between the Applicant and CTED. In ruling to deny CTED's motion, the Council noted that the stipulation became part of the SCA upon the Council's acceptance and that it is now the Council's responsibility to decide whether it should be amended.

EFSEC was created to respond to the legislature's finding more than two decades ago that:

[T]he present and predicted growth in energy demands in the state of Washington requires the development of a procedure for the selection and utilization of sites for energy facilities and the identification of a state position with respect to each proposed site. The legislature recognizes that the selection of sites will have a significant impact upon the welfare of the population, the location and growth of industry and the use of the natural resources of the state.

RCW 80.50.010. Just four years ago, the legislature amended this section, yet left its earlier finding intact. In addition, RCW 80.50.010 continues to provide, in relevant part, that:

It is the policy of the state of Washington to recognize the pressing need for increased energy facilities, and to ensure through available and reasonable methods, that the location and operation of such facilities will produce minimal adverse effects on the environment, ecology of the land and its wildlife, and the ecology of state waters and their aquatic life. It is the intent to seek courses of action that will balance the increasing demands for energy facility location and operation in conjunction with the broad interests of the public.

Further legislative guidance on energy policy is given in RCW 43.21F.015. In part, this statute states:

It is the policy of the state of Washington that:

- (1) The development and use of a diverse array of energy resources with emphasis on renewable energy resources shall be encouraged;
- (2) The supply of energy shall be sufficient to insure the health and economic welfare of its citizens;

- (3) The development and use of energy resources shall be consistent with the statutory environmental policies of the state;
- (4) Energy conservation and elimination of wasteful and uneconomic uses of energy and materials shall be encouraged, and this conservation should include, but is not limited to, resource recovery and materials recycling; ...

In the past, the Council has interpreted these intent and policy provisions to require a balancing of the state's need for energy at a reasonable cost with the imperative to minimize adverse impacts to the environment. In recent Council decisions, including Order No. 698, this has been referred to as requiring that the applicant show it has met "need and consistency" requirements. The Council has employed a number of tests to determine "need and consistency." These include the following: (1) a showing that a certain percentage of capacity is under firm contract entered into prior to construction⁷; (2) consistency with integrated resource planning⁸ principles by having a certain percentage of capacity sold to a purchaser who has adopted an integrated resource plan or otherwise conducted an integrated resource planning process, including the opportunity for public participation⁹; (3) a showing of consistency with regional or statewide energy plans or strategies for acquisition of new energy resources¹⁰; or (4) consistency with and reliance upon regional forecasts of energy needs.¹¹ By contrast, where a proponent has failed to show need, the Council has rejected an application.¹²

The Council considers "need and consistency" to be a single concept that is not just a demonstration of the need to produce power based on the current supply and demand. The need and consistency issue poses a broader question of whether an energy facility at a particular site will produce a net benefit after balancing the availability and costs of energy to consumers and the impact to the environment.

Each application is unique and falls somewhere on a continuum that may be defined by end points that, at the one extreme, might involve a facility that produces no harmful emissions, is designed and proposed to be located in a fashion to minimally impact the environment; and that provides economic benefits both immediately and over the long term. Persuasive evidence of such weighty benefits would militate strongly in favor of site certification even if the facility promised to produce only a moderate amount of energy or was proposed at a time when available energy supply is adequate to meet demand.

⁷ Chehalis (Order No. 698, June 10, 1996), Satsop (Order No. 694, as revised, April 15, 1996)

⁸ Integrated resource planning evaluates "all of the possibilities for meeting demand for energy services, including the entire range of generating sources available and conservation or efficiency improvements." (Exhibit 50.15, p. v)

⁹ Chehalis (Order No. 698, June 10, 1996), Satsop (Order No. 694, as revised, April 15, 1996)

¹⁰ Id., KVA (Order No. 697, June 10, 1996)

¹¹ KVA, *Ibid*, Creston Coal (Order No. 645, December 17, 1982)

¹² Northern Tier (Order No. 636, January 27, 1982)

At the other extreme, a proposed facility might produce significant harmful emissions, be designed and proposed to be located with little regard to impacts on the land, surface, and ground waters; and promise few economic benefits. Persuasive evidence of such weighty costs would militate strongly against site certification even if the facility promised to satisfy completely an extraordinarily pressing energy need somewhere on the Western states' and Canadian power grid that could not otherwise be satisfied.

Most proposed facilities, of course, fall somewhere in the middle range between these hypothetical extremes. Thus, EFSEC's "need and consistency" analysis is a delicate and difficult task in practice, made more difficult yet by the need to consider both objective and subjective criteria in evaluating "the broad interests of the public."

The balancing of the state's need for energy at a reasonable cost and the need to minimize environmental impacts need not be a strict cost accounting. However, inherent in this balancing process is the expectation that, unless an applicant can demonstrate a commitment to provide energy at a reasonable cost that will either directly or indirectly benefit consumers, a determination of net benefit will include consideration of whether the applicant will: (1) procure preferred energy resources; (2) further minimize the facility's impacts to the environment; and/or (3) provide offsets that further mitigate impacts of the facility on the environment and citizens.

In considering the need and consistency issue and deciding if there is a net benefit for the consumers in the siting of a power plant, the Council will consider the policy considerations expressed in RCW 43.21F.015(1) – (4), which are consistent with the intent expressed in RCW 80.50.010. Specifically, EFSEC will consider:

1. Whether, and to what extent, the energy and capacity from the proposed facility will benefit consumers;
2. 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
3. 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.

In a case in which the applicant informs this Council that it is applying for an amendment to the SCA to conduct its sale of energy purely as a merchant plant and is not willing to agree to commit to sell any power whatsoever to the citizens of Washington or the Northwest region, then this Council must use the "need and consistency" inquiry to

protect the interests of all concerned. While merchant plants may eventually be the norm in this country, they must be built in such a way that the citizens of one state or region do not bear the costs of environmental degradation and the concomitant health risks without receiving any of the benefits of the generated power. The citizens of those areas of the country which are choosing not to site power generating plants, because of their negative environmental impacts, must pay the actual costs of power generated elsewhere and not be allowed to impose on the citizens of the locale of the site the external and inevitable pollution costs.

If the external costs of the generation of power are borne by the generator, then they will presumably be passed on to the actual consumers of the power and not imposed unfairly on the citizens of the location where the generating plant is located. While it may be legitimate to accept some environmental impacts in order to compensate for demonstrated energy benefits, this is not the case when the locale where the plant is sited is not assured of any energy benefits. If an applicant has shown no assured energy benefit to the state, then it is inequitable that the citizens of that state receive the damage to their air quality and suffer the other negative environmental impacts. Hence, a merchant plant which enjoys the absolute freedom to supply power to whoever is willing to pay the highest price must also have the responsibility to build such a plant in a manner (or purchase actual appropriate local offsets) so that the locale where it is sited does not alone bear the external costs of environmental degradation.

In this case, we are not dealing with an original site certification application in which all of the factors can be weighed to determine a net benefit. Rather, the Council must consider the proposed amendments and determine whether a net benefit can be achieved consistent with the existing SCA, applicable laws and rules, and the public health, safety, and welfare.

In Order No. 698, the Council found that the requirements of Attachment 7 adequately addressed the issues of need and consistency. The Applicant now proposes to eliminate those requirements and to operate as a merchant plant. Chehalis Power has not demonstrated any energy benefits other than an increased supply of energy to the Western grid. Nor has the Applicant made any commitment to increase the diversity of energy resources. Therefore, if the Council is to recommend the amendments be granted, it must consider what other factors should apply to achieve a net benefit to citizens. Accordingly, the Council finds that elimination of Attachment 7 from the SCA is contingent upon compliance with the conditions discussed below.

D. Increase in Capacity

The Applicant contends that an increase in electrical generation capacity from 460 to 520 megawatts (MW) should be approved to accommodate an improvement in turbine technology. None of the parties expressed opposition to this amendment. The Council finds the increase in capacity, subject to the conditions of this order, to be consistent with the SCA, applicable laws and rules, and the public health, safety, and welfare.

E. Shift from Water to Air Cooling

1. Summary of Arguments

Combined cycle combustion turbine plants require a coolant to condense steam turbine exhaust. Cooling may be accomplished through the use of air or water cooling systems. Each process has its advantages and disadvantages. In the original SCA, the Council approved the use of a water-cooling system using reclaimed water from the City of Chehalis. Chehalis Power was also allowed to purchase untreated municipal water from the City of Chehalis, but only when reclaimed water was insufficient to meet process and cooling water needs or when operating conditions at the CGF temporarily precluded the use of reclaimed water. The Council concluded that the use of reclaimed water, in conjunction with commitments by the Applicant to acquire and dedicate surface water rights, would assure that the Chehalis River is adequately protected.

