

ESHB 1020 - S COMM AMD

By Committee on Water, Energy & Environment

ADOPTED 02/28/2006

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 80.50.020 and 2001 c 214 s 3 are each amended to read
4 as follows:

5 The definitions in this section apply throughout this chapter
6 unless the context clearly requires otherwise.

7 (1) "Applicant" means any person who makes application for a site
8 certification pursuant to the provisions of this chapter.

9 (2) "Application" means any request for approval of a particular
10 site or sites filed in accordance with the procedures established
11 pursuant to this chapter, unless the context otherwise requires.

12 (3) "Person" means an individual, partnership, joint venture,
13 private or public corporation, association, firm, public service
14 company, political subdivision, municipal corporation, government
15 agency, public utility district, or any other entity, public or
16 private, however organized.

17 (4) "Site" means any proposed or approved location of an energy
18 facility.

19 (5) "Certification" means a binding agreement between an applicant
20 and the state which shall embody compliance to the siting guidelines,
21 in effect as of the date of certification, which have been adopted
22 pursuant to RCW 80.50.040 as now or hereafter amended as conditions to
23 be met prior to or concurrent with the construction or operation of any
24 energy facility.

25 (6) "Associated facilities" means storage, transmission, handling,
26 or other related and supporting facilities connecting an energy plant
27 with the existing energy supply, processing, or distribution system,
28 including, but not limited to, communications, controls, mobilizing or
29 maintenance equipment, instrumentation, and other types of ancillary
30 transmission equipment, off-line storage or venting required for

1 efficient operation or safety of the transmission system and overhead,
2 and surface or subsurface lines of physical access for the inspection,
3 maintenance, and safe operations of the transmission facility and new
4 transmission lines constructed to operate at nominal voltages in excess
5 of ~~((200,000))~~ 115,000 volts to connect a thermal power plant or
6 alternative energy facilities to the northwest power grid(~~(+—PROVIDED,~~
7 ~~That)~~). However, common carrier railroads or motor vehicles shall not
8 be included.

9 (7) "Transmission facility" means any of the following together
10 with their associated facilities:

11 (a) Crude or refined petroleum or liquid petroleum product
12 transmission pipeline of the following dimensions: A pipeline larger
13 than six inches minimum inside diameter between valves for the
14 transmission of these products with a total length of at least fifteen
15 miles;

16 (b) Natural gas, synthetic fuel gas, or ~~((liquified))~~ liquefied
17 petroleum gas transmission pipeline of the following dimensions: A
18 pipeline larger than fourteen inches minimum inside diameter between
19 valves, for the transmission of these products, with a total length of
20 at least fifteen miles for the purpose of delivering gas to a
21 distribution facility, except an interstate natural gas pipeline
22 regulated by the United States federal power commission;

23 (c) Electrical transmission facilities in excess of 115,000 volts
24 in national interest electric transmission corridors as designated by
25 the United States secretary of the department of energy or the federal
26 energy regulatory commission pursuant to section 1221 of the national
27 energy policy act, and such rules and regulations as the secretary or
28 the federal energy regulatory commission adopts to implement the act.

29 (8) "Independent consultants" means those persons who have no
30 financial interest in the applicant's proposals and who are retained by
31 the council to evaluate the applicant's proposals, supporting studies,
32 or to conduct additional studies.

33 (9) "Thermal power plant" means, for the purpose of certification,
34 any electrical generating facility using any fuel, including nuclear
35 materials, for distribution of electricity by electric utilities.

36 (10) "Energy facility" means an energy plant or transmission
37 facilities: PROVIDED, That the following are excluded from the
38 provisions of this chapter:

1 (a) Facilities for the extraction, conversion, transmission or
2 storage of water, other than water specifically consumed or discharged
3 by energy production or conversion for energy purposes; and

4 (b) Facilities operated by and for the armed services for military
5 purposes or by other federal authority for the national defense.

6 (11) "Council" means the energy facility site evaluation council
7 created by RCW 80.50.030.

8 (12) "Counsel for the environment" means an assistant attorney
9 general or a special assistant attorney general who shall represent the
10 public in accordance with RCW 80.50.080.

11 (13) "Construction" means on-site improvements, excluding
12 exploratory work, which cost in excess of two hundred fifty thousand
13 dollars.

