

BEFORE THE STATE OF WASHINGTON  
ENERGY FACILITY SITE EVALUATION COUNCIL

In re Application No. 94-1	)	PREHEARING ORDER NO. 1	
	)		
of	)	PREHEARING CONFERENCE	
	)	ORDER GRANTING AND	
WASHINGTON PUBLIC POWER	)	DENYING PETITIONS FOR	
SUPPLY SYSTEM	)	INTERVENTION	
	)		
For Site Certification,	)		
Satsop Combustion	)		
Turbine Project	)		
.....	)		

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

The Council held a prehearing conference on March 15, 1995, before Council Chair Frederick S. Adair and members C. Robert Wallis and Ron Skinnarland.

**APPEARANCES.** The following persons participated in the prehearing conference.

<b>Applicant</b>	<b>Washington Public Power Supply System</b> , by Charles R. Blumenfeld, Attorney, Bogle & Gates, Seattle, Washington
<b>Counsel for the Environment</b>	<b>Tom Young</b> , Asst. Attorney General Olympia
<b>Council Member Agencies</b>	<b>Dept. of Ecology</b> , by Thomas C. Morrill, Asst. Attorney General, Olympia
	<b>Dept. of Fish and Wildlife</b> , by William C. Frymire, Asst. Attorney General, Olympia
	<b>Washington State Energy Office</b> , by Tommy Prud'Homme, Asst. Attorney General, Olympia
	<b>Washington Utilities and Transportation Commission</b> , by Jeffrey D. Goltz, Asst. Attorney General, Olympia
	<b>Thurston County</b> , by Mike Kain, Senior

Planner, Thurston County Planning  
Department

**Petitioners for  
Intervention:**

**Northwest Environmental Advocates**, by  
Nancy Holbrook, Director, Clinton

**Susan Elwanger**, by Robert Parent,  
Thurston County, Washington

**Donald and Daphne Niemann**, by Richard L.  
Ditliveson, Attorney, Olympia

In this order, the Council discusses scheduling matters and rules on petitions for intervention.

**I. Petitions for Intervention.**

In this proceeding, the Council has received ten petitions for intervention, including those filed by member agencies that are granted intervenor status by rule, upon request. Among the latter are the Washington State Energy Office, the Department of Ecology, the Utilities and Transportation Commission, the Department of Fish and Wildlife, and Thurston County. Those entities are granted intervenor status as a matter of right under Council rules.

In addition, the Council has received petitions from North Fork Timber, Susan Elwanger, et al., Donald and Daphne Niemann, Northwest Environmental Advocates, and the Bonneville Power Administration.

**Landowners' interventions.** The Applicant in its filing voiced no objection to the interventions of landowners Elwanger, et al., and Niemann. Those persons having demonstrated an interest in the proceeding that could be substantially adversely affected by the adjudication, the petitions are granted. The interventions will be conditioned upon the parties' cooperation with Counsel for the Environment to the end that duplications are eliminated and separate presentations are made only when the underlying interests of the parties differ.

**North Coast Timber.** Petitioner North Coast Timber did not appear at the prehearing conference. The council understands that it has been engaged in discussions with the applicant, and defers a ruling on this intervention until the next prehearing conference.

**Bonneville Power Administration.** The Bonneville Power Administration has filed a late petition for intervention. It is not clear that the petitioner has served counsel for the applicant; the Council will reserve a ruling on the petition until after the

next prehearing conference so the applicant and other parties may respond to the petition.

**Northwest Environmental Advocates.** Northwest Environmental Advocates (NWEA) petitions for intervention. In support of its petition, it states concerns about specific issues, largely environmental in nature, including need for power, consistency with the Northwest Power Act, adequacy of gas supplies and delivery systems, impact on current gas users, and water quality and quantity. It notes that the Nuclear Regulatory Commission granted intervenor status to it in the federal licensing proceeding involving nuclear plants at the Satsop site. Neither the petition nor any other information states that it or its members have any legal interest that would be adversely affected by a grant of the application. The applicant opposes this petition.<sup>1</sup>

We have attached as an appendix the discussion from a prior order on the topic of grants or denials of interventions generally to this order as an appendix, and make it a part of this order as though set forth herein.

NWEA contends that it has an interest in the proceeding because it wishes to protect the environment of the state of Washington. In that sense, it seeks to perform the same functions that the law assigns to Counsel for the Environment.

