

BEFORE THE STATE OF WASHINGTON  
ENERGY FACILITY SITE EVALUATION COUNCIL

In re Application No. 93-2	)	PREHEARING ORDER NO. 3	674
	)		
of	)		
	)	PREHEARING ORDER;	
KVA RESOURCES, INC., and	)		
CSW ENERGY, INC.	)		
	)	NOTICE OF PREHEARING	
For Certification	)	CONFERENCE	
of the NORTHWEST	)	(March 16, 1995)	
REGIONAL POWER FACILITY	)		

The Council convened a prehearing conference on February 22, 1995, at Olympia, Washington, upon due and proper notice to all interested parties, to begin the process of resolving scheduling, discovery, settlement, and other procedural issues. This Order states the results of that conference, and in the absence of objections, will govern the matters identified herein. The conference was held before Fred Adair, Council chair; C. Robert Wallis, vice-chair, and Douglas Kilpatrick, member. The Council has designated Mr. Wallis to facilitate the prehearing conferences and the hearing.

APPEARANCES: The following persons appeared -- Applicant, KVA Resources, Inc., by Darrell Peebles, attorney, Olympia; Counsel for the Environment, Ms. Deborah Mull, assistant attorney general, Olympia; Washington State Energy Office, by Tommy Prud'Homme, assistant attorney general, Olympia; Department of Fish and Wildlife, by William Frymire, assistant attorney general, Olympia; Department of Ecology, by Jay Manning and Rebecca VanderGrif, assistant attorneys general, Olympia; U. S. Department of the Interior, Bureau of Reclamation, by Lola Sept, attorney, Boise, Idaho; Confederated Tribes of the Colville Reservation, by Alan Stay, attorney, Nespelem; Spokane Tribe of Indians, by Christopher B. Gray, attorney, Wellpinit; Lincoln County, by Alan Shepherd, Prosecuting Attorney, Davenport; Lincoln County Fire Protection District No. 7, by Clarke B. Snure, attorney, Des Moines; Wilbur Public Schools, by Lester S. Portner, Superintendent, Wilbur; Lincoln County Ag Coalition, by Daniel C. Buob, Edwall.

GENERAL: The hearing on KVA's application is by definition in Chapter 80.50 RCW an adjudication, which is by definition in Chapter 34.05 RCW an adversarial proceeding. Even so, the Administrative Procedure Act, Chapter 34.05 RCW, and Council rules, favor stipulations and settlements of parties that are subject to Council approval. The Council encourages parties' efforts to reach agreement on matters of principle as well as specific factual matters.

The Council will consider all elements of the parties' presentations simultaneously, in reaching its decision at the conclusion of the proceeding. The hearing may be conducted in a single

series of consecutive hearing days or may be conducted in segments at different times. The Council's decision and recommendation will be based on all the evidence of record.

**DRAFT ENVIRONMENTAL IMPACT STATEMENT:** The draft environmental impact statement is not expected to be issued before mid-April. Parts of it, by subject matter, will be completed before that date and will be made available to parties when completed, before the entire document is completed and released.

**MOTIONS:** A time will be set for presentation of motions addressed to process or threshold issues.

**GENERAL TIME FRAME:** Parties agreed that it is feasible to consider a late summer/early fall time frame for the hearing. Tentatively, the current target is to begin the hearing during the August 15-September 15 time frame.

**DISCOVERY:** The applicant has committed that it will disclose voluntarily its underlying information and the answers to all relevant, reasonable questions. The parties will participate in informal discovery, including conferences as appropriate where parties' experts can inquire of other parties' experts. Formal discovery is not precluded by this process. A party may make a specific request subject to Council approval and will be expected to demonstrate why informal discovery is insufficient to meet the party's needs.

**PREHEARING CONFERENCES:** One or more additional prehearing conferences will be held as needed to consider procedural issues and, if appropriate, to facilitate informal discovery. The next prehearing conference is tentatively scheduled for March 16, as noted below, to resolve questions, schedule informal discovery, and deal with other procedural matters as needed.