Chehalis Power now proposes to use an air-cooled system that will only use municipal water purchased from the City of Chehalis. The Applicant states that it is proposing to shift from water to air cooling in response to the continuing concern over the use of surface water and the use of reclaimed water that would otherwise be discharged into the Chehalis River. The Applicant argues that switching from water to air cooling provides significant benefits to and protection of water resources because it provides for a massive reduction in water use from 3,000,000 gallons per day (gpd) to an average of 192,000 gpd. The Applicant contends that the proposed Amended SCA would better protect instream flows by adding flows to the watershed where the current SCA would have removed 2,700,000 gpd due to evaporative (air) cooling.

Chehalis Power argues that the settlement agreement¹³ with Ecology and WDFW provides for a water retirement plan that is twice as beneficial as the original SCA because it requires a 2:1 water right retirement instead of 1:1 for municipal water used during low flow periods from May to October. In addition, there is a monetary contingency arrangement if water rights are not available. Finally, the settlement agreement limits CGF water use to 70 million gallons per year; limits daily purchases to 850,000 gallons; and limits purchases at the maximum rate to not more than seven consecutive days from May 1 to October 31. CGF may not use City water when flows at Grand Mound fall below 165 cubic feet per second (cfs).

Chehalis Power contends that, even though the Applicant will not be treating the City's wastewater, the proposed amendment is consistent with the original SCA because the Council stated in Order 698 that "it would be inappropriate to require

¹³ Exhibit 3.

the Applicant to fix the City's waste disposal problems." Also, there was no requirement to treat wastewater when the plant was not operating in the winter. Chehalis Power argues that the proposed amendment will protect the Chehalis River from degradation and may serve to improve water quality with respect to temperature and dissolved oxygen. Effluent from CGF will be treated by the Chehalis wastewater treatment plan in compliance with the City's National Pollutant Discharge Elimination System (NPDES) permit. Chehalis Power contends that the EPA will impose pretreatment requirements under the NPDES program on CGF and that CGF effluent will reduce the concentration of metals in the City's wastewater effluent.

Finally, Chehalis Power contends that CFE and CIC should be barred from objecting to the shift from a water to air cooled process because they supported the air-cooled alternative in the previous proceeding. Because air-cooling was fully analyzed and addressed in the previous proceeding, and because the Council issued a ruling on the issue, Chehalis Power argues that collateral estoppel should apply.

CFE contends that she is not estopped from taking a position on the air cooling amendment because of the public's concern regarding impacts to water quantity and quality. CFE is opposed to the proposed amendments unless further mitigation measures are imposed. CFE is concerned that the public is losing the benefit of urgently needed wastewater treatment and that the amendment will still result in a drain on municipal water during seasonal low flows. CFE proposes that the following conditions be included in the SCA: (1) CGF should be prohibited from using municipal water during low flow periods and the feasibility of recycling water during low flow periods should be evaluated and implemented if it is cost neutral; (2) identification of low flow conditions should include direct monitoring at the Centralia Reach of the Chehalis River concurrent with existing gauging at Grand Mound; (3) CGF should be required to compile, maintain, and make publicly available records showing flow levels at the Centralia Reach and Grand Mound; (4) a self-executing remedy for noncompliance should be included in the SCA to halt environmental degradation resulting from noncompliance with CGF's limitations on water use or other record-keeping obligations; and (5) consistent with the original SCA, CGF should be required to actually acquire and permanently retire water rights at the level contained in the settlement agreement.

CIC does not object to the use of air cooling, but urges additional mitigation measures. CIC argues that the following mitigation measures should be imposed with respect to water rights and wastewater discharge: (1) CGF should be required to acquire 106 acre feet or 34.5 million gallons to fully offset the amount of water being used consistent with the original SCA; (2) CGF should be required to acquire land having an appropriate water right, with the amount of land to be acquired to be calculated based upon the number of exempt wells that could be created; (3) Sections 3(b), 6(a), 6(c), and the force majeure exception in 6(d)

should be deleted from the settlement agreement¹⁴; (4) Chehalis Power should be required to record water meter readings at least daily from May 1 to October 31 and the records should be available for public inspection during normal business hours without advance notice; (5) the settlement agreement proposal to amend Article VI, section B(4) regarding the use of biocides, anti-corrosion inhibitors, etc. should not be approved; and (6) Chehalis Power should be required to pay \$2.5 million to the City as mitigation for the loss of the wastewater treatment plant consistent with the intent of the original SCA.

The Council finds that a substantial public benefit will be lost with the removal of the provision for CGF to treat the City's wastewater. However, as previously noted, the Council cannot require the applicant to remedy the City's waste disposal problems. After considering the current air cooling proposal, the Council concludes that it constitutes a reasonable alternative. However, additional conditions should be required to offset the loss of wastewater treatment to the community and to ensure adequate protection of the Chehalis River consistent with the SCA.

The Council finds that CFE is not estopped from taking a position on the air cooling amendment because she is charged with representing the public's concern regarding impacts to water quantity and quality. CIC has not objected to the use of air cooling. CIC is not barred from proposing additional mitigation measures due to the loss of public benefit from removal of the provision for CGF to treat the City's wastewater.

2. Water Quality and Gauging of Flow

The Applicant has requested deletion of SCA Article VI.A.5, which requires Chehalis Power to consult with the City of Chehalis, Ecology, the United States Geological Survey (USGS), and Council staff in order to determine the best means to gauge the Centralia Reach to measure and record flow rates. On the other hand, CFE has requested that identification of low flow conditions include direct monitoring at the Centralia Reach of the Chehalis River.

In its consideration of water supply and usage for the Chehalis Generation Facility, the Council finds that it would be most prudent to follow parameters and conditions, including limitations that already exist and are being implemented for the Chehalis River and Upper Chehalis River Basin. Those supply, discharge and use parameters or limits, particularly for low-flow conditions in the river and Centralia Reach, are tied specifically to agreements, permits, plans, studies, and a court approved consent decree, that have been established to protect and preserve water quality in this river basin.

¹⁴ Exhibit 3.

The Council recognizes the substantial amount of work done by the City of Chehalis, City of Centralia, state Department of Ecology, federal Environmental Protection Agency (EPA), and many other organizations and individuals to address water quality problems in the Upper Chehalis River Basin. As described in testimony and briefs filed during the amendment adjudication, the Council is aware of several key elements that guide how the Chehalis River is currently being managed to minimize impacts on the basin.

Key to setting standards for usage in the basin is the work done by the Department of Ecology in completing the Total Maximum Daily Load (TMDL) analyses for the Upper Chehalis River Basin. The Oxygen TMDL approved by the EPA in 1996 sets restrictions on certain pollutants in the basin and the Centralia Reach. In March 2000, Ecology issued the “Revised Upper Chehalis River Basin Dissolved Oxygen TMDL” report¹⁵ that modified seasonal restrictions on the discharge of BOD and ammonia “based on river flows.” The revised TMDL establishes specific low-flow thresholds that guide when municipal and industrial permittees can discharge to the river. Those thresholds and other operating effluent standards and limitations are set out in NPDES permits issued to the City of Centralia, City of Chehalis, and Darigold, Inc.

Further clarification as to how those organizations operate their respective wastewater treatment plants is set out in a Consent Decree entered by the U.S. District Court Western District of Washington at Tacoma on January 14, 2000.¹⁶ The Consent Decree reiterates the conditions adopted in the earlier Oxygen TMDL study to have restrictions on effluent discharges that are based on flow-based limits.

The determination of flow conditions in the Centralia Reach of the Chehalis River, for the Oxygen TMDL and wastewater discharge permits, is based on a calculation of measurements taken at the U.S. Geological Survey (USGS) Grand Mound gauge. The Consent Decree states that the “flow of the Chehalis River in the Centralia Reach” shall be determined by the USGS Grand Mound gauge using a specified conversion equation. A measurement of 300 cfs or less from a direct measurement at the Grand Mound gauging station or using the conversion calculation triggers more stringent effluent limits on permittees’ discharges.

The Consent Decree and wastewater permits do recognize that if a gauging station were to be installed within or near the Centralia Reach itself, participants would consider using that gauge as the “definitive measure of flow in the Centralia Reach.”

¹⁵ Exhibit 22.2.

¹⁶ Exhibit 22.3.

The water resource management permits and operating practices of major municipal and industrial water users in the basin identified in the Council's proceeding, clearly show that a flow-based approach has been settled on for establishing operating conditions and limitations for using and discharging Chehalis River water in the basin and reach areas.¹⁷ In the original approval of the Chehalis Generation Facility, the state also recognized that low-flow periods warranted limitations on CGF operating conditions to protect water resources in the basin.

SCA condition VI.3 defined low-flow periods "as below 165 cfs , as measured at Grand Mound," and specified that Chehalis Power would acquire 507 acre feet of surface water rights to "protect against potential impacts on the Chehalis River from the use of municipal water during low flow periods."