NWEA contends, however, that it is engaged in litigation against the Environmental Protection Agency involving the failure of the Department of Ecology to enforce existing requirements in another forum regarding Section 303(d)(1) of the Clean Water Act. Petitioner argues that because the State is failing to enforce existing requirements, no agency or assistant attorney general, including Counsel for the Environment, can represent its interests.

The Applicant responds that despite the litigation, Counsel for the Environment and not NWEA is charged with representing the public interest in the proceeding, and that the litigation does not affect the Counsel for the Environment's ability to pursue the public interest.

NWEA does not contend that it wishes to represent the interests of persons living near the facility. It identified its concerns as the environmental issues that Counsel for the Environment is empowered to represent. Counsel for the Environment represents the broad range of environmental interests on behalf of

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<sup>1</sup>The applicant asked leave to submit a reply to petitioner's response to applicant's opposition. Because the response added an entirely new subject in support of the petition, the Council grants the motion and considers the reply.

members of the public throughout the state. The interests are adequately represented by other parties, and granting intervention to the NWEA would delay the proceeding or prejudice the rights of existing parties.

We reject Petitioner's contention that its interests cannot be represented by any state institution, including Counsel for the Environment, and we deny its petition for intervention. The interests, in environmental protection, are identical; it is the positions that may, but do not necessarily, differ. Here, Counsel for the Environment does represent those interests and the Council cannot say from petitioner's presentation that there is any likelihood that they will be inadequately or inappropriately represented.

Petitioner has demonstrated that it is responsible, knowledgeable, active, and experienced in energy and environmental policy development within the state. It is to be commended for its interest and their dedication. This is an adjudication, however, directly and substantially affecting the rights of a limited number of persons relating to the application.

Denial of the intervention does not impair petitioner's members' rights as citizens. They may attend and observe all hearing sessions to the same extent as any member of the public. They may appear and testify at the hearings designated to hear evidence from members of the public, subject to any reasonable limitations applicable to all such witnesses. NWEA and its members may also participate fully in the environmental impact process.

NWEA may support the efforts of parties of record. Counsel for the Environment has considerable latitude in formulating his participation. Among other things, he may choose to associate counsel from the petitioning organizations for his presentation and may choose to cooperate with the organizations in his representation of public and environmental interests.

The petitioner has not demonstrated any legal interest in the outcome of the application that differs from any other group or member of the public. The fact that it disagrees with the Department of Ecology in pending litigation does not entitle it to party status. Using that standard would promote dissension and disagreement.

## **II. Other Matters.**

**Next prehearing conference:** The parties agreed to meet informally among themselves for the purpose of further refining issues and for the purpose of exploring stipulations and settlement. The parties agreed to a further prehearing conference on April 12 at 2:00 p.m.

**Timing and Format of Hearing.** Council Staff stated the desire to begin public hearings in May or June, 1995. The Council will work toward that goal so long as doing so does not impair the rights of the parties.

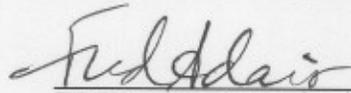
**Hearing format.** The Council prefers a format in which parties' direct and rebuttal evidence is prefiled, and then a single hearing is held. It will remain flexible to hear the views of the parties, however, should reason exist for altering this format.

**Discovery:** The parties agreed that they would begin the process by committing to provide information voluntarily whenever possible. The parties acknowledged, and the Council rules, that doing so does not prevent any party from seeking formal discovery rulings from the Council at a later time.

**Hearing Guidelines:** The Council distributed copies of hearing guidelines to the parties. The guidelines aid the council in determining how the Council will exercise its statutory discretion under the Administrative Procedure Act to govern the course of the hearing. The Council invited comments about the guidelines. No participant filed comments. The Guidelines are adopted; they are attached to this Order as an Appendix. The Guidelines are subject to such exceptions as the Council believes to be just and fair in light of the circumstances before it.

**Amended Service List.** The Council will provide a copy of the amended service list as an Appendix to this Order.

DATED and effective at Olympia, Washington this 11th day of April, 1995.



FRED ADAIR, Chairman

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

APPENDIX A

EXCERPT, PREHEARING CONFERENCE ORDER NO. 2  
IN RE KVA/CSW APPLICATION NO. 93-2

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II. Petitions for Intervention.

