

BEFORE THE STATE OF WASHINGTON  
ENERGY FACILITY SITE EVALUATION COUNCIL

In re Application No. 93-2	)		
of	)		
CSW ENERGY, INC., AND.	)	PREHEARING CONFERENCE	690
KVA RESOURCES, INC.	)	ORDER No. 10	
	)		
Certification of the	)	NOTICE OF CONTINUED PREHEARING	
NORTHWEST REGIONAL	)	CONFERENCE (OCTOBER 5, 1995)	
POWER FACILITY	)		
.....	)		

The Washington State Energy Facility Site Evaluation Council held a prehearing conference in this matter on September 14, 1995, before Council Chair Frederick S. Adair and members C. Robert Wallis, Walter Swenson, Ron Skinnarland, Jo Roller, Doug Kilpatrick, and Ted Hopkins.

**APPEARANCES.** The following parties participated in the prehearing conference: Applicant KVA Resources, Inc., by Darrell Peeples, attorney, Olympia, and Charles Lean, attorney, Tacoma; Counsel for the Environment, Deborah Mull, assistant attorney general, Olympia; Department of Ecology, by Rebecca VanderGrif, assistant attorney general, Olympia; Washington State Energy Office, by Tommy Prud'Homme, assistant attorney general, Olympia; Washington State Department of Fish and Wildlife, by William Frymire, assistant attorney general, Olympia; Confederated Tribes of the Colville Reservation, by Steve Suagee, attorney, Nespelem; Spokane Tribe of Indians, by Christopher B. Gray, attorney, Wellpinit; Lincoln County Ag Coalition, by Daniel C. Buob, Edwall.

In this order, the Council discusses scheduling matters, its consideration of the Draft Environmental Impact Statement (DEIS) in the deliberative process, pretrial and post-trial briefing, hearing procedures, and other administrative matters.

**Scheduling and the DEIS in the Deliberative Process.** On June 21, 1995, Counsel for the Environment asked that the Council continue the adjudicative hearing until after the Council has issued the final environmental impact statement (FEIS). On July 18, 1995, the Council ruled in Prehearing Order No. 8 that the SEPA process and the adjudicative process would be conducted contemporaneously, and denied the motion to continue the hearing. In that Order, the Council set out a suggested procedure allowing parties to offer the DEIS as evidence.

When Prehearing Order No. 8 was entered, the Council expected the DEIS to be available for review in mid-August. For reasons not relevant here, the DEIS is now expected to be issued on approximately October 9, 1995. Parties will receive copies on approximately October 2, 1995.

This delay prompted the Counsel for the Environment and intervenor parties to express opposition to the established hearing schedule. They asked that the adjudicative hearing be delayed until 30 days after the issuance of the DEIS. They argued that beginning the adjudicative hearing on October 17 would not allow the parties adequate time to review it, prepare cross examination of the Applicant's witnesses based upon it, submit revised direct testimony, and otherwise prepare for the hearing. Counsel for the Environment claimed that holding to the prior schedule would violate the Council's Prehearing No. 8.

The objections, and the ensuing scheduling discussions, caused the Council to review and reconsider its prior related rulings. After argument, the Council ruled that it would not modify the previously scheduled beginning date of October 17. The schedule is not a violation of Prehearing Order No. 8 or the Administrative Procedure Act (APA).

Counsel for the Environment and the intervenor parties contend that advance information about the draft environmental impact statement is necessary for their direct presentations and for their cross examination of opposing witnesses. Counsel for the Environment continues to contend that the hearing should not proceed until the Council first issues its final EIS.

We believe that the parties misconstrue the function of the SEPA process in this proceeding. The SEPA and adjudicative processes are separate and distinct. The DEIS is not an element of the applicant's case. The parties do not have the right to respond to it as an element of the applicant's case. The DEIS is the product of the Council's consultant, and is prepared for the purpose of meeting SEPA requirements. The Council will consider the DEIS and produce a final EIS in the manner required under SEPA.

The parties' rights are protected and the requirements of law are met when the application is tested in the adjudication and the SEPA process is conducted according to its own requirements.

SEPA is neither designed nor required to be conducted as an adjudication. The parties' remedy for any error that they perceive to inhere in the DEIS is to comment on it within the time allowed. They are not entitled as a matter of law to respond to it in the adjudication. The Council is required to have completed the SEPA process prior to making its final decision but is not required to conduct that process in the adjudication.

The Council will reconsider its earlier ruling that any party may examine the Council's consultant and offer the DEIS into evidence. The parties may, if they desire to do so, simultaneously submit briefs of no more than five pages to comment or to supplement their earlier comments on the issue of interrelationship of SEPA and adjudication. Briefs on this issue will be considered if filed no later than October 2, 1995.

