

BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of the)	
Application of)	Application No. 76-2
)	
NORTHERN TIER)	
PIPELINE COMPANY)	ORDER DENYING MOTION
)	
)	
A Montana Corporation)	
.)	

On August 21, 1978, Clallam County ("the county") filed with the Council a motion for dismissal of Application No. 76-2 of the Northern Tier Pipeline Company ("Northern Tier") on the ground that Northern Tier had failed to comply with conditions stated in a Council resolution, Resolution No. 130, passed on December 27, 1977. A supporting memorandum, an affidavit, and a notice of issue accompanied the filed petition. On September 7, 1978, the City of Port Angeles ("the city") filed with the Council a demand for leave to present argument on the same motion for dismissal. On September 11, 1978, in the course of its regular meeting, the Council took argument on the motion. Craig Ritchie, Prosecuting Attorney, appeared for the county and the city, Lee Johnson, Assistant Attorney General, appeared as Counsel for the Environment, and Gordon Conger, attorney at law, appeared for Northern Tier.

The Council's December 27, 1977 resolution extended the time for processing Application No. 76-2 to December 27, 1978. The resolution additionally directed Northern Tier to file a certified complete application by June 30, 1978, and to provide supporting data by July 31, 1978. Intervening circumstances caused Northern Tier to file its application and supporting data in two parts, the first part having been served on the Council on June 30, 1978, and the second part on August 18, 1978. Northern Tier kept the Council timely advised of the changes in the filing dates and the reasons therefor. The variance between the dates identified in the resolution and the actual dates of filing forms the basis for the motion to dismiss.

The motion should be denied for two reasons. First, the filing dates identified in Resolution 130 are directory, not mandatory. While the Council listed the dates as elements of understanding in the agreement embodied in Resolution 130, it did not state that the time extension agreement would fail if the dates were not precisely met.

Second, the timing of the actual filing comports substantially with the times identified in the resolution. Northern Tier's timely advice concerning changed filing dates has assisted in preventing undue applications processing delays, and the county and city, while they did describe difficulties and expenses encountered over the more than two years of processing the application, did not show themselves to have been substantially prejudiced by the aforementioned variance between dates identified in the resolution and actual filing dates. Whether the county's motion is strictly construed as a request that the Council dismiss Application 76-2, or liberally construed as a request to recommend dismissal to the governor, sufficient grounds for granting the motion do not exist.

Having considered the oral and written arguments of the parties, the Council enters the following order:

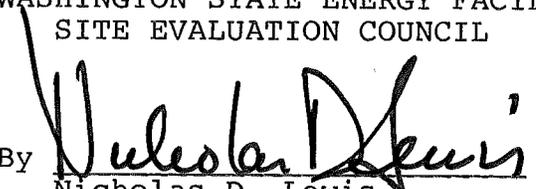
ORDER

IT IS HEREBY ORDERED That the August 21, 1978 motion of Clallam County for dismissal of Application No. 76-2 be denied.

DATED at Olympia, Washington and effective this 25th day of September, 1978.

WASHINGTON STATE ENERGY FACILITY
SITE EVALUATION COUNCIL

By


Nicholas D. Lewis
Chairman

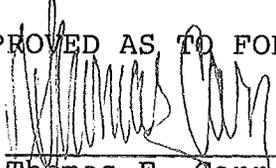
ATTEST:

By


William L. Fitch
Executive Secretary

APPROVED AS TO FORM:

By


Thomas F. Carr
Assistant Attorney General