**A. Standards for granting or denying intervention.**

**1. Parties of right.** When the Council enters into an adjudication upon an application for site certification, there are two statutory parties of right. These are the Applicant<sup>2</sup> and Counsel for the Environment.<sup>3</sup>

**2. State agencies.** Another class of entities has a right to participate under Council rules: any Council member state agency is entitled to party status by operation of WAC 463-30-050 and -060. Three state agencies have indicated their intention to participate in this adjudication: the Departments of Ecology and Fish & Wildlife, and the Washington State Energy Office. It is immaterial for our purposes whether or not we call them intervenors, although technically that is what they appear to be -- their participation as full parties is provided for by the rule, each has statutory responsibilities to pursue, and each has filed a document identifying itself and its interests in the proceeding.

**3. Petitions for intervention; standards for granting intervention.** Twenty-three petitions for intervention were filed by parties who have no "absolute" right to participate under statute or rule. In reviewing these petitions, the Council considered the petitions, oral comments made at the prehearing conferences, and any supplementary filings made by the petitioner. In addition, it considered pertinent provisions of the statute and of the Council's rules and it considered pertinent decided judicial appellate cases and other recognized legal research materials as identified in this order.

**a. Adjudicative Proceeding.** The Council must hear applications for site certification as adjudications, with minor exception. This proceeding is an adjudication established by statute to determine the applicant's right to complete a single, specific, proposed project in light of existing state and federal environmental requirements. It is not a rulemaking, in which the broadest possible public participation is encouraged at every stage

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<sup>2</sup>RCW 80.50.090.

<sup>3</sup>RCW 80.50.080.

in order to determine policies under the law.<sup>4</sup> Instead, it is a limited proceeding, conducted under adjudicative rules and processes for the protection of parties' rights, to answer a single question. Unlike a rulemaking, "open entry" to an adjudication would be improper because it could adversely affect the rights of the parties whose narrow interests are being resolved, and it could adversely interfere with the Council's ability to conduct a fair and efficient hearing.

Also unlike a meeting or a rulemaking, persons who are granted intervenor status assume responsibilities that they must meet in order to protect their own interests and in order for the adjudicative process to be manageable for all participants. Intervenors must appear in the proceeding, either on their own behalf or by an attorney. Intervenors must study other parties' cases so they can participate knowledgeably. They must decide whether to question other parties' witnesses, and determine the questions to be asked. Intervenors have the responsibility either to attend the entire proceeding, including conferences, or to monitor it to learn when their interests will be at issue -- otherwise, they may be bound by matters that are resolved in their absence. They or their representatives have the responsibility to become familiar with the Council's procedural rules and guidelines, so they can participate knowledgeably and effectively to advance their interests, knowing what is expected and how to proceed. The Council is limited in its ability to instruct participants, because that would delay the proceeding and could interfere with their or other parties' rights. Intervention is not a step to be approached casually.

**b. Administrative Procedure Act (APA).** The basic document governing administrative adjudications is the state's Administrative Procedure Act, or APA, set out in Chapter 34.05 RCW. The APA contains provisions allowing, and setting parameters on agency treatment of, intervention. RCW 34.05.443.<sup>5</sup>

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<sup>4</sup>Public participation in the adjudication is accommodated in two ways: by the creation and designation of Counsel for the Environment in RCW 80.50.080, to represent "the public and its interest in protecting the quality of the environment", and by the requirement that members of the public do have the opportunity to participate in the hearing by presenting testimony. RCW 80.50.090(3).

<sup>5</sup>The statute reads as follows:

**RCW 34.05.443 Intervention.** (1) The presiding officer may grant a petition for intervention at any time, upon determining that the petitioner qualifies as an intervenor under any provision of law and that the intervention sought is in the interests of justice and will not impair the orderly and prompt conduct of the

Under the statute, an agency may grant intervention if it finds that the petitioner for intervention qualifies under a provision of law; that the intervention is in the interests of justice, and that it will not impair the orderly and prompt conduct of the hearing. The statute permits the imposition of conditions upon intervenors, and it permits the agency to impose those conditions at any time. The statute also allows the agency to impose limitations as to the issues an intervenor may address; limitations on the use of discovery, cross examination, and other procedures to promote the prompt and orderly conduct of the hearing, and may require two or more intervenors to combine their participation.