The original approval also contained a condition that Chehalis Power would pursue in determining how the Chehalis [Centralia].¹⁸ Reach could best be gauged to measure flow rates. The Council was to consider future gauging requirements based on the results of Chehalis Power's consultation with interested organizations.

In considering how water usage and river flow should be treated in considering Chehalis Power's amendment request, the Council recognizes that the change to an air-cooled facility significantly decreases the amount of water used by the project. At the same time, the state must balance any usage of water resources in the Chehalis River and Upper Basin against current regulations, existing permits [and accompanying court orders], and prudent management practices.

The Council continues to support the existing conditions that restrict the use of municipal supply water from the City of Chehalis during periods of low flow. The definition of low flow for the CGF must be consistent with other users in the basin. Therefore, the Council finds that the restriction on the use of water during low flow periods should continue to be "defined as flow below 165 cfs, as measured at Grand Mound." Additional conditions to minimize the impact of the project on the Chehalis River will be included in the SCA to: limit the purchase of water from the city during low flow periods; set an annual limit on gallons that can be purchased; restrict water purchases during the drier months of the year; and limit fuel oil usage during that same period. However, the company may build storage facilities to meet water needs during low flow periods consistent with the existing SCA.

Regarding continued efforts to establish a gauging station in the Centralia Reach, the Council now supports basing SCA conditions on the same station that is used

¹⁷ Exhibit 22.3

¹⁸ This was misstated in the SCA.

in other permits, i.e., the Grand Mound Gauging Station. The Council will continue to encourage Chehalis Power to participate in discussions to determine if gauging in the Reach should be required. The Council will reserve the right to have river gauging requirements considered as part of its consideration of detailed monitoring plans in the final design for the project.

Finally, the Council notes that the City of Chehalis is fully cognizant of their responsibilities as the provider of water to the CGF project. David M. Campbell, Manager of the City of Chehalis, testified that the city will ensure that Chehalis Power covers its full and fair share of the cost of having the City provide water and wastewater service.¹⁹ Accordingly, the Council expects Chehalis Power to work with the City of Chehalis, Ecology, and other interested parties, to ensure the TMDL, NPDES, and SCA requirements for Chehalis River water usage continue to be met. If future studies of flow in the Chehalis River and/or Centralia Reach are needed to meet these requirements, as noted above, Chehalis Power could be required by the Council to participate in or contribute to further studies.

Therefore, the Council finds that Article VI.A.5 should not be deleted, but the SCA should be amended consistent with the preceding discussion.

The Council finds that the use of chemicals such as biocides and other additives to the water cooling system should be monitored for compliance with applicable regulatory standards. If the EPA already monitors these chemicals, there should be no additional burden to the Applicant.

In the settlement agreement with WDFW,²⁰ Chehalis Power agreed to amend SCA Article IV, Section F - Wastewater Discharge System to provide that “storm water will be collected, treated if necessary, and directed to either an existing storm water tributary or to the municipal sanitary sewer system.” In order to ensure consistency with the existing SCA, the Council finds that storm water runoff should be collected and treated consistent with the Stormwater Management Manual (SWMM) for the Puget Sound Basin, February 1992 (WDOE 1992) and other requirements in Attachment 3 - Excavation and Erosion Control Measures.

Consistent with the Council’s ruling that it will not assert jurisdiction over the pretreatment discharge for the CGF, the Council finds that CGF is subject to federal wastewater pretreatment requirements that will be imposed and enforced by the EPA under the NPDES program.

3. Water Quantity

¹⁹ Exhibit 22, page 10, line 17 through page 11, line 4.

²⁰ Exhibit 2.

Under the terms of the settlement agreement with Ecology and WDFW, Chehalis Power has agreed to use its best efforts to acquire and retire water rights of 80 acre feet by December 31, 2001. If Chehalis Power is unable to acquire water rights by that date, Chehalis Power is to pay a one-time sum of \$4000 per acre foot for water rights that it was unable to acquire to Chehalis Basin Partnership, or to some other organization agreed upon by Chehalis Power, Ecology and the Council for purposes of improving stream flows or flow-related conditions in the Centralia Reach.²¹

Chehalis Power contends that the acquisition of 80 acre feet of water rights constitutes a two-to-one mitigation of its water use based on the CGF's expected consumption of municipal water from May through October. Under the existing SCA, Chehalis Power is required to fully offset its use of water by acquiring water rights and retiring them based on consumption of municipal water from May through October. While the proposal to acquire and retire 80 acre feet is consistent with the SCA regarding use of water during low flow months, it will not fully offset the plant's use of water because it is not based upon CGF's annual water use. Although the impacts to water have been reduced under the proposed amendment, the facility will still be using substantial amounts of water from the Chehalis River. Therefore, the Council concludes that the amount of water rights to be acquired is not sufficient to offset water use impacts by Chehalis Power. In order to fully offset its annual water use, Chehalis Power needs to acquire and retire at least 102 acre feet of water rights.²² This will result in a 1:1 mitigation ratio for water use over the entire year, including the low flow months.

The Council is also concerned that no evidence was presented at the hearing regarding the Applicant's efforts to date in acquiring water rights as required under the current SCA. To give Chehalis Power sufficient time to acquire water rights, and to ensure that water rights are actually acquired and retired, the Council will extend the deadline for acquisition from December 31, 2001 to December 31, 2002. If at least 102 acre feet of water rights are not acquired by that date, the sum to be delivered in trust to Chehalis Basin Partnership or another suitable organization will be used for purposes of acquiring and retiring water rights to improve stream flows or flow-related conditions in the Centralia Reach of the Chehalis River. To calculate the amount of water rights acquired, the total amount acquired should be based on acre feet net of the amount of water that the transferor could possibly take from exempt wells on their property. The amount that can be taken from exempt wells should be based on what would be allowed by zoning applicable at the time of water right acquisition.²³

²¹ Exhibit 3.

²² Donald Davidson, Department of Ecology water resource specialist, testified that the facility's consumptive use would be 102 acre feet per year (TR 272, line 25 - 273, line 6).

²³ For example, an owner of 20 acres of land wishes to transfer their water rights to Chehalis Power. Under applicable zoning the owner can subdivide their property into 5-acre lots. After transfer of the water rights, that

In Order No. 698, the Council directed a review of the water situation within three years of the date of approval of the SCA, or nine months prior to commencement of plant construction, whichever comes first. The Council believes that the evidence presented in this proceeding provided information regarding the water situation approximately three years after the original SCA was approved. The Council continues to find it appropriate to require that a review of and report on water use and the water situation in the Chehalis River, and in particular the Centralia Reach, be made by Chehalis Power to the Council three years from the date of approval of the proposed amendments and every three years thereafter for possible revisions to the water use limitations. Therefore, the Applicant's request to delete SCA Article VI.A.6 should be denied. Article VI.A should be revised to reflect the above findings.

CIC has requested that Chehalis Power be required to record water meter readings daily and that the records should be available for public inspection during normal business hours without advance notice. Reports should be provided to the Council for monitoring. Given, the limitations on water use agreed to by the Applicant in the settlement agreement,²⁴ the Council finds it appropriate to require Chehalis Power to meter and record all water purchased and discharged by the CGF in operating, testing, maintenance, start up and shut down, and other such activities that require the use of stored or purchased water for the CGF. Pursuant to Attachment 5 and the conditions of this Amended SCA, Chehalis Power shall compile daily water purchase and discharge data and report to the Council monthly. CGF shall compile an annual report on water purchase by the CGF, to be submitted to the Council no later than January 31 of the following year.

Chehalis Power will develop the format and content of the water usage reports in consultation with the Council. The water usage reports prepared by Chehalis Power shall be available to the public at the Councils' office. The Council will reevaluate the reporting requirements at least once every three years.

The Council shall review water usage at the CGF as part of the compliance monitoring program established for overseeing the construction and operation of the project. This will include review of reports and plant data that document the use and discharge of all water at the site, and updates on Chehalis Powers' retirement of water rights. Commensurate with the submittal of the annual water usage report, the Council will evaluate the data and consult with Chehalis Power

owner could still dig four exempt wells, or one well per lot, that can draw up to 500 gallons per day (gpd). The amount of water rights acquired should therefore be calculated based upon total water rights transferred less 2000 gpd for the four wells.

²⁴ Exhibit 3.

and determine if additional requirements are needed for the use of water for the CGF.

The Council concludes that the impacts of the air cooling system on water quality and quantity will be adequately addressed with the inclusion of these conditions such that the use of air cooling technology is consistent with the existing SCA, applicable laws and rules, and the public health, safety, and welfare.