**Hearing Schedule.** At the prehearing conference, the Council denied the parties' request for a continuance of the adjudication and determined that it will begin on October 17,

1995, in Olympia. Beginning then and continuing for the time needed, the parties will present evidence on all issues except socioeconomic, air quality, and effects of pipeline construction. The hearing will reconvene in eastern Washington during the week of October 23, 1995. The Council will there conduct a view of the proposed site, conduct an evening session for purposes of receiving public comment on the application at which time it will allow members of the public to comment on the DEIS, and receive evidence relating to effects of the facility on local socioeconomic environment and on air quality, and to the extent permitted on pipeline construction.

**Stipulations.** The parties advised the Council that they have nearly completed stipulated agreements involving the Applicant and several intervenor parties. Stipulations will be filed with the Council on or before October 5 and parties to the stipulations will support them to the Council as the first order of business at the evidentiary hearing beginning October 17.

**Issues List.** The parties will present an agreed issues list by October 5, 1995. It will identify those issues that the parties intend actively to pursue through the presentation of direct evidence or cross examination and that they intend to argue on brief.

**Corrected Testimony.** The Applicant will submit revised prefiled testimony, limited to changes reflecting the Application's switch from air to water cooling, on or before October 5, 1995.

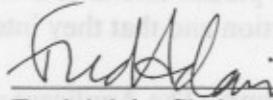
**Prehearing Briefing -- oral argument.** The Council denied Counsel for the Environment's request to submit a prehearing brief outlining her legal arguments. The Council will allow each party up to 15 minutes' opening argument and will allow post-hearing briefs. In addition, the parties are requested to brief by October 17 1995 the admissibility of evidence relating to construction of portions of the natural gas pipeline that are outside the Council's jurisdiction and within the jurisdiction of the Federal Energy Regulatory Commission, or FERC. The Council establishes no page limit for this brief, but strongly encourages the parties to present concise, well-reasoned documents.

**Post-hearing Process.** At the conclusion of the evidentiary hearings, the Applicant will submit documents reflecting its position on the issues in the adjudication in the form of a brief stating its legal arguments and citing to portions of the record that support its arguments, a model order, and a model site certification agreement with any needed permits. These documents represent the Applicant's best argument for certification and do not represent the Council's opinion that certification should be recommended to the Governor. Other parties may respond to the Applicant's presentation by briefing their own legal arguments, citing the record for any evidentiary support and, where appropriate, suggesting changes or providing their own suggested model documents. In turn, the Applicant may reply to the parties' presentations. Note: In briefing their arguments, the parties should follow the order of issues in the agreed issues list. The Council may deem a party's failure to address an issue as the party's acquiescence in its opponents' view of the issue.

The briefing schedule has been tentatively agreed, subject to determination at the conclusion of the evidentiary hearing. Tentatively, the Applicant's materials will be filed on or before December 1, 1995. Other parties' presentations will be filed on or before January 5, 1995. The Applicant may respond on or before January 19, 1995.

**Notice of Prehearing Conference.** A continued Prehearing Conference will be held on October 5, 1995, at 2:00 p.m., in Room 308 of the Energy Office, 925 Plum Street, Olympia WA, 98504-43172. The Council will designate exhibit numbers for the prefiled evidence, and will deal with remaining procedural matters.

DATED and effective at Olympia, Washington this 25<sup>th</sup> day of September 1995.

  
Fred Adair, Chair

**NOTICE TO PARTICIPANTS:** Unless modified, this prehearing order will control the course of the hearing. RCW 34.05.431; WAC 463-30-270(3). Objections to this order must be filed in writing with the Council within ten days after the date of this order. WAC 463-30-270(3).

NORTHWEST REGIONAL POWER FACILITY

AMENDED SERVICE LIST

**EFSEC**

FREDERICK S. ADAIR, CHAIR  
ENERGY FACILITY SITE EVALUATION  
COUNCIL  
PO BOX 43172  
OLYMPIA, WA 98504-3172

(360) 956-2150 FAX (360) 956-2158

C. ROBERT WALLIS, EFSEC VICE CHAIR  
UTILITIES & TRANSPORTATION  
COMMISSION  
PO BOX 47250  
OLYMPIA, WA 98504-7250

(360) 753-6404 FAX (360) 586-1150

MEREDITH MORTON, ASSISTANT  
ATTORNEY GENERAL  
HIGHWAYS-LICENSES BUILDING  
PO BOX 40100  
OLYMPIA, WA 98504-0100

(360) 664-3241 FAX (360) 664-0224

**COUNCIL MEMBERS**

WALTER SWENSON  
DEPARTMENT OF AGRICULTURE  
PO BOX 42560  
OLYMPIA WA 98504-2560

FAX (360) 902-2089

DAVID McCRAANEY  
COMMUNITY, TRADE & ECONOMIC  
DEVELOPMENT  
2001 6TH AVE STE 2600  
SEATTLE WA 98121

FAX (206) 464-7222

RON SKINNARLAND  
DEPARTMENT OF ECOLOGY  
PO BOX 47600  
OLYMPIA WA 98504-7600

FAX (360) 407-6902

DOUG KILPATRICK  
ENERGY OFFICE  
PO BOX 43165  
OLYMPIA WA 98504-3165

FAX (360)