Intervention is an issue that shall be considered at a prehearing conference and decided by the presiding officer (here, the Council) in a prehearing conference order.<sup>6</sup> The result of the order shall bind the course of the hearing unless objection is raised within 10 days after entry of the order.

**c. Council regulations.** The Council's regulations regarding intervention are set out at WAC 463-30-400 and -410.<sup>7</sup>

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proceedings.

(2) If a petitioner qualifies for intervention, the presiding officer may impose conditions upon the intervenor's participation in the proceedings, either at the time that intervention is granted or at any subsequent time. Conditions may include:

(a) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition; and

(b) Limiting the intervenor's use of discovery, cross-examination, and other procedures so as to promote the orderly and prompt conduct of the proceedings; and

(c) Requiring two or more intervenors to combine their presentations of evidence and argument, cross-examination, discovery, and other participation in the proceedings.

(3) The presiding officer shall timely grant or deny each pending petition for intervention, specifying any conditions, and briefly stating the reasons for the order. The presiding officer may modify the order at any time, stating the reasons for the modification. The presiding officer shall promptly give notice of the decision granting, denying, or modifying intervention to the petitioner for intervention and to all parties.

<sup>6</sup>WAC 463-30-270.

<sup>7</sup>Those sections read as follows:

**WAC 463-30-400 Intervention.** On timely application in writing to the council, intervention shall be allowed to any person

They parallel the statute.

**d. Analysis of requirements.**

**i. Qualification.** A person "qualifies under any provision of law" for intervention by filing a timely petition, verified under oath,<sup>8</sup> demonstrating an "interest in the subject matter of the proceeding" and impairment or impedance of its ability to protect that interest if it is not allowed to intervene. The Council has the authority to condition and limit interventions, consistent with the statute.

**ii. Interest in the subject matter.** Petitioners must demonstrate an "interest in the subject matter" of the

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upon whom a statute confers a right to intervene and, in the discretion of the council, to any person having an interest in the subject matter and whose ability to protect such interest may be otherwise impaired or impeded. All petitions to intervene shall be verified under oath by the petitioner, shall adequately identify the petitioner, and shall establish with particularity an interest in the subject matter and that the ability to protect such interest may be otherwise impaired or impeded. In exercising discretion with regard to intervention, the council shall consider whether intervention by the petitioner would unduly delay the proceeding or prejudice the rights of the existing parties. The council may establish a date after which petitions to intervene will not be considered except for good cause shown. When such a date has been established, the council will assure that adequate public notice is given.

**WAC 463-30-410 Participation by intervenor.** In general, it is the policy of the council to allow any intervenor broad procedural latitude. To the extent that the council determines that numerous intervenors might unduly delay the proceedings or prejudice the rights of existing parties, intervenor status may be conditioned upon assent by the prospective intervenor and counsel for the environment to allow the counsel for the environment to act as lead counsel for the balance of the hearing, where the intervenor's interests more closely align with those of the counsel for the environment. Intervenor status may also be conditioned upon allowance of other parties to act as lead parties, where appropriate. The council reserves the right to prescribe other limitations and conditions, where appropriate.

<sup>8</sup>Most of the petitions were not verified. The applicant waived verification, and the Council will not reject the existing petitions for lack of verification. The Council must expect that all participants, however, be aware of and meet their basic obligations under pertinent law and rules.

proceeding and that their ability to protect that interest may be impaired or impeded if they are not allowed to intervene.

"Interest" is not used in the sense of "being interested," but in the sense of having a legal as opposed to philosophical interest that the intervention will afford an opportunity to protect.<sup>9</sup> Intervention may be allowed to protect such an interest when failure to participate could adversely affect the interest in a direct and substantial way. The rule places the burden on the petitioner to establish its interest "with particularity", that is, clearly and specifically, and to establish that the failure to allow intervention could impair that interest.

**iii. Representations considered.** Petitioners had the opportunity to express their interest not only through the initial petition, but also through oral statements at the prehearing conferences and through supplemental presentations authorized by the Council. They also had the opportunity to answer any objections presented to the petition. The Council considers the petition, the oral comments, if any, and the supplemental comments and answers to objections, if any, in ruling on each petition to intervene.

**iv. Burden on the proceeding.** In determining whether to grant intervention, the Council may determine under the statute whether the intervention would impair the orderly and prompt conduct of the hearing and under the Council rule whether intervention would impair the rights of existing parties or unduly delay the proceeding.