F. Nitrogen Oxides (NO_x) Emissions

Although the amendment would allow for increased capacity, Chehalis Power is not proposing an increase in annual NO_x emissions from the existing concentration limit of 9.9 parts per million (ppm) in the PSD air permit. The amendment would allow for increased short term emissions of NO_x. However, the Applicant has agreed under the settlement agreement with Ecology and WDFW²⁵ to establish additional emission limits for NO_x that would apply during the three-hour startup and shutdown periods and to not revise the 9.9 ppm concentration limit.

Chehalis Power asserts that, by virtue of extending the PSD air permit in 1998, the original Best Available Control Technology (BACT) was reconfirmed by EFSEC. Therefore, the Applicant argues that the amendments to the permit should be approved without additional analysis for BACT.

On December 13, 1999, the Council determined that Chehalis Power had commenced construction for purposes of the PSD air permit in accordance with EPA guidance.

EFSEC issued a draft amended PSD air permit in conjunction with these proceedings on May 18, 2000, for public comment. A public hearing was held and testimony taken on the draft PSD air permit on June 19, 2000. On June 19, 2000, the Council received a letter from the EPA requesting additional time to review and comment upon the proposed amendment to the PSD air permit for CGF. EPA indicated that it would continue to evaluate whether additional analyses addressing PSD air requirements, BACT specifically, would be required. EFSEC extended the comment period through July 5, 2000, but received no additional written comments from EPA.

On August 2, 2000, the EPA sent a letter to Paul Margaritis requesting additional information to facilitate a determination by the EPA as to whether Chehalis Power commenced construction. This letter referred to EFSEC's previous determination that Chehalis Power had commenced construction for purposes of PSD review during a December 13, 1999, Council meeting. In the letter EPA appeared to be questioning whether Chehalis Power has commenced construction according to EPA guidelines.

²⁵ Exhibit 3.

As indicated in this order, the Council is prepared to forward its recommendation to the Governor except for the PSD air permit. However, EFSEC does not find it appropriate to send an incomplete recommendation to the Governor on the proposed amendments. Because EPA must also sign the PSD air permit, EFSEC is waiting for a decision from the EPA. The Council understands that completion of the PSD air permit amendment may require additional time after EPA has made a determination. The Council will not be able to complete the permit and the remainder of this process until after EPA has made a determination and EFSEC, and/or the EPA, have issued any further public notice and/or conducted hearings that may be required.

Therefore, this Initial Order will be entered with the proposed draft Amended SCA and a recommendation for approval subject to completion of the PSD air permit process. Upon completion of the PSD air permit process, the completed PSD air permit will be incorporated in the Council's final order and attached to the draft Amended SCA for the Governor's consideration.

G. Climate Change: Greenhouse Gas Emissions

Power plants such as the CGF that produce energy from the combustion of fossil fuels produce exhaust gases. A number of these gases, such as carbon dioxide (CO₂), methane (CH₄), and nitrous oxide (N₂O), are considered "greenhouse gases"²⁶ because they trap infrared energy within the earth's atmosphere and cause a warming of the atmosphere globally. The facility as currently proposed would emit 1.8 million tons of CO₂ per year.

Chehalis Power contends that no mitigation regarding CO₂ emissions is warranted because the projected increase in carbon emissions of the 520 MW facility is incremental (8%), the current SCA imposes no limits, there is no state or federal program regulating emissions, and the SCA provides the flexibility for imposing limits in the event a state or local mitigation program is implemented. Also, the settlement agreement with Ecology and WDFW²⁷ provides that Chehalis Power will pay \$5,000 to a non-profit organization to be agreed upon by Chehalis Power and Ecology for purposes of addressing issues relating to CO₂ and/or global warming. Finally, the Applicant argues that a requirement to reduce greenhouse gas emissions would discourage gas-fired facilities that are essential to reduce our reliance on coal-fired generation.

CFE contends that it is good public policy to require mitigation to offset the 1.8 million tons of CO₂ emissions from this facility because it is reasonable, cost effective, and will maintain a level playing field for merchant plants. CFE argues that there is no assurance that coal plants will be retired if this plant is built. CFE recommends that the amendment be expanded to increase the \$5,000 in CO₂ emission mitigation currently proposed in the settlement agreement to an appropriate amount.

²⁶ Testimony of Philip C. Malte, page 7, lines 15-16 (Exhibit 61 in original application proceeding).

²⁷ Exhibit 3.

The CIC recommends elimination of the \$5,000 mitigation provision in the settlement agreement because it is not germane to the agreement.

In Order No. 698 (pages 24-25), the Council found that the threat of global warming is substantial and that it has the authority to address the issues under RCW 80.50.010. The Council required the Applicant to explore mitigation by preparing a report on the state of regulation of greenhouse gases and potential available mitigation options, identifying possible reasonable and economical mitigation proposals. The Applicant was encouraged to adopt mitigation measures that it identifies in its report. Finally, if a federal or state mitigation program is implemented, the Council reserved the right to exercise its authority under that program.

The proposed amendments will result in increased CO₂ emissions. The amendments will also eliminate the requirement in Attachment 7 and allow Chehalis Power to operate as a merchant plant. The Applicant's August 29, 1997, report on the state of regulation of greenhouse gas emissions noted the State of Oregon's adoption of mitigation requirements for greenhouse gas emissions.²⁸ In response to that report, the "Council reaffirmed its interest in receiving more current information on greenhouse gases and possible mitigation alternatives at a time that coincides with a decision to proceed with the project and a planned construction date."²⁹ Therefore, Council finds these amendment proceedings to be the appropriate time to revisit the issue of greenhouse gas emissions for this facility.

The Council is not convinced that restrictions on greenhouse gas emissions will reduce the competitiveness of this facility with other energy producing plants. Similar facilities are being applied for and certified in Oregon, where greenhouse gas emissions standards and mitigation are imposed.³⁰ Further, there is no evidence that the construction of this or any other gas-fired energy facility will result in the closure of coal-fired plants with higher emissions. Finally, WAC 463-42-225 requires an applicant for a fossil fuel plant to deal with products containing CO₂ and a number of other emissions, including any other emissions subject to regulation. Therefore, the Council finds that the issue of mitigation for greenhouse gases needs to be considered to determine the net benefit of the Amended SCA.

CFE has proposed that the CGF be required to design and implement a carbon offset strategy equivalent to Oregon's new plant mitigation requirements. The State of Oregon adopted a new statute directing the Oregon Energy Facility Siting Council to set carbon dioxide emissions standards for new energy facilities, which the Oregon Council subsequently implemented in rule.³¹ At their discretion, applicants in Oregon can

²⁸ Exhibit 25.13.

²⁹ Exhibit 25.14.

³⁰ Tony Usibelli, CTED Energy Division (TR 721, line 19 - 722, line 18); Exhibit 30.5, page 8.

³¹ Exhibits 25.3, 30.3, 30.4, and 30.5.

propose carbon dioxide offsets through guaranteed cogeneration, by proposing projects they or a third party will manage, or by providing funds via the “monetary path” to the Oregon Climate Trust. The Oregon Climate Trust takes responsibility for obtaining offsets when an applicant uses the “monetary path.” Under the “monetary path”, applicants pay a deemed amount of \$0.57 per ton of CO₂. The amount paid is based on a formula calculating the efficiency of the plant.

The Council finds that the Oregon “monetary path” is a reasonable approach to greenhouse gas mitigation because it provides a reasonable method of calculating monetary requirements for mitigation that can be used to offset emissions from the facility. The Applicant has not proposed a project for offsetting greenhouse gas emissions, and there is no third party in Washington State set up to manage such projects. Therefore, the Council will adopt an approach similar to Oregon’s “monetary path” in this proceeding.

The Council will direct the Applicant to develop a plan and recommended strategies to offset greenhouse gas emissions from the CGF, which could be used as a model for a statewide greenhouse gas emission offset program. The plan shall be submitted to EFSEC no later than one year from the effective date of this order. The Applicant shall also make mitigation payments to the Council to implement the greenhouse gas emission offset plan. The Council will cause such payments to be deposited and held as required or authorized by state law.

The Applicant will be directed to calculate the amount to be paid in mitigation based upon the Oregon formula. The calculations shall be submitted to the Council for review and a determination of the total amount to be paid. The payment for greenhouse gas mitigation shall be paid in installments of equal amounts over a period of five years. The first payment will be due on the date CGF commercial operations commence. The remaining four payments will be due not later than one year, two years, three years, and four years, respectively, after the day CGF commercial operations commence.

Upon submittal of the greenhouse gas emission offset plan, the Council will review the plan for actions that will lead to actual offsets of greenhouse gas emissions by the CGF. Upon review and approval by the Council, the greenhouse gas emission offset funds will be drawn upon for implementation of the plan.

If, in the future, a state or federal mitigation program is implemented, the Council continues to reserve the right to exercise its authority under that program, considering and appropriately crediting, if permitted by law, any measures that the Applicant has accomplished under the Amended SCA.

