

BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In re Application No. 93-2)	PREHEARING ORDER NO. 2	673
)		
of)	PREHEARING ORDER	
)	CLARIFYING AND AFFIRMING	
KVA RESOURCES, INC.)	PREHEARING ORDER NO. 1	
)	WITHOUT MODIFICATION	
For Site Certification)		
.....)		

This is an application for certification of a proposed site at Creston, Lincoln County, Washington for construction and operation of a natural gas-fueled combustion turbine facility to generate electrical energy.

The Council held prehearing conferences on November 16 and December 9, 1994. It entered Prehearing Conference Order No. 1 on January 20, 1995. Objections to a prehearing conference order may be filed within 10 days after service of the order. Within the ten day period, Counsel for the Environment filed a motion to amend and/or clarify the order. The Council enters this order in response to the request of Counsel for the Environment.

APPEARANCES. The following party filed a post-order document:

**Counsel for
the Environment**

Ms. Deborah Mull, Asst. Attorney General
Olympia, Washington

In its January 20 order, the Council granted, granted upon condition, and denied petitions for intervention. As to some petitioners for intervention, it found that their substantial or legal interest in the outcome of the application proceeding was as members of the public. The order noted that Counsel for the Environment is a statutory office created to represent interests of the public in environmental matters in such proceedings, that no indication appeared that the interests would be inadequately represented, and that the number of petitioners would cause unnecessary duplication of the represented interests in the proceeding if all were allowed intervenor status.

The Council therefore denied several petitions for intervention.¹ The order noted that the persons and organizations who were denied intervention could participate in other aspects of the proceeding, including the environmental impact process and hearings to receive evidence from members of the public. It noted also that Counsel for the Environment could, in her discretion, involve persons and organizations who had been denied intervenor status, in her presentation.

¹Petitioners denied intervention included the following: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local No. 44, Columbia Valley District Council of Carpenters, Millwright Locals Nos. 1699 and 2205, Citizens Concerned About Washington's Energy Future, Big Bend Water Resources Committee, Greenpeace, USA, Greenpeace, Canada, Northwest Environmental Advocates, Joseph Kelley, and John Klingele.

Counsel for the Environment asks clarification or amendment of the order, suggesting that the Council could reconsider its rejection of the petitions for intervention if the petitioners' "interests" and those of Counsel for the Environment diverged.

The Council disagrees with this suggestion. It is Counsel for the Environment's job to represent the public's interest in the environment in an application proceeding. By definition, the legal or substantial interest of every member of the public, as such, is essentially similar to that of other members. Rather than "interests", the question appears to involve potential disagreements about litigation strategy.

Counsel for the Environment need not act in a way that satisfies the personal preferences of every person or organization concerned about the environment, or any single such person or organization. Counsel for the Environment will not only choose the tactics to use in representing the public's interests, she will choose the appropriate definition of those interests.

The Council order rejected the concept that each member of the public and each organization stating a concern for environmental issues has the right to participate as an intervenor in an application, choosing its own issues to pursue and choosing its own tactics by which to pursue them. Allowing such widespread participation would be error. Instead, the Council found that the generalized public interests in the environment appear adequately represented by Counsel for the Environment.

Counsel for the Environment may well want to involve members of the public in identifying their preferences as to issues to pursue. But it is she who will identify how to do that in a way to satisfy her statutory charge. The mere fact that one or more members of the public disagree with Counsel for the Environment's proposed litigation strategy or with the issues that she chooses to raise in the hearing does not entitle the person to intervenor status.

As we noted in the prior prehearing conference order, Counsel for the Environment has considerable latitude in formulating her participation. She may choose to associate counsel from the petitioning organizations for a single presentation and may choose to cooperate with the organizations in her representation of public and environmental interests. But it is clear that Counsel for the Environment is not required to choose to do that and, if she so chooses, it is she who directs and is responsible for the litigation. The Council declines to amend the order.

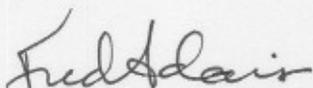
Counsel for the Environment also requests that the Council delete a sentence relating to possible federal preemption of some issues. The sentence was descriptive rather than operative. It described why some issues may be beyond the Council's purview; it did not constitute a ruling that they are; it does not foreclose the Council from making an appropriate ruling at a later stage in the proceeding. Modification of the order is therefore unnecessary.

The Council makes and enters the following Order.

ORDER

THE COUNCIL DENIES the requests of Counsel for the Environment to amend Prehearing Conference Order No. 1.

DATED and effective at Olympia, Washington this 14th day of February 1995.



FRED ADAIR, EFSEC Chair