The Council has an obligation to its own administrative processes, to the applicant, to all participants, to the Council

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<sup>9</sup>A similar term in the Federal Rules of Civil Procedure, Rule 24(a)(2), has evoked varied application and considerable legal comment. See, for example, Tobias, "Standing to Intervene", 1991 Wisconsin L.Rev. 415; "Note: Acid Rain Falls on the Just and the Unjust: Why Standing's Criteria Should Not Be Incorporated into Intervention of Right", 1990 Univ. of Illinois L.Rev. 605; "Note: Intervention in the Public Interest under Rule 24(a)(2) of the Federal Rules of Civil Procedure", 45 Washington and Lee L.Rev. 1549 (1988). The United States Supreme Court seems to have resolved much of the uncertainty by defining interest in this context as a legally protected interest subject to an invasion in the litigation that is concrete and particularized, actual or imminent. Lujan v. Defenders of Wildlife, 112 S.Ct. 2130 (1992). Under the analogous provision of the Washington civil rules, the Washington State courts require an immediate, concrete and specific injury to an interest in which the petitioner has a right. See, Trepanier v. Everett, 64 Wn.App.380 (1992).

members, and to the public to maintain a process that not only fairly and legally allows it to reach a decision, but also does so effectively and efficiently. The statutory time limit on Council decisions imposes an obligation to conduct a timely proceeding and evidences the legislative intention that the Council conduct its process efficiently.

Unnecessary duplication of representation of the same interest, if the interest is otherwise adequately represented, imposes an unnecessary and undue burden of time and resources on the parties and will impair the orderly and prompt conduct of the hearing.

**v. Cooperation and coordination.** The Council is gratified at the evidence of cooperation and coordination that has been shown by the potential intervenors, including the state agencies. It especially appreciates the leadership shown in that regard by Counsel for the Environment. If the promise of coordination and cooperation that is expressed in the parties' actions to date is fulfilled, future limitations on the intervenors may well be unnecessary.

**vi. Condition upon intervention.** The Council may also consider potential delay and burden in deciding whether to condition intervention on the designation of lead party, or on the coordination or combination of presentations. The Council retains the authority to impose such conditions on interventions during the proceeding if doing so appears to be necessary.

**vii. Limitations on intervention.** Finally, the Council may limit the participation of intervenors in discovery, cross examination, or other procedures, and may limit the issues an intervenor may address, not only at the time it grants intervention but at any time. In general, when potential intervenors have defined their interest as relating to limited issues, the intervention will be limited to matters relating to those issues.

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## Hearing guidelines

### Satsop Combustion Turbine Project Application No. 94-1

#### Washington State Energy Facility Site Evaluation Council

These guidelines are of a general nature and are provided to assist counsel in understanding the Council's expectations and how it will manage the adjudicative hearing. The Council may, when appropriate, vary from the guidelines or use measures not specified.

Administrative matters.

(1) **General; administrative matters.**

(a) **Case-related correspondence, pleadings, etc.,** should be addressed to the Council, not any Council member or staff member. Correspondence addressed directly to an individual may not be logged in, may not be inserted in the case file, and may not constitute a part of the official record for appeal or for other purposes. **Number of copies:** Unless other instructions are given or other arrangements are made with the Council Manager, parties shall file an original and 20 copies of pleadings and case-related correspondence.

(b) **Starting times** will be strictly observed. The hearing may proceed without counsel who are late.

(c) All counsel are expected to address comments, objections, and statements to the Council rather than to other counsel. Questions will be addressed to the witnesses rather than to counsel.

(d) There will be no **off-the-record discussions** at the request of counsel unless counsel first asks leave to go off the record and states the purpose for the request. Extended **colloquies** regarding procedural issues should be conducted off the record. After such a colloquy, each attorney will be given the opportunity to state for the record a summary of his or her view on behalf of his or her client when the record resumes.

(e) **Predistributed evidence.** The Council may require that parties' evidence be distributed to the Council and other parties in advance of the hearing or hearing session. The schedule for predistribution will be determined after consultation with the parties.

(f) **Pleadings and Exhibits.** All pleadings and prepared exhibits shall be 8-1/2 by 11 inches in size or reduced to that size. They may be folded to that size if reduction would render the document illegible. Every pleading and exhibit shall be punched for insertion into three-ring binders. Line numbers shall be set out on all prepared testimony to facilitate

transcript or exhibit references. Large documents, charts, etc., may be used at the hearing for illustrative purposes so long as a legible reduction is provided for inclusion in the record.