H. Plants and Animals

The air cooling technology eliminates the need for the three water pipelines required for the water cooling technology permitted in the current SCA. However, the City of Chehalis will still need to construct municipal water and wastewater lines to the CGF. The City has not determined the location or design of these pipelines. The settlement agreement with WDFW³² and stipulation with CIC³³ require Chehalis Power to notify WDFW and CIC of the anticipated location and routing for any municipal water and wastewater lines after the City of Chehalis has established the location and routing and notified Chehalis Power. Upon completion of the preliminary design (including sizing) for each line, Chehalis Power will provide WDFW and CIC with copies of such preliminary design information. The Council finds that including these provisions in the Amended SCA will ensure that WDFW and CIC have an opportunity to notify the Council of onsite impacts and Lewis County and the City of Chehalis of offsite impacts to natural resources by the pipelines.

I. Other Issues

CIC has requested that the Council's recommendation to the Governor be deferred until the Applicant has staked the center line of the proposed gas pipeline and the Applicant commences the formal application to FERC or causes the pipeline company to do so. Chehalis Power responds that EFSEC has determined that issues regarding the natural gas pipeline are beyond the scope of its authority and are not under consideration in the amendment process. The Council concurs with Chehalis Power and notes its previous decision not to consider this issue in Order No. 742, page 9.

CIC also requests that Chehalis Power be required to provide a full explanation of changes to the "Noise Monitoring" clause in SCA Article VII.I, and that the more restrictive requirement of the original SCA Article VII.I or Attachment 6 should prevail. CIC acknowledges that it entered into a settlement agreement³⁴ to withdraw the issue of what the new increased decibels will be and what mitigation is in place. However, CIC contends that the proposed amendments to the SCA regarding noise were not submitted until after the settlement agreement was entered into. The Applicant argues that the changes were at the request of the Council and serve only to clarify the noise standards by incorporating the former Attachment 6 into the body of the SCA. The Council finds that the revisions to the SCA as proposed by the Applicant are not less restrictive, as the revision only deletes some specific examples of mitigation. The Council is not being precluded from requiring these types of mitigation if the monitoring results show that noise is exceeding state and local standards. Therefore, CIC's request will be denied but the Amended SCA provisions regarding noise will be clarified.

³² Exhibit 2.

³³ Exhibit 5.

³⁴ Exhibit 1.

CIC argues that the parcels Chehalis Power has recently acquired adjacent to the site should be included in the site description and the Council undertake a new land use consistency process. Chehalis Power responds that the recent land transactions have not affected the location of the site. The Council finds that acquisition of the adjacent parcels is not relevant to this proceeding because it was not raised as an issue and because they were acquired for purposes of the gas pipeline and water lines, which are not within the Council's jurisdiction.

In reviewing the draft Amended SCA, the Council has noted two proposed amendments that were not contested or directly addressed in the adjudicative hearings. One of the amendments was to Article IV.C - Steam Turbine, as follows: "The steam turbine ~~will~~ may be provided with a steam extraction system to supply steam for a future steam host." The amendment request states that the reason for this change is that Chehalis Power has not yet identified any future steam users and a final decision as to whether to include a steam extraction system has not been made. The original SCA required the Applicant to provide a steam extraction system to supply steam to a future steam host. Cogeneration provides important opportunities for greater efficiency in the use of natural gas.³⁵ It is also consistent with the state energy policy provision in RCW 43.21.F.015(4), which states: "Energy conservation and elimination of wasteful and uneconomic uses of energy and materials shall be encouraged...." The Applicant submitted no evidence in support of this amendment other than a footnote statement that no future steam user has been identified.³⁶ The Council finds that Chehalis Power has not presented sufficient evidence or an adequate rationale for removing this requirement. This amendment should be denied.

The second uncontested amendment was to Article IV.D - Fuel Supply, for an increase in the size of each of the two back up fuel oil tanks from 1,600,000 to 1,700,000 gallons, for a total increase of 200,000 gallons. The amendment request states in a footnote that the larger turbines will require an increase in backup fuel oil.³⁷ The Council finds the stated reason for an increase in the size of the oil tanks is credible. As it is uncontested and appears reasonable, the amendment should be granted.

J. Environmental Review

As part of the SCA process, following independent review under the State Environmental Policy Act (SEPA), EFSEC adopted the Environmental Impact Statement (EIS) prepared by the Bonneville Power Administration (BPA) for the Resource Contingency Program (of which the CGF was a part) and other related National Environmental Policy Act (NEPA) documents. EFSEC's responsible official reviewed the proposed amendments to the SCA and issued an addendum on October 13, 2000, finding that the probable

³⁵ Exhibit 50.15.

³⁶ Exhibit 20.2, page 9, footnote 8.

³⁷ Exhibit 20.2, page 9, footnote 10.

significant environmental impacts of the requested amendments were described in the BPA FEIS adopted in 1996.

Consistent with SEPA requirements, the Council is required to consider the short-term and long-term environmental impacts of the proposal. WAC 463-36-050. The Council finds that these impacts have been analyzed in the BPA FEIS and in the adjudicative record and considered in imposing the conditions in this Order.

Having discussed in detail above the facts relating to relevant material matters, and having stated findings and conclusions, the Council now states the following summary of those facts. Those portions of the preceding findings pertaining to the Council findings and conclusions stated below are incorporated by this reference.³⁸

FINDINGS OF FACT

A. The Amendment Request

1. On January 10, 2000, Chehalis Power filed a request for an amendment to its SCA for the Chehalis Generation Facility (CGF) with the Council, including a request for amendment of the Prevention of Significant Deterioration (PSD) air permit. The CGF is a fully permitted facility. On February 25, 2000, Chehalis Power submitted revisions to its June 1995 Application for Site Certification (Application No. 94-2) to support its amendment request.
2. EFSEC duly published notice of the amendment request and of a prehearing conference to be held on March 27, 2000.
3. EFSEC duly gave notice of its intent to hold the adjudicative hearing commencing on May 24, 2000.
4. EFSEC duly published notice of the public hearing held on May 24, 2000, the public hearing portion of the adjudicative hearing.
5. EFSEC duly published notice of a public comment period and of the hearing held on June 19 to accept public comments on the proposed amended draft PSD air permit. EFSEC extended the public comment period until July 5, 2000. EFSEC has been waiting for a decision from the EPA as to whether Chehalis Power has commenced construction according to EPA guidelines and whether additional analyses addressing PSD air requirements regarding Best Available Control Technology (BACT) will be required.

³⁸ The Council has incorporated the evidence from the previous proceeding on the original SCA into this proceeding. Therefore, the findings of fact from Order No. 698 are hereby incorporated into this Order by reference. For ease of reference and readability, the findings of fact in Order No. 698 that are relevant to the proposed amendments are restated here.

B. The Applicant and the Project under the Existing SCA

6. The CGF is a fully permitted, natural gas-fired, combined-cycle combustion turbine project.
7. The Application for amendments to the SCA was filed by Chehalis Power Generating Limited Partnership (Chehalis Power), a Delaware Limited Partnership qualified to do business in the State of Washington. Chehalis Power will own the CGF. Tractebel Power, Inc. will own all of the partnership interests of Chehalis Power either directly or through Chehalis Power, Inc. (CPI). CPI is a Delaware corporation, incorporated in August 1993, and is a wholly-owned subsidiary of Tractebel Power, Inc. CPI will be the sole general partner of Chehalis Power and will manage all of the affairs of Chehalis Power.
8. The CGF consists of two natural gas-fired combined-cycle combustion turbine generator units and associated facilities. The Applicant is currently permitted under the SCA to produce a nominal output of 460 MW.
9. The CGF's primary fuel will be natural gas, which will be delivered to a metering station on the eastern boundary of the site by an interstate gas line regulated by the Federal Energy Regulatory Commission (FERC).
10. In the event that natural gas is unavailable, the CGF will burn low sulfur (≤ 0.05 percent) No. 2 diesel fuel. Use of low sulfur fuel No. 2 diesel fuel will be limited to 720 hours per year for each combustion turbine and auxiliary boiler.
11. Exhaust gases from the combustion turbines will produce steam in a heat recovery system generator. The steam will be collected in a manifold and directed to a condensing steam turbine rated to produce a nominal 80 MW under the current SCA. The SCA currently requires that the steam turbine be provided with a steam extraction system to supply steam for a future steam host.
12. The CGF is currently permitted under the SCA to use water cooling of exhaust gases. The CGF was to have two sources of water supply for its process and cooling water: (1) reclaimed water from the City of Chehalis' Wastewater Treatment Plant (WWTP), comprised of effluent from the City of Chehalis that has been treated to Class A standards for re-use and normally is discharged to the Chehalis River; and (2) municipal water from the City of Chehalis' Chehalis River Water Pumping Station. To the extent that reclaimed water is available, reclaimed water was to be the CGF's primary water source. Municipal water was to be obtained from the City of Chehalis through the City's existing water rights permit. Once the reclaimed water reached the CGF, Chehalis Power was to treat it to Class A reclaimed water standards, as required by the Departments of Health and Ecology. Sanitary wastewater from the CGF was to be discharged to the City of

Chehalis' municipal sewage collection system in the industrial park and treated at the Chehalis WWTP.

