ORDER NUMBER: 546
DATE: September 25, 1978

BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of the
Application of
NORTHERN TIER
PIPELINE COMPANY
A Montana Corporation

Application No. 76-2
ORDER DENYING MOTION

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 con-
ditions 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 peti-
tion. 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 cir-
cumstances 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