14 (14) "Energy plant" means the following facilities together with
15 their associated facilities:

16 (a) Any stationary thermal power plant with generating capacity of
17 three hundred fifty thousand kilowatts or more, measured using maximum
18 continuous electric generating capacity, less minimum auxiliary load,
19 at average ambient temperature and pressure, and floating thermal power
20 plants of one hundred thousand kilowatts or more, including associated
21 facilities. For the purposes of this subsection, "floating thermal
22 power plants" means a thermal power plant that is suspended on the
23 surface of water by means of a barge, vessel, or other floating
24 platform;

25 (b) Facilities which will have the capacity to receive
26 (~~(liquefied)~~) liquefied natural gas in the equivalent of more than one
27 hundred million standard cubic feet of natural gas per day, which has
28 been transported over marine waters;

29 (c) Facilities which will have the capacity to receive more than an
30 average of fifty thousand barrels per day of crude or refined petroleum
31 or (~~(liquefied)~~) liquefied petroleum gas which has been or will be
32 transported over marine waters, except that the provisions of this
33 chapter shall not apply to storage facilities unless occasioned by such
34 new facility construction;

35 (d) Any underground reservoir for receipt and storage of natural
36 gas as defined in RCW 80.40.010 capable of delivering an average of
37 more than one hundred million standard cubic feet of natural gas per
38 day; and

1 (e) Facilities capable of processing more than twenty-five thousand
2 barrels per day of petroleum into refined products.

3 (15) "Land use plan" means a comprehensive plan or land use element
4 thereof adopted by a unit of local government pursuant to chapter(~~(§)~~)
5 35.63, 35A.63, (~~(§)~~) 36.70, or 36.70A RCW.

6 (16) "Zoning ordinance" means an ordinance of a unit of local
7 government regulating the use of land and adopted pursuant to
8 chapter(~~(§)~~) 35.63, 35A.63, (~~(§)~~) 36.70, or 36.70A RCW or Article XI
9 of the state Constitution.

10 (17) "Alternative energy resource" means: (a) Wind; (b) solar
11 energy; (c) geothermal energy; (d) landfill gas; (e) wave or tidal
12 action; or (f) biomass energy based on solid organic fuels from wood,
13 forest, or field residues, or dedicated energy crops that do not
14 include wood pieces that have been treated with chemical preservatives
15 such as creosote, pentachlorophenol, or copper-chrome-arsenic.

16 (18) "Secretary" means the secretary of the United States
17 department of energy.

18 NEW SECTION. Sec. 2. (1) Section 1221 of the national energy
19 policy act also authorizes a state siting authority, in those instances
20 where applicants seek a federal construction permit otherwise
21 authorized pursuant to section 1221 of the act, to assert jurisdiction
22 on the basis of existing state regulatory authority.

23 (2) Section 1221 of the national energy policy act further
24 authorizes a state siting authority to approve the siting of facilities
25 or consider the interstate benefits to be achieved by proposed
26 construction or modification as provided for in section
27 1221(b)(1)(A)(i)-(ii) of the act or other provisions of the act, or
28 rules and regulations implementing the act, and to convey the views and
29 recommendations regarding the need for and impact of a transmission
30 facility where the federal energy regulatory commission is determined
31 to have jurisdiction.

32 (3) Because the types of transmission facilities subject to section
33 1221 of the national energy policy act are not defined, and because the
34 legislature recognizes that the siting of electric transmission lines
35 at or below 115,000 volts has historically been regulated by local
36 governments in the state, the legislature finds that the 115,000 volt

1 threshold established in this act is appropriate to satisfy the
2 requirements of section 1221.

3 NEW SECTION. **Sec. 3.** A new section is added to chapter 80.50 RCW
4 to read as follows:

5 (1) The council shall consult with other state agencies, utilities,
6 local municipal governments, public interest groups, tribes, and other
7 interested persons to convey their views to the secretary and the
8 federal energy regulatory commission regarding appropriate limits on
9 federal regulatory authority in the siting of electrical transmission
10 corridors in the state of Washington.