(g) **Hearing format.** The Council will decide hearing format and schedule after hearing parties' comments. At least three format models are available: exchange of evidence, followed by a single hearing session; individual hearing sessions for cross examination of applicant's case, intervenors and Counsel for the Environment's case, and rebuttal cases; and individual hearing sessions for cross-examination of all evidence on a given topic. In addition, one or more hearing sessions will be held specifically for the purpose of receiving comment from members of the public.

(h) **Objections.** The Council need not specifically ask each representative whether that party objects to an offer of evidence or other motion or proposed action. Instead, the Council may ask generally whether there are objections, and persons having objections shall state them. Failure to respond or object means that the party does not object, and will constitute a waiver of the right to object.

(2) **Daily prehearing conferences** or administrative sessions. The Council will set a time prior to the start of the presentation of evidence for a prehearing conference for marking, distribution, and argument regarding objections to exhibits to be offered during the day and for arguing motions or other matters. Counsel who anticipate such matters should request that the time be set aside.

(3) **Petitions and motions.**

(a) **Time for Filing.** When a party asks the Council to take some **formal action prior to the next hearing session** or prehearing conference, the requester shall serve the request on all other parties, to be received no later than the day filed with the Council. Responses are due in the office of the Council no later than the fifth business day following service or one day prior to the hearing/prehearing session, whichever is earlier.

(b) **Motions to dismiss parties or issues.** Petitions or motions **seeking the dismissal of any party or any portion of a proceeding**, or that in the moving party's judgment require the submission of a written motion, petition, brief or statement of authorities, should be filed with the Council and served on other parties no later than one week prior to the first scheduled hearing session after grounds for the petition or motion become apparent, unless the Council finds that later filing is reasonable. Answers should be filed with the Council and served on other parties at least three days prior to the hearing session. Oral argument may be allowed on the record in the Council's discretion.

(c) **Motions related to evidence** or to the procedural course of the hearing, but not involving dismissal of a party or a part of the proceeding, should be stated and argued no later than the start of the day, unless they arise from matters emerging during the hearing that are

not reasonably foreseeable. If a motion is not presented at the start of the day, the Council may refuse to hear it or defer it to the following day.

(d) **Potential motions.** Counsel should notify the Council no later than the start of the hearing session of any motion that may be presented during the hearing, such as one that may require foundation regarding the admissibility of evidence.

Written and Oral Evidence.

(4) **Administration of evidence.**

(a) **Number of copies.** When predistribution of evidence is required, each party shall file 20 copies of its evidence with the Council no later than the established filing date unless different instructions are given.

(b) **Predistributed testimony** will be treated as an exhibit and may be accompanied by other exhibits. Parties should not preassign numbers to their own prefiled testimony and exhibits. Instead the following system should be used, including the witness's initials, and marked serially. For John Q. Witness's prefiled testimony and accompanying exhibits:

Ex . . . . (JQW-T)

Ex . . . . (JQW-1)

Ex . . . . (JQW-2)

Ex . . . . (JQW-3)

Parties not familiar with this method of identification may contact the Council for further guidance. The official numbers for the record will be assigned at the hearing session.

(c) **Summary.** Each witness should present a short summary of his or her remarks at the beginning of prepared testimony.

(5) **Revisions to predistributed evidence.**

(a) **Disclosure.** A party finding it necessary to make a revision to predistributed evidence having substantive effect shall disclose the revision to other parties as soon as need for the revision is discovered.

(b) **Labeling.** Any revisions to predistributed or previously admitted testimony or exhibits shall be prominently labeled "REVISED" and bear the date of the revision. The revised portions shall be highlighted, in legislative style or other manner clearly indicating the change for comparison with the original submissions. This practice should be followed even as to minor changes that involve only one page of an exhibit. Counsel should identify revisions by page and date at the time an exhibit is presented for identification, sponsored, or offered into evidence, as appropriate.

(6) **Evidence at the hearing.**

(a) **Copies.** Each party is responsible for having one revised, corrected copy of its exhibits ready for marking and inclusion in the official record at the hearing. A second revised, corrected set of exhibits will also be needed for the court reporter.

