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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THURSTON COUNTY

NORTHWEST ENVIRONMENTAL
DEFENSE CENTER, NORTHWEST
ENVIRONMENTAL ADVOCATES,
AND COLUMBIA RIVERKEEPER,

Petitioners,

v.

ENERGY FACILITY SITE
EVALUATION COUNCIL,

Respondent.

NO. __

PETITION FOR REVIEW

Petitioners Northwest Environmental Defense Center, Northwest Environmental Advocates, and Columbia Riverkeeper (collectively, Petitioners) bring this action pursuant to Washington's Administrative Procedures Act, Ch. 34.05 RCW (APA), challenging a decision by the Washington Energy Facility Site Evaluation Council (EFSEC) to approve a Clean Water Act National Pollutant Discharge Elimination System (NPDES) permit for Energy Northwest's Columbia Generating Station, a nuclear power plant located in Richland, Washington along the Columbia River. In support of its petition, Petitioners allege as follows:

1 **1. Name and Address of Petitioners**

2 Northwest Environmental Defense Center
3 10015 S.W. Terwilliger Blvd.
4 Portland, OR 97219

5 Northwest Environmental Advocates
6 P.O. Box 12187
7 Portland, OR 97212-0187

8 Columbia Riverkeeper
9 111 Third Street
10 Hood River, OR 97031

11 **2. Petitioners' Attorneys**

12 David S. Mann
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24 Marla S. Nelson
25 Staff Attorney
26 Northwest Environmental Defense Center
27 10015 S.W. Terwilliger Blvd.
 Portland, OR 97219
 503.768.6726 phone
 503.768.6677 fax
 msnelson@nedc.org

3. Name and Address of Agency Whose Action is at Issue

 Washington Energy Facility Site Evaluation Council
 1300 S. Evergreen Park Drive
 P.O. Box 43172
 Olympia, WA 98504.3172

1 **4. Agency Action at Issue**

2 This Petition for Review challenges EFSEC's September 30, 2014, decision to issue
3 NPDES Permit No. WA002515-1 to Energy Northwest for wastewater discharges from the
4 Columbia Generating Station into the Columbia River and operation of a cooling water intake
5 structure to the Columbia Generating Station from the Columbia River. A copy of the final
6 permit is attached.
7

8 **5. Parties to the Proceedings Below**

9 Energy Northwest
10 P.O. Box 968, Mail Drop PE04
11 Richland, WA 99352-0968

12 This Petition for Review is a direct challenge to the decision by EFSEC to approve the
13 issuance of an NPDES permit, pursuant to WAC 463-76-063(1). No adjudicative proceedings
14 occurred below.

15 **6. Facts Demonstrating Petitioners are Entitled to Obtain Judicial Review**

16 6.1. Petitioner Northwest Environmental Defense Center (NEDC) is a non-profit,
17 public interest organization with more than 300 members. NEDC was founded in 1969 to
18 preserve and protect the environment and natural resources of the Pacific Northwest by
19 providing legal support to individuals and grassroots organizations with environmental concerns,
20 and engaging in litigation independently or in conjunction with other environmental groups.
21 NEDC's members derive educational, scientific, aesthetic, recreational, spiritual, and other
22 benefits from the protection of our earth's ecosystems and natural resources.
23

24 6.2 Petitioner Northwest Environmental Advocates (NWEA) is a 501(c)(3) non-profit
25 organization that works through advocacy and education to protect and restore water and air
26 quality, wetlands, and wildlife habitat. Founded in 1969 by citizens concerned about the
27

1 imminent operation of the Trojan Nuclear Power Plant along the Columbia River, NWEA has a
2 long history of analyzing nuclear reactor operations in the Pacific Northwest and ensuring their
3 compliance with federal and state law as well as education and advocacy to improve water
4 quality in the Lower Columbia River.
5

6 6.3 Petitioner Columbia Riverkeeper is a 501(c)(3) non-profit corporation registered
7 in the State of Washington. The mission of Columbia Riverkeeper is to restore and protect the
8 water quality of the Columbia River and all life connected to it, from the headwaters to the
9 Pacific Ocean. To achieve these objectives, Columbia Riverkeeper operates scientific,
10 educational, and legal programs aimed at protecting water quality, air quality, and habitat in the
11 Columbia River Basin. Columbia Riverkeeper has over 8,000 members and supporters.
12

13 6.4 The NPDES permit at issue authorizes the Columbia Generating Station to
14 discharge wastewater to the Columbia River and to remove water from the Columbia River
15 through cooling water intake structures. Petitioners believe the evidence shows that discharges
16 from the plant will adversely impact water quality in the Columbia River. The cooling water
17 intake structures that remove water from the Columbia River may have resulted and may
18 continue to result in the impingement and entrainment of fish. These operations will diminish
19 Petitioners' and their members' use and enjoyment of the Columbia River and surrounding areas
20 and/or harm the environmental, health, aesthetic, and recreational interests of Petitioners and
21 their members.
22

23 6.5 Petitioners have members who recreate in or enjoy the vicinity of the Columbia
24 Generating Station and are concerned that the operations authorized under the NPDES permit
25 will adversely affect their use and enjoyment of that area. Petitioners have members who
26 regularly visit, use, and enjoy the Columbia River and/or areas adjacent to the Columbia
27