11 (2) The council is designated as the state authority for purposes
12 of siting transmission facilities under the national energy policy act
13 of 2005 and for purposes of other such rules or regulations adopted by
14 the secretary. The council's authority regarding transmission
15 facilities is limited to those transmission facilities that are the
16 subject of section 1221 of the national energy policy act and this
17 chapter.

18 (3) For the construction and modification of transmission
19 facilities that are the subject of section 1221 of the national energy
20 policy act, the council may: (a) Approve the siting of the facilities;
21 and (b) consider the interstate benefits expected to be achieved by the
22 proposed construction or modification of the facilities in the state.

23 (4) When developing recommendations as to the disposition of an
24 application for the construction or modification of transmission
25 facilities under this chapter, the fuel source of the electricity
26 carried by the transmission facilities shall not be considered.

27 **Sec. 4.** RCW 80.50.060 and 2001 c 214 s 2 are each amended to read
28 as follows:

29 (1) The provisions of this chapter shall apply to the construction
30 of energy facilities which includes the new construction of energy
31 facilities and the reconstruction or enlargement of existing energy
32 facilities where the net increase in physical capacity or dimensions
33 resulting from such reconstruction or enlargement meets or exceeds
34 those capacities or dimensions set forth in RCW 80.50.020 (7) and (14).
35 No construction of such energy facilities may be undertaken, except as

1 otherwise provided in this chapter, after July 15, 1977, without first
2 obtaining certification in the manner provided in this chapter.

3 (2) The provisions of this chapter apply to the construction,
4 reconstruction, or enlargement of a new or existing energy facility
5 that exclusively uses alternative energy resources and chooses to
6 receive certification under this chapter, regardless of the generating
7 capacity of the project.

8 (3) The provisions of this chapter apply to the construction of new
9 electrical transmission facilities or the modification of existing
10 electrical transmission facilities in a national interest electric
11 transmission corridor designated by the secretary.

12 (4) The provisions of this chapter shall not apply to normal
13 maintenance and repairs which do not increase the capacity or
14 dimensions beyond those set forth in RCW 80.50.020 (7) and (14).

15 ((+4)) (5) Applications for certification of energy facilities
16 made prior to July 15, 1977 shall continue to be governed by the
17 applicable provisions of law in effect on the day immediately preceding
18 July 15, 1977 with the exceptions of RCW 80.50.190 and 80.50.071 which
19 shall apply to such prior applications and to site certifications
20 prospectively from July 15, 1977.

21 ((+5)) (6) Applications for certification shall be upon forms
22 prescribed by the council and shall be supported by such information
23 and technical studies as the council may require.

24 **Sec. 5.** RCW 80.50.071 and 1977 ex.s. c 371 s 16 are each amended
25 to read as follows:

26 (1) The council shall receive all applications for energy facility
27 site certification. The following fees or charges for application
28 processing or certification monitoring shall be paid by the applicant
29 or certificate holder:

30 (a) A fee of twenty-five thousand dollars for each proposed site,
31 to be applied toward the cost of the independent consultant study
32 authorized in this subsection, shall accompany the application and
33 shall be a condition precedent to any further consideration or action
34 on the application by the council. The council shall commission its
35 own independent consultant study to measure the consequences of the
36 proposed energy facility on the environment for each site application.
37 The council shall direct the consultant to study any matter which it

1 deems essential to an adequate appraisal of the site. The full cost of
2 the study shall be paid by the applicant: PROVIDED, That said costs
3 exceeding a total of the twenty-five thousand dollars paid pursuant to
4 subsection (1)(a) of this section shall be payable subject to the
5 applicant giving prior approval to such excess amount.

6 (b) Each applicant shall, in addition to the costs of the
7 independent consultant provided by subsection (1)(a) of this section,
8 pay such reasonable costs as are actually and necessarily incurred by
9 the council and its members as designated in RCW 80.50.030 in
10 processing the application. Such costs shall include, but are not
11 limited to, council member's wages, employee benefits, costs of a
12 hearing examiner, a court reporter, additional staff salaries, wages
13 and employee benefits, goods and services, travel expenses within the
14 state and miscellaneous expenses, as arise directly from processing
15 such application.

16 Each applicant shall, at the time of application submission,
17 deposit twenty thousand dollars, or such lesser amount as may be
18 specified by council rule, to cover costs provided for by subsection
19 (1)(b) of this section. Reasonable and necessary costs of the council
20 directly attributable to application processing shall be charged
21 against such deposit.