13. The CGF will be interconnected to BPA's 500 kV transmission system through a new switchyard located at the CGF. The CGF is designed to be fully dispatchable and displaceable, based on seasonal, annual or temporary need for power.
14. Under the current SCA, three water pipelines would be constructed along an approximately 5.5 mile long alignment from the Chehalis WWTP and the Chehalis River to the CGF. Two of the pipelines were to supply water to the CGF for cooling purposes; one would convey reclaimed water from the Chehalis WWTP, and the other would convey municipal water from the Chehalis River Pumping Station. A third pipeline would return wastewater discharge from the CGF to the City of Chehalis' discharge line, downstream of the Chehalis WWTP. The three pipelines would have been parallel to each other and within a single corridor except for the northern-most portions of the two supply lines.
15. Under the current SCA, the CGF holds a National Pollutant Discharge Elimination System (NPDES) waste discharge permit allowing discharge of industrial wastewater to the Chehalis River.

C. The Proposed Amendments

16. As amended, the facility will use air cooling technology in lieu of water cooling technology to reduce water use. Although the Council determined in 1996 that air cooling would be less efficient than water cooling, the technological advancements in turbine design and current water resource concerns have restructured the efficiencies such that air cooling is now the Applicant's preferred alternative considering efficiency and environmental standpoints.
17. This use of air cooling technology will require changes to the SCA to: (1) eliminate Attachment 2, the legal description for the water pipeline route, because the pipelines will not be required for air cooling; (2) eliminate Attachment 4 because Chehalis Power will not need an NPDES permit from EFSEC (the air cooling alternative will not require direct discharge to the Chehalis River by CGF); (3) eliminate Attachment 9 because the interim effluent limitations and compliance schedule that are associated with the NPDES permit are no longer needed; and (4) amend Attachments 5 and 6 relating to requirements and mitigation for the water and wastewater pipelines.
18. The proposed amendments will eliminate the SCA requirement that CGF provide treatment of reclaimed water from the City of Chehalis.
19. CGF is proposing the use of more efficient GE 7FA turbines. Thus, the electrical generation capacity of the facility will increase from 460 MW to 520 MW.

20. Chehalis Power proposes to eliminate Attachment 7 from the SCA and to operate the CGF as a “merchant plant.”
21. The Applicant has proposed to revise the short-term emission limits for NO_x in the PSD air permit based on the more efficient GE 7FA turbines.
22. Chehalis Power proposes to amend Article IV.C - Steam Turbine - as follows: “The steam turbine ~~will~~ may be provided with a steam extraction system to supply steam for a future steam host.”
23. Chehalis Power proposes an amendment to Article IV.D - Fuel Supply - to increase the size of each of the two back up fuel oil tanks from 1,600,000 to 1,700,000 gallons, for a total increase of 200,000 gallons.

D. Agreements and Stipulations

24. On May 15, 2000, Chehalis Power and the CIC entered into a settlement agreement regarding noise, chemicals and hazardous materials. Based on the commitments made by Chehalis Power in that agreement, CIC agreed to withdraw issues 44 and 46 as contained in Consolidated Issues List No. 1. The parties agreed that the withdrawal of issues 44 and 46 operates as a dismissal with prejudice of these issues.³⁹
25. On May 17, 2000, Chehalis Power and WDFW entered into a settlement agreement regarding natural resource impacts of location and routing of water and wastewater lines. Based on the commitments made by Chehalis Power in that agreement, WDFW agreed to withdraw issues 7, 8 and 9 as contained in Consolidated Issues List No. 1.⁴⁰
26. On May 24, 2000, Chehalis Power, WDFW, and Ecology entered into a settlement agreement. Based on the commitments made by Chehalis Power in that agreement, WDFW and Ecology stipulated to withdraw from the adjudicative hearing issues 10, 11, 12, 13, 14, 15 as contained in Consolidated Issues List No. 1. The agreement addressed issues of water quality and quantity, NO_x emissions during facility start up and shut down, and the 9.9 parts per million (ppm) NO_x emission concentration limit.⁴¹
27. On May 26, 2000, Chehalis Power and the CIC entered into a second stipulation.⁴² Based on the commitments made by Chehalis Power in that agreement, the CIC agreed to assent to the Council’s adoption of the provisions of Exhibit 2 (settlement agreement between WDFW and Chehalis Power). The Council accepts the stipulation in this order.

³⁹ Exhibit 1.

⁴⁰ Exhibit 2.

⁴¹ Exhibit 3.

⁴² Exhibit 5.

E. Need and Consistency

- 28. Chehalis Power will be allowed to operate as a merchant plant.
- 29. The Applicant has made no commitment to increase the diversity of energy resources and has not demonstrated any direct energy benefits other than an increased supply of energy to the Western grid.

F. Increase in Capacity

- 30. Chehalis Power will be allowed to increase its electric generation output from 460 MW to 520 MW using a new General Electric (GE) frame 7FA combustion turbine. The GE frame 7F combustion turbine permitted in the SCA is no longer available.

G. Shift from Water to Air Cooling

Water

- 31. Combined cycle combustion turbines require a coolant to condense steam turbine exhaust. Cooling may be accomplished through the use of air or water cooling systems. Chehalis Power proposes to amend the application to shift from water to air cooling technology for the CGF.
- 32. Operating at full capacity, the new GE frame 7FA combustion turbines, combined with the permitted water cooling system, would require more water than the Applicant is allowed to use under the current SCA.
- 33. The air cooled system will use an air cooled condenser consisting of an A-frame support structure for partitioned fine tube bundles. Fans will draw ambient air over the tube bundles to condense the steam. Steam ducts will connect the steam turbine exhaust to the condenser.
- 34. The air cooled system will require two additional water tanks. However, the air cooled system will require a more compact site layout than the water cooled system.
- 35. Under the proposed amendments, the CGF's water reclamation and pretreatment facility is no longer required. Although a new reclamation and pretreatment facility would have benefited the City of Chehalis, such a facility would not have solved the City's wastewater discharge problems.
- 36. Under the proposed amendments, water use will be reduced from 3,000,000 gallons per day (gpd) to an average of 192,000 gpd, with the facility using 110,000 gpd for approximately 11 months annually and 1,100,000 gpd for no more than 720 hours annually. Wastewater discharge will be reduced under the proposed amendments to 80,000 gpd from 300,000 gpd. Thus, consumptive use under the Amended SCA is

30,000 gpd when the CGF operates on natural gas (110,000 gpd intake – 80,000 gpd discharge = 30,000 gpd consumptive use).

37. The CGF will discharge its wastewater to the City of Chehalis Waste Water Treatment Plant.
38. The CGF will no longer be subject to EFSEC requirements for a National Pollutant Discharge Elimination System (NPDES) permit for direct discharge of its wastewater into the Chehalis River.
39. The CGF will not impede the City's ability to comply with its NPDES permit.
40. The CGF is subject to federal wastewater pretreatment requirements under the NPDES program that will be imposed and enforced by the United States Environmental Protection Agency (EPA). The CGF will comply with all applicable water quality requirements.
41. The EPA will monitor and enforce compliance with water quality requirements applicable to the CGF's discharge to the City's WWTP by applying its pretreatment requirements under the NPDES program to the CGF. In addition, Chehalis Power has committed to develop plans to address monitoring and compliance as part of development of its operating procedures.
42. In the settlement agreement with WDFW, Chehalis Power agreed to amend SCA Article IV, Section F - Wastewater Discharge System, to provide that "storm water will be collected, treated if necessary, and directed to either an existing storm water tributary or to the municipal sanitary sewer system." In order to ensure consistency with the existing SCA, storm water runoff shall be collected and treated consistent with the Stormwater Management Manual (SWMM) for the Puget Sound Basin, February 1992 (WDOE 1992) and other requirements in Attachment 3 - Excavation and Erosion Control Measures.
43. A Consent Decree, entered by the U.S. District Court Western District of Washington at Tacoma on January 14, 2000,⁴³ reiterates the conditions adopted in an earlier Oxygen TMDL study to have restrictions on effluent discharges that are based on flow-based limits. The Consent Decree and wastewater permits recognize that if a gauging station for the Chehalis River were to be installed within or near the Centralia Reach itself, participants would consider using that gauge as the "definitive measure of flow in the Centralia Reach."
44. Pending continuing efforts by state and local agencies to establish a gauging station in the Centralia Reach of the Chehalis River, restrictions on CGF's use of municipal water will be based on measurements from the Grand Mound Gauging Station. Chehalis Power is encouraged to participate in discussions to determine if gauging in the Reach should be

⁴³ Exhibit 22.3.

required. The Council reserves the right to have river gauging requirements considered as part of its consideration of detailed monitoring plans in the final design for the project.