In the meantime, parties will consult among themselves. The applicant will pursue issues with other parties to determine whether interests may be satisfied. Other parties will consult to coordinate presentations and with the applicant regarding scheduling of informal discovery. Counsel for the Environment will submit a brief written report to the Council on behalf of all parties no later than noon, March 13, regarding the issues list and the schedule for informal discovery.<sup>1</sup> The report shall also state whether the parties or any of them believe that the prehearing conference scheduled for March 16 is needed. The Council will consider the report in determining whether to conduct the prehearing conference or cancel it.

**ISSUES LIST:** All parties will work to develop an agreed issues list. The first list is to be presented to the Council no later than March 13 with the report from Counsel for the Environment.

**PREFILED EVIDENCE; HEARING FORMAT:** The parties agreed that evidence will be submitted in writing prior to the hearing. In general format with tentative time frames, the parties will submit evidence (including the written direct testimony of witnesses, exhibits to be

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<sup>1</sup>This reflects a short extension of the deadline agreed at the prehearing conference, necessitated by the hearing schedule of Counsel for the Environment, and agreed to by the applicant.

submitted through the witnesses, and bibliographies of principal resources relied on by the witnesses) on the following schedule:

Applicant's direct evidence	June 1
Other parties' direct evidence	July 15
Applicant's rebuttal (if any)	August 1

and the hearing would begin between August 15 and September 15. Under Council rules, the hearing would be organized by subject areas. A separate, earlier, session is anticipated for parties to present stipulations or proposals for settlement.

**WITNESS PANELS:** The applicant indicated its desire to explore the use of witness panels for cross-examination of experts; other parties questioned that process. The Council has used that procedure in prior hearings without objection. Each witness is responsible for responding to questions regarding his or her prefiled evidence. It sometimes occurs in highly technical areas when more than one witness have each concentrated on a part of a presentation on a single subject, the line between responsibilities of each witness may be unclear to other parties. A panel may allow questions to be answered without referral to a witness who is not then on the stand. Parties may make specific requests for panels; other parties may object; and the Council will rule on any objections.

**HEARING LOCATIONS; SESSIONS FOR PUBLIC TESTIMONY:** Parties agreed to consult on whether to recommend that any prehearing conferences or hearing sessions be conducted at a location other than Olympia. Counsel for the Environment will consider her preferred timing and locations for sessions to receive evidence from members of the public who are not associated with any party. These subjects will be addressed in the March 10 report.

#### NOTICE OF PREHEARING CONFERENCE

**ALL PARTIES PLEASE TAKE NOTICE** That a prehearing conference is scheduled for March 16, 1995, at 2:00 p.m., in Room 308, Washington State Energy Office, 925 Plum Street S.E., Olympia, Washington. Persons may attend this prehearing conference by teleconference<sup>2</sup> by making prior arrangements with Council Staff. The Council has made arrangements to use a conference bridge line at (206) 956-2225. Because the teleconference system reserved has only eight ports, persons who wish to use the facility should reserve a space no later than close of business on March 14, 1995, by calling Allen Fiksdal at (206) 956-2152. If demand exceeds the available ports, the Council may limit teleconference participation to available ports or may make other arrangements and notify persons who have asked to reserve a port.

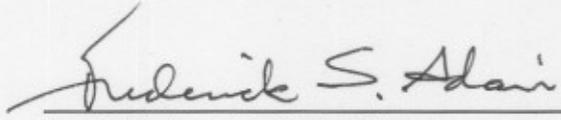
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<sup>2</sup>Teleconferencing is subject to availability of technically suitable equipment and these arrangements are tentative until the Council is reasonably assured that all parties attending by teleconference will be able to hear and participate meaningfully in the conference.

ORDER

This document sets out the results of the Prehearing Conference held in Olympia on February 22, 1995, and will govern the proceeding unless modified by the Council.

Dated at Olympia, Washington and effective this 3<sup>rd</sup> day of March, 1995.

  
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Frederick S. Adair, EFSEC Chair

**NOTICE TO PARTIES:** Unless modified, this prehearing order will control the course of the hearing. Objections to this order may be stated only by filing them in writing with the Council within ten days after the date of this order.