22 The council shall submit to each applicant a statement of such
23 expenditures actually made during the preceding calendar quarter which
24 shall be in sufficient detail to explain such expenditures. The
25 applicant shall pay the state treasurer the amount of such statement to
26 restore the total amount on deposit to the originally established
27 level: PROVIDED, That such applicant may, at the request of the
28 council, increase the amount of funds on deposit to cover anticipated
29 expenses during peak periods of application processing. Any funds
30 remaining unexpended at the conclusion of application processing shall
31 be refunded to the applicant, or at the applicant's option, credited
32 against required deposits of certificate holders.

33 (c) Each certificate holder shall pay such reasonable costs as are
34 actually and necessarily incurred by the council for inspection and
35 determination of compliance by the certificate holder with the terms of
36 the certification relative to monitoring the effects of construction
37 and operation of the facility.

1 Each certificate holder, within thirty days of execution of the
2 site certification agreement, shall deposit twenty thousand dollars, or
3 such other amount as may be specified by council rule, to cover costs
4 provided for by subsection (1)(c) of this section. Reasonable and
5 necessary costs of the council directly attributable to inspection and
6 determination of compliance by the certificate holder with the terms of
7 the certification relative to monitoring the effects of construction
8 and operation of the facility shall be charged against such deposit.

9 The council shall submit to each certificate holder a statement of
10 such expenditures actually made during the preceding calendar quarter
11 which shall be in sufficient detail to explain such expenditures. The
12 certificate holder shall pay the state treasurer the amount of such
13 statement to restore the total amount on deposit to the originally
14 established level: PROVIDED, That if the actual, reasonable, and
15 necessary expenditures for inspection and determination of compliance
16 in the preceding calendar quarter have exceeded the amount of funds on
17 deposit, such excess costs shall be paid by the certificate holder.

18 (2) If an applicant or certificate holder fails to provide the
19 initial deposit, or if subsequently required payments are not received
20 within thirty days following receipt of the statement from the council,
21 the council may (a) in the case of the applicant, suspend processing of
22 the application until payment is received; or (b) in the case of a
23 certificate holder, suspend the certification.

24 (3) All payments required of the applicant or certificate holder
25 under this section are to be made to the state treasurer who shall make
26 payments as instructed by the council from the funds submitted. All
27 such funds shall be subject to state auditing procedures. Any
28 unexpended portions thereof shall be returned to the applicant or
29 certificate holder.

30 **Sec. 6.** RCW 80.50.090 and 2001 c 214 s 7 are each amended to read
31 as follows:

32 (1) The council shall conduct an informational public hearing in
33 the county of the proposed site as soon as practicable but not later
34 than sixty days after receipt of an application for site
35 certification(~~(:—PROVIDED, That)~~). However, the place of such public
36 hearing shall be as close as practical to the proposed site.

1 (2) Subsequent to the informational public hearing, the council
2 shall conduct a public hearing to determine whether or not the proposed
3 site is consistent and in compliance with city, county, or regional
4 land use plans or zoning ordinances. If it is determined that the
5 proposed site does conform with existing land use plans or zoning
6 ordinances in effect as of the date of the application, the city,
7 county, or regional planning authority shall not thereafter change such
8 land use plans or zoning ordinances so as to affect the proposed site.

9 (3) Prior to the issuance of a council recommendation to the
10 governor under RCW 80.50.100 a public hearing, conducted as an
11 adjudicative proceeding under chapter 34.05 RCW, the administrative
12 procedure act, shall be held. At such public hearing any person shall
13 be entitled to be heard in support of or in opposition to the
14 application for certification.

15 (4) Additional public hearings shall be held as deemed appropriate
16 by the council in the exercise of its functions under this chapter."

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By Committee on Water, Energy & Environment

ADOPTED 02/28/2006

17 On page 1, line 1 of the title, after "Relating to" strike the
18 remainder of the title and insert "the energy facility site evaluation
19 council; amending RCW 80.50.020, 80.50.060, 80.50.071, and 80.50.090;
20 adding a new section to chapter 80.50 RCW; and creating a new section."

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