1 Generating Station for a variety of recreational activities. Petitioners have members who use
2 these areas for hiking, walking, boating, fishing, swimming, photographing, and/or observing
3 wildlife. Petitioners and their members are concerned that the operations authorized under the
4 NPDES permit have had, have, and will continue to have adverse effects on their enjoyment of
5 these activities in the affected areas.
6

7 6.6 Petitioners have been actively engaged in the public process related to Energy
8 Northwest's application for an NPDES permit. In preparation for the public notice period for the
9 NPDES permit, Petitioners submitted Freedom of Information Act requests to the National
10 Marine Fisheries Service (NMFS), U.S. Nuclear Regulatory Commission (NRC), and U.S.
11 Environmental Protection Agency (EPA). Petitioners reviewed and prepared extensive
12 comments on the NPDES permit proposed by EFSEC during the public comment period.
13 Petitioners also submitted supplemental comments highlighting new federal regulations
14 promulgated by EPA applicable to cooling water intake structures.
15

16 6.7 EFSEC's decision to issue the NPDES permit for the Columbia Generating
17 Station has prejudiced or is likely to prejudice Petitioners and Petitioners' members' interests.
18

19 6.8 Petitioners and Petitioners' members' interests are among those that EFSEC was
20 required to consider when it issued the NPDES permit.

21 6.9 Judgment in favor of Petitioners will substantially eliminate or redress the
22 prejudice suffered by Petitioners and Petitioners' members due to EFSEC's authorization of the
23 NPDES permit to Energy Northwest to discharge wastewater from and draw cooling water into
24 the Columbia Generating Station.
25
26
27

1 6.10 Petitioners have exhausted all available administrative remedies. Under WAC
2 463-76-063(1), the approval of an NPDES permit by EFSEC is subject to judicial review
3 pursuant to the provisions of RCW Chapter 34.05 RCW.
4

5 **7. Reasons Why Relief Should Be Granted**

6 7.1 EFSEC may authorize an NPDES permit only if, *inter alia*, (a) the conditions of
7 the permit provide for compliance with the requirements of the federal Clean Water Act and its
8 implementing regulations, (b) the applicant has obtained or the applicable state has waived any
9 required state certifications under section 401 of the federal Clean Water Act, and (c) the
10 conditions of the permit ensure compliance with applicable water quality requirements.
11

12 7.2 For each effluent standard or limitation established by EFSEC in an NPDES
13 permit, the agency must make a finding that any discharge authorized by the permit will not have
14 a reasonable potential to violate applicable water quality standards and it must prepare an explicit
15 verification of that finding.
16

17 7.3 The scope and manner of EFSEC's review of an application for reissuance of an
18 NPDES permit must be sufficiently detailed to insure that EFSEC has up-to-date information on
19 the nature, content, and frequency of the permittee's discharge, and to insure that the discharge is
20 consistent with applicable effluent standards and limitations, water quality standards, and other
21 legally applicable requirements during the term of the reissued permit.
22

23 7.4 In January of 2014, EFSEC proposed to reissue the Columbia Generating
24 Station's NPDES permit. Petitioners submitted comments on April 18, 2014, that identified
25 numerous ways in which the draft NPDES permit would violate the minimum federal
26 requirements set forth by the Clean Water Act and EPA's implementing regulations. Petitioners
27 submitted supplemental comments on May 20, 2014, identifying new federal regulations from

1 EPA applicable to cooling water intake structures and extensive new studies from the U.S.
2 Geological Survey (USGS) showing high levels of toxic substances in the Columbia River
3 sediments, water, and wildlife.
4

5 7.5 Both the EPA and NMFS also submitted comments on the NPDES permit.
6 NMFS disagreed with EFSEC's determination that the existing cooling water intake screens
7 represent the "best technology available" to minimize adverse environmental effects on fish
8 listed as threatened or endangered under the federal Endangered Species Act. NMFS asserted
9 the screens pose an unacceptable risk to juvenile salmon and steelhead that may encounter them.
10 NMFS highlighted its earlier comments to EFSEC, reiterating those comments because EFSEC
11 had not made adequate changes to the draft permit to resolve NMFS's concerns. EPA's
12 comments likewise focused on the cooling water intake screens, and presented EFSEC with the
13 following two alternatives: (1) that Energy Northwest would undertake studies during the term of
14 the new permit to inform whether additional actions are needed to minimize adverse
15 environmental impacts and to support the best professional judgment determination made to
16 assess the best technology available (BTA); or (2) to proceed directly with modifying the intake
17 screens to meet the objectives described by NMFS under a compliance schedule consistent with
18 federal regulations and Washington water quality standards.
19
20

21 7.6 On September 30, 2014, EFSEC reissued the NPDES permit for the Columbia
22 Generating Station, Permit No. WA002515-1.
23

24 7.7 **Failure to Comply with State & Federal Water Quality Laws:** In issuing the
25 NPDES permit for the Columbia Generating Station, EFSEC acted in a manner inconsistent with
26 the law, unsupported by substantial evidence, inconsistent with its own rules and/or procedures,
27