45. Chehalis Power's plan for water use and wastewater discharge is consistent with the findings and recommendations of the Revised Upper Chehalis River Basin Dissolved Oxygen Total Maximum Daily Load Submittal Report, dated March 2000, and the draft Upper Chehalis River Basin Temperature Total Maximum Daily Load dated May 1999.
46. Chehalis Power will obtain its water from the City of Chehalis. The City has sufficient water to provide service to the CGF.
47. Chehalis Power will purchase no more than 70 million gallons annually from the City of Chehalis. Chehalis Power's maximum daily rate of purchase of municipal water is 850,000 gallons, limited during the period of May 1 to October 31 to seven consecutive days or less. Chehalis Power will not purchase City water during low flow periods, that is, when the river is at or below 165 cfs as measured at Grand Mound, except to the extent that Chehalis Power funds water conservation according to the terms of the settlement agreement set forth in Exhibit 3.
48. The settlement agreement with WDFW and Ecology obligates Chehalis Power to obtain 80 acre feet at up to \$2,000 per acre foot. This obligation is equivalent to a two-to-one mitigation for the CGF's expected consumption of municipal water from May through October. However, it is not equivalent to the entire 70 million gallons per year that CGF is allowed to purchase annually. Therefore, Chehalis Power will be required to acquire at least 102 acre feet, or a one-to-one mitigation, for total annual allowed consumption.
49. Under the terms of the settlement agreement with Ecology and DFW, Chehalis Power has agreed to use its best efforts to acquire and retire the water rights by December 31, 2001. If Chehalis Power is unable to acquire water rights by that date, Chehalis Power is to pay a one-time sum of \$4000 per acre foot for water rights that it was unable to acquire to Chehalis Basin Partnership, or to some other organization agreed upon by Chehalis Power, Ecology and the Council for purposes of improving stream flows or flow-related conditions in the Centralia Reach.
50. No evidence was presented at the hearing regarding the Applicant's efforts to date in acquiring water rights as required under the current SCA. To give Chehalis Power sufficient time to acquire water rights, and to ensure that water rights are actually acquired and retired, the deadline for acquisition will be extended from December 31, 2001 to December 31, 2002. If at least 102 acre feet of water rights are not acquired by that date, the sum to be delivered in trust to Chehalis Basin Partnership or another suitable organization (per Finding of Fact No. 49 above) will be for purposes of acquiring and retiring water rights to improve stream flows or flow-related conditions in the Centralia Reach of the Chehalis River. In calculating the amount of water rights acquired, the total amount acquired will be based on acre feet net of the amount that

could possibly be taken from exempt wells allowed by zoning applicable at the time of water right acquisition.

51. Chehalis Power shall meter and record all water purchased and discharged by the CGF in operating, testing, maintenance, start up and shut down, and other such activities that require the use of stored or purchased water for the CGF. Pursuant to Attachment 5 and the conditions of the Amended SCA, Chehalis Power shall compile daily water purchase and discharge data and report to the Council monthly. CGF shall compile an annual report on water purchase by the CGF, to be submitted to the Council no later than January 31 of the following year. Chehalis Power will develop the format and content of the water usage reports in consultation with the Council. The water usage reports prepared by Chehalis Power shall be available to the public at the Councils' office.
52. The Council will reevaluate the reporting requirements at least once every three years.
53. The Council shall review water usage at the CGF as part of the Compliance Monitoring Program established for overseeing the construction and operation of the project. This will include review of reports and plant data that document the use and discharge of all water at the site, and updates on Chehalis Power's retirement of water rights. Commensurate with the submittal of the annual water usage report, the Council will evaluate the data and consult with Chehalis Power and determine if additional requirements are needed for the use of water for the CGF.
54. The City of Chehalis has stated that it will ensure that Chehalis Power covers its full and fair share of the cost of having the City provide water and wastewater service.
55. The Council's analysis of the CGF's water impacts is an analysis of cumulative impacts because the TMDLs, the low flow calculations, the City's water system capacity, and other evidence central to the analysis are premised on the existence and activities of other water users and dischargers.
56. The proposed amendments, together with the settlement agreements and conditions imposed by the Council, incorporate the intent of the current SCA and minimize concerns regarding water resources.

Air⁴⁴

57. The CGF is subject to federal and state air emissions control requirements: Notice of Construction (NOC) approval; Prevention of Significant Deterioration (PSD); New Source Performance Standards (NSPS); and air toxics standards.
58. On December 13, 1999, the Council determined that Chehalis Power had commenced construction for purposes of the PSD air permit in accordance with EPA guidance.
59. The proposed revised PSD air permit issued by EFSEC for public comment incorporates the Applicant's proposed revised short term emission limits for nitrogen oxides (NO_x). The proposed revised permit issued by EFSEC also imposes a new condition limiting annual NO_x emissions to the amount of anticipated NO_x emissions upon which the original ambient impacts modeling was based.
60. Two additional changes are proposed as a result of the settlement agreement by and among Chehalis Power, Ecology and WDFW⁴⁵. The parties agreed to accept the increased short-term NO_x emission limits, to include NO_x limits during start-up and shut-down periods, and to include a statement in which Chehalis Power agrees that it will not seek any increase in the NO_x concentration limit of 9.9 parts per million.
61. The Council has not acted to complete the PSD air permit process because the Council has been waiting for a decision from the EPA on the permit. Therefore, the Council does not have a recommendation on the PSD air permit to include in this Initial Order. Upon completion of the PSD air permit process, a permit will be incorporated in the decision expressed in the Council's final order and attached to the draft Amended SCA for the Governor's consideration.

H. Climate Change

61. Operation of the CGF will result in the annual emission of 1.8 million tons of carbon dioxide (CO₂), with an increase of 8% due to the increase in energy output.
62. CO₂ is not specifically regulated under federal, state or local laws or regulations. However, WAC 463-42-225 requires an applicant for a fossil fuel plant to deal with products containing CO₂ and a number of other emissions, including any other emissions subject to regulation.
63. The threat of global warming is real and should not be ignored. The production and release of greenhouse gases pose a real threat to the quality of the environment that the Council has the duty to protect.

⁴⁴ Additional findings of fact may be included in the Final Order upon completion of the PSD permit process.

⁴⁵ Exhibit 3.

64. Replacing electricity generated at plants using fossil fuels other than natural gas with electricity generated by natural gas-fired plants is a strategy approved by the Clinton Administration for reducing CO₂ emissions. However, there is no evidence that construction of this or any other natural gas-fired plant will cause existing plants using fossil fuels to be retired.
65. Greenhouse gas mitigation will not place the Applicant at a competitive disadvantage within the power producing market. Natural gas-fired plants that have been permitted in Oregon with greenhouse gas mitigation requirements are being applied for and certified.
66. The Oregon “monetary path” is a reasonable approach to greenhouse gas mitigation because it provides a reasonable method of calculating monetary requirements for mitigation that can be used to offset emissions from the facility.
67. The Applicant is directed to develop a plan and recommended strategies to offset greenhouse gas emissions from the CGF, which could be used as a model for a statewide greenhouse gas emission offset program. The plan shall be submitted to EFSEC no later than one year from the effective date of this order.
68. The Applicant is directed to make mitigation payments to the Council to implement the greenhouse gas emission offset plan. The Council will cause such payments to be deposited and held as required or authorized by state law. The Applicant is directed to calculate the amount to be paid in mitigation based upon the Oregon formula. The calculations shall be submitted to the Council for review and a determination of the total amount to be paid. The payments for greenhouse gas mitigation shall be made in installments of equal amounts over a period of five years. The first payment will be due on the date CGF commercial operations commence. The remaining four payments will be due not later than one year, two years, three years, and four years, respectively, after the day CGF commercial operations commence.
69. Upon submittal of the greenhouse gas emission offset plan, the Council will review the plan for actions that will lead to actual offsets of greenhouse gas emissions by the CGF. Upon review and approval by the Council, the greenhouse gas emission offset funds will be drawn upon for implementation of the plan.
70. If, in the future, a state or federal mitigation program is implemented, the Council reserves the right to exercise its authority under that program, considering and appropriately crediting, if permitted by law, any measures that the Applicant has accomplished under the Amended SCA.