(b) **An errata sheet** may be used to indicate the corrections to predistributed evidence for a relatively small number of relatively minor revisions. A rule of reason will apply.

(c) **Corrections and revisions** should be made or attached to all documents distributed at the hearing before the copies are distributed.

(d) **Sufficient copies.** Parties must have sufficient copies at the hearing of each document that they distribute there other than prefiled evidence so that each party, each Council member, the Council Staff, and the Council consultant may each have a copy.

(7) **Direct examination.**

(a) **Typographical corrections.** Counsel should **not** ask the witness on the stand to correct obvious typographical errors in the prefiled testimony if more than three corrections are required, but should submit an errata sheet or revised documents.

(b) **Foundation questions.** Counsel will be expected to ask several foundation questions: the witness' name and business address, whether any predistributed testimony represents the answers the witness would give if asked those questions; whether any exhibits were prepared by the witness or under her or his control or direction; and what subjects the witness will cover. The latter foundation question should request only a statement of the subjects to be covered by the witness, e.g., aquatic biota, not a summary of the witness's positions on the subjects.

(9) **Cross-examination.**

(a) **Time estimates.** For planning purposes, counsel should be prepared to provide time estimates for cross-examination of witnesses.

(b) **Limitation.** Cross-examination will be limited to two rounds except upon a showing that good cause exists.

(c) **Subject to check.** Witnesses should not be asked to perform calculations or extract detailed data on the stand. Such questions should be provided to the witness in advance or should be asked "subject to check."

(d) **Performing a check.** When a witness answers "subject to check," the witness must perform the "check" as soon as possible. A response given "subject to check" will be deemed accurate unless disputed by the witness within ten days of distribution of the transcript or by the time the record is closed, whichever occurs first.

(9) **Public testimony.**

(a) **Public orientation.** At the beginning of a hearing session for the purpose of taking testimony from members of the public, counsel for the environment may inform the public of the major contested issues and the purpose of the hearing session.

(b) **Exhibits.** Documents provided by or on behalf of members of the public at a public hearing may be offered as illustrative exhibits.

(c) **Letters.** Letters received by the Council and counsel for the environment from members of the public may be offered into evidence as illustrative of the opinions of the correspondents.

(d) **Factually probative exhibits.** Documents from the public that Counsel for the Environment believes to contain factual information of a probative nature may be offered into evidence separately, provided that a sponsoring witness is available for cross-examination.

(e) **Expert witnesses.** If Counsel for the Environment knows that a witness intending to present evidence as a member of the public will be speaking with expertise in a technical or scientific area as opposed to expertise regarding the community, public sentiment or perception, or personal sentiment, Counsel should inform the Council in advance so that any questions of admissibility, scheduling, and rebuttal may be addressed.

(f) **Limitation to record.** Only exhibits and testimony offered and received are part of the record and subject to consideration by the Council in its decision.

Post-hearing process.

(10) The Council will confer with the parties at the conclusion of the hearing about post-hearing process.

(a) **Argument, briefs.** The Council will determine whether oral argument, briefs, or both will be required, taking into consideration the parties' preferences and its own needs.

(b) **Brief format, length.** If the Council requests briefs, it may determine a format to be used by all parties. The Council will establish a maximum length for briefs. Number and complexity of the issues will be considered in setting the allowed length of briefs. Limited-issue intervenors may be allowed fewer pages than parties addressing all issues.

- (11) **Transcripts.** Each party will bear its own costs for transcripts purchased from the court reporter, including charges for expedited service when the party requests it.

In the Matter of  
Application No. 94-1

WASHINGTON PUBLIC POWER  
SUPPLY SYSTEM

SATSOP COMBUSTION TURBINE  
PROJECT

APPLICATION NO. 94-1

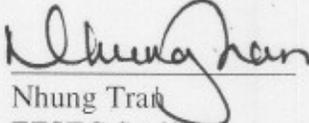
CERTIFICATE OF SERVICE

The undersigned certifies that on April 11, 1995, she served the enclosed:

Prehearing Order No. 1  
Prehearing Conference Order Granting and Denying Petitions for Intervention

by depositing copies thereof in the United States mail, properly stamped and addressed, as indicated on the Satsop Combustion Turbine Project Service List.

DATED: April 11, 1995

  
Nhung Tran  
EFSEC Staff

SATSOP COMBUSTION TURBINE PROJECT

SERVICE LIST

April 10, 1995

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