1 and/or was arbitrary or capricious. EFSEC's conduct was unlawful in one or more of the
2 following ways:

- 3
- 4 (a) In failing to comply with the public notice requirements of the federal Clean
5 Water Act, its implementing regulations, and EFSEC's own regulations by failing
6 to respond to comments, adding and/or relying on significant information that was
7 not available to the public during the public comment period, and/or by
8 substantially revising the permit terms based on information not available to the
9 public during the public comment period;
- 10
- 11 (b) In misinterpreting and/or misapplying the legal requirements governing cooling
12 water intake structures in section 316(b) of the Clean Water Act, 33 U.S.C. §
13 1326(b), and 40 C.F.R. § 401.14, by failing or refusing to demonstrate that the
14 location, design, construction, and capacity of the cooling water intake structures
15 reflect the "best technology available" for minimizing adverse environmental
16 impacts;
- 17
- 18 (c) In failing to base its determination of what constitutes the "best technology
19 available" for cooling water intake structures on current data evidencing a lack of
20 adverse impacts;
- 21
- 22 (d) In failing to evaluate the environmental impact of the cooling water intake
23 structures as a basis for its "best technology available" determination;
- 24
- 25 (e) In failing to afford the proper level of deference to the expert determinations of
26 NMFS regarding what constitutes the "best technology available" for cooling
27 water intake structures;

- 1 (f) In failing to afford the proper level of deference to the expert determinations of
2 EPA regarding what constitutes the “best technology available” for cooling water
3 intake structures;
4
- 5 (g) In misinterpreting and/or misapplying state and/or federal law in evaluating
6 whether or not the discharges from the Columbia Generating Station will comply
7 with each of the applicable water quality standards of Washington and/or Oregon
8 in violation of 40 C.F.R. §§ 122.44(d), 122.4, section 301(b)(1)(C) of the Clean
9 Water Act, 33 U.S.C. § 1311(b)(1)(C), and WAC 463-76-053;
10
- 11 (h) In failing to base its water quality standards determinations on substantial
12 evidence;
13
- 14 (i) In failing to evaluate and establish limits to ensure discharges from the Columbia
15 Generating Station will meet each of the applicable water quality standards of
16 Washington and/or Oregon in violation of 40 C.F.R. §§ 122.44(d), 122.4, section
17 301(b)(1)(C) of the Clean Water Act, 33 U.S.C. § 1311(b)(1)(C), and WAC 463-
18 76-053;
19
- 20 (j) In misinterpreting and/or misapplying state law in evaluating and determining all
21 known, available, and reasonable methods of prevention, control and treatment
22 applicable to the discharges from the Columbia Generating Station;
23
- 24 (k) In failing to base its determinations regarding the use of all known, available, and
25 reasonable methods of prevention, control and treatment on substantial evidence;
26
- 27 (l) In issuing an NPDES permit with conditions that fail to provide for compliance
with the applicable requirements of the federal Clean Water Act, the federal

1 implementing regulations, and EFSEC's own regulations, including *inter alia*,
2 adequate monitoring requirements..

3
4 7.8 EFSEC's decision was inconsistent with the law, unsupported by substantial
5 evidence, inconsistent with EFSEC's own rules and/or procedures, and was arbitrary or
6 capricious.

7 **8. Relief Requested**

8 For the foregoing reasons, Petitioners request that this Court, exercising its authority
9 under RCW 34.05.574:

- 10 (a) Declare that EFSEC violated the Washington Water Pollution Control Law, the
11 federal Clean Water Act and EPA's implementing regulations, and/or EFSEC's
12 own rules by authorizing an NPDES permit that does not provide for compliance
13 with the applicable requirements of state and federal law;
- 14 (b) Issue an injunction vacating and setting aside EFSEC's decision to authorize the
15 NPDES permit for Energy Northwest's Columbia Generating Station;
- 16 (c) Remand the NPDES permit to EFSEC to modify its provisions to comply with the
17 Washington Water Pollution Control Law, the federal Clean Water Act and
18 EPA's implementing regulations, and/or EFSEC's own rules;
- 19 (d) Issue an injunction prohibiting EFSEC from authorizing an NPDES permit for the
20 Columbia Generating Station unless and until EFSEC modifies the permit
21 provisions in a manner that complies with the Washington Water Pollution
22 Control Law, the federal Clean Water Act and EPA's implementing regulations,
23 and/or EFSEC's own rules;
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- 1 (e) Grant such preliminary and/or permanent injunctive relief as Petitioners may from
2 time to time request during the pendency and resolution of this case;
3
4 (f) Award Petitions their reasonable litigation expenses, including attorney fees,
5 expert witness fees, Court costs, and other expenses as necessary for the
6 preparation and litigation of this case under RCW 8.84.350 and/or as otherwise
7 authorized by law; and
8
9 (g) Grant other such relief as the Court deems just and equitable.

10 Dated this 29th day of October, 2014.

11 Respectfully submitted,

12 GENDLER & MANN, LLP

13
14 By: 

15 David S. Mann
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19 WSBA No. 21346
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