I. Plants and Animals

72. The air cooling technology eliminates the need for the three water pipelines required for the water cooling technology permitted in the current SCA. However, the City of Chehalis will still need to construct municipal water and wastewater lines to the CGF. The City has not determined the location or design of these pipelines.
73. The settlement agreement with WDFW⁴⁶ and stipulation with CIC⁴⁷ require Chehalis Power to notify WDFW and CIC of the anticipated location and routing for any municipal water and wastewater lines after the City of Chehalis has established the location and routing and notified Chehalis Power. Upon completion of the preliminary design (including sizing) for each line, Chehalis Power will provide WDFW and CIC with copies of such preliminary design information. These provisions will ensure that WDFW and CIC have an opportunity to notify the Council of onsite impacts and Lewis County and the City of Chehalis of offsite impacts to natural resources by the pipeline.

J. Other Issues

74. Issues regarding the natural gas pipeline are beyond the scope of EFSEC's authority and are not under consideration in the amendment process.
75. The proposed amendments to the CGF will not affect noise levels authorized under the Amended SCA.
76. Acquisition of parcels adjacent to the plant is not relevant to this proceeding because it was not raised as an issue and because they were acquired for purposes of the gas pipeline and water lines, which are not within the Council's jurisdiction.
77. The amendment to Article IV.C. states: "The steam turbine ~~will~~ may be provided with a steam extraction system to supply steam for a future steam host." The amendment request states that the reason for this change is that Chehalis Power has not yet identified any future steam users, and a final decision as to whether to include a steam extraction system has not been made.⁴⁸ Cogeneration provides important opportunities for greater efficiency in the use of natural gas.⁴⁹ It is also consistent with the state energy policy provision in RCW 43.21.F.015(4), which states: "Energy conservation and elimination of wasteful and uneconomic uses of energy and materials shall be encouraged...." The Applicant submitted no evidence in support of this amendment other than a footnote statement that no future steam user has been identified. Chehalis Power has not

⁴⁶ Exhibit 2.

⁴⁷ Exhibit 5.

⁴⁸ Exhibit 20.2, page 9, footnote 8.

⁴⁹ Exhibit 50.15.

presented sufficient evidence or an adequate rationale for removing this requirement. The amendment shall be denied.

78. The amendment to SCA Article IV.D - Fuel Supply, to increase the size of each of the two back up fuel oil tanks from 1,600,000 to 1,700,000 gallons is needed because the larger turbines will require an increase in backup fuel oil⁵⁰. The amendment shall be granted.

K. Environmental Documentation

79. As part of the SCA process, following independent review, EFSEC adopted as its own the Environmental Impact Statement (EIS) prepared by the Bonneville Power Administration (BPA) for the Resource Contingency Program (of which the CGF was a part), as well as related environmental documents and materials.
80. EFSEC's adoption of those environmental documents was consistent with the provisions of the State Environmental Policy Act (SEPA; ch. 43.21C RCW); chapter 463-47 WAC and WAC 197-11-600, -610, -630 and -695.
81. The environmental documentation previously adopted by EFSEC covers a range of alternatives and impacts, including the air-cooled alternative. EFSEC's responsible official reviewed the proposed amendments to the SCA and issued an addendum on October 13, 2000, finding that the probable significant environmental impacts of the requested amendments were described in the BPA FEIS adopted in 1996.

Summary

Balancing the interests sought to be protected and promoted by chapter 80.50 RCW in light of all the evidence, testimony, and documents of record, the Council finds that amending Chehalis Power's Site Certification Agreement for the CGF, as set forth in the attached draft Amended Site Certification Agreement, will promote the public interest.

CONCLUSIONS OF LAW

Based on the foregoing findings of fact, the testimony received and evidence admitted during the adjudicative hearing, the environmental documents and environmental determinations made by the Council, and the record in this matter, the Council makes the following conclusions of law:

1. The Washington State Energy Facility Site Evaluation Council has jurisdiction over the parties to and the subject matter of this amendment proceeding.
2. Amendment Request No. 1 to the Chehalis Generation Facility Site Certification Agreement, with conditions as reflected in the attached draft Amended Site Certification

⁵⁰ Exhibit 20.2, page 9, footnote 10.

Agreement, complies with the guidelines contained in Chapter 463-36 WAC for amending a Site Certification Agreement.

3. The agreements and stipulations entered into between and among Chehalis Power and Ecology, Fish and Wildlife and the CIC should be approved, with the Council's revisions, and should be incorporated into the Amended Site Certification Agreement for the CGF. WAC 463-30-250.
4. The proposed amendments and conditions to the Site Certification Agreement (SCA), including the conditions imposed by the Council, are consistent with the intent of the original SCA.
5. The proposed amendments and conditions to the Site Certification Agreement, including the conditions imposed by the Council, are consistent with all applicable laws and rules.
6. The proposed amendments and conditions to the Site Certification Agreement, including the conditions imposed by the Council, are consistent with public health, safety and welfare.
7. As set forth in Prehearing Conference Order No. 4 (Order No. 745), the Council will not assert jurisdiction over the pretreatment discharge permit for the CGF. The terms, conditions and contents of the waste water discharge authorization for the CGF will be established and enforced by the EPA under the NPDES program.
8. The terms, conditions and contents of the amended PSD air emissions permit, which will be contained in Attachment 2 to the draft Amended Site Certification Agreement upon completion of the PSD permit process, will comply with the requirements of chapter 463-39 WAC.
9. Chehalis Power's proposed amendment to the SCA for the CGF constitutes an action and is not categorically exempt from the State Environmental Policy Act (SEPA) within the meaning of WAC 463-47-060.
10. EFSEC is the SEPA lead agency for the proposed action. As Council Manager, Allen Fiksdal is the SEPA responsible official. WAC 463-47-051.
11. Because the proposed action encompassed by the amendment falls within the range of alternatives and impacts analyzed in previous environmental documents, no additional environmental review is required.
12. The Council's issuance of an addendum to add the Request to Amend the Chehalis Generation Facility SCA to its 1996 Notice of Adoption is adequate and meets all of EFSEC's responsibilities under SEPA, satisfying the requirements of chapter 43.21C RCW, chapter 463-47 RCW and chapter 197-11 WAC. The probable significant

environmental impacts of the requested changes to the SCA were described in the previously adopted environmental documents and other materials.

13. The acquisition and retirement of water rights as required in the draft Amended SCA will preserve and protect the quality of the environment and enhance the public's opportunity to enjoy the aesthetic and recreational benefits of the Chehalis River. RCW 80.50.010(2).
14. The mitigation measures contained in the draft Amended SCA that are designed to protect against potential adverse impacts on the Chehalis River provide complete mitigation for any such adverse impacts.
15. The other mitigation measures contained in the draft Amended SCA provide complete mitigation for any other probable significant adverse impacts that may result from the Council's decision to recommend approval of the amendment to the SCA for the CGF.
16. No mitigation beyond that specified or contemplated in the draft Amended SCA is necessary.
17. Having reviewed the proposed amendments and considered the factors required by its rules and regulations, the Council proposes to recommend that the Governor of the State of Washington approve the attached draft Amended SCA between the State of Washington and Chehalis Power, subject to completion of the PSD air permit process and incorporation of any necessary changes.

IV. ORDER

Based on the foregoing findings of fact and conclusions of law, the parties' briefs, and the record in this matter, the Council issues the following Initial Order.

1. The Council hereby proposes to Report to the Governor of the State of Washington that Chehalis Power's Amendment Request No. 1 to the Site Certification Agreement for the Chehalis Generation Facility, as revised in the draft Amended Site Certification Agreement attached hereto, is in compliance with applicable laws and regulations.
2. The Council proposes to recommend that the Governor of the State of Washington approve the attached draft Amended Site Certification Agreement, with all Attachments (including the amended PSD air permit upon completion of the permit process), upon the terms and conditions set out therein, and in so doing approve the amendment to the certification of the Chehalis Generation Facility Site for construction and operation of the Chehalis Generation Facility.

SIGNATURE

DATED at Olympia, Washington and effective this __5th__ day of __December____, 2000.

WASHINGTON ENERGY FACILITY
SITE EVALUATION COUNCIL

_____/s/_____
Heather L. Ballash, Presiding Officer
Department of Community, Trade and
Economic Development

NOTICE TO PARTIES

This an initial order only. This order is entered pursuant to RCW 34.05.461 and WAC 463-30-320. This order states the Council's proposed decision resulting from adjudicative proceedings held under Chapter 34.05 RCW pursuant to the mandate of RCW 80.50.090(3). The action proposed in this order is not effective until a final order of the Washington Energy Facility Site Evaluation Council is entered. If any party disagrees with this initial order and wants the Council to consider its comments, it must take specific action within the time limit set out below.

Any party to this proceeding has twenty-one (21) days after the service date of this initial order to petition for administrative review to the Council. Any party wishing to respond to a petition may do so within fourteen (14) days after the petition is filed. Upon conclusion of the period for administrative review and completion of the PSD air permit process, the Council will enter its final order and forward its recommendation to the Governor pursuant to RCW 80.50.100 and WAC 463-30-390.