GERRY O'KEEFE  
OFFICE OF FINANCIAL MANAGEMENT  
PO BOX 43113  
OLYMPIA WA 98504-3113

FAX (360) 586-4837

JO ROLLER  
FISH AND WILDLIFE  
PO BOX 41091  
OLYMPIA WA 98504-1091

FAX (360) 902-2947

NANCY JOSEPH  
NATURAL RESOURCES  
PO BOX 47014  
OLYMPIA WA 98504-7014

FAX (360) 902-1789

JUDY McNICKLE  
PARKS AND RECREATION  
PO BOX 42650  
OLYMPIA WA 98504-2650

FAX (360) 753-1594

TERRY STRONG  
DEPARTMENT OF HEALTH  
PO BOX 47821  
OLYMPIA WA 98504-7821

FAX (360) 753-1496

GARY RAY  
DEPARTMENT OF TRANSPORTATION  
PO BOX 47300  
OLYMPIA WA 98504-7300

FAX (360) 705-6911

TED HOPKINS  
RT 1 BOX 38  
CRESTON, WA 99117  
(509) 725-3031 FAX (509) 636-2334

**PARTIES**

**APPLICANT**

STEVEN F. ANDERSON, VICE PRESIDENT  
KVA RESOURCES, INC.  
1500 WEST FOURTH AVENUE, SUITE 510  
SPOKANE, WA 99204

(509) 747-4420 FAX (509) 747 4363

DARRELL PEEPLES, ATTORNEY  
SWANSON, PARR, CORDES, YOUNGLOVE &  
PEEPLES  
EASTSIDE PROFESSIONAL PLAZA, SUITE A  
924 EAST SEVENTH AVENUE  
OLYMPIA, WA 98507-7846

(360) 357-7791 FAX (360) 754-9268

**COUNSEL FOR THE ENVIRONMENT**

DEBORAH MULL, ASSISTANT ATTORNEY  
GENERAL  
COUNSEL FOR THE ENVIRONMENT  
PO BOX 40117  
OLYMPIA, WA 98504-0117

(360) 493-9224 FAX (360) 438-7743

**STATE AGENCIES**

ROBERT TURNER, DIRECTOR  
DEPARTMENT OF FISH AND WILDLIFE  
PO BOX 43135  
OLYMPIA, WA 98504-3135

WILLIAM C. FRYMIRE, ASSISTANT  
ATTORNEY GENERAL  
DEPARTMENT OF FISH AND WILDLIFE  
1125 WASHINGTON STREET  
OLYMPIA, WA 98504-0100

(360) 586-2428 FAX (360) 586-2756

JUDITH MERCHANT, DIRECTOR  
WASHINGTON STATE ENERGY OFFICE  
PO BOX 43165  
OLYMPIA, WA 98504-3165

TOMMY PRUD'HOMME, ASSISTANT  
ATTORNEY GENERAL  
URBAN & AGRICULTURAL RESOURCES  
DIVISION  
OFFICE OF THE ATTORNEY GENERAL  
PO BOX 40109  
OLYMPIA WA 98504-0109

(360) 753-5060 FAX (360) 586-7671

MARY RIVELAND, DIRECTOR  
DEPARTMENT OF ECOLOGY  
PO BOX 47600  
OLYMPIA, WA 98504-7600

JAY MANNING, ASSISTANT ATTORNEY  
GENERAL  
DEPARTMENT OF ECOLOGY  
PO BOX 40117  
OLYMPIA, WA 98504-0117

(360) 459-6158 FAX (360) 438-7743

**FEDERAL AGENCIES**

ROBERT CHRISTENSEN  
UNITED STATES DEPARTMENT OF THE  
INTERIOR  
PN-6510  
1150 NORTH CURTIS ROAD  
BOISE, ID 83706-1234

(208) 378-5039 FAX (208) 378-5066

DENNIS M. OSTER  
BONNEVILLE POWER ADMINISTRATION-  
MPF  
PO BOX 3621  
PORTLAND, OR 97208-3621

(503) 230-5871 FAX (503) 230-4973

STEPHEN R. LARSON, ASSISTANT  
GENERAL COUNSEL  
BONNEVILLE POWER ADMINISTRATION-  
MGL  
PO BOX 3621  
PORTLAND, OR 97208-3621

(503) 230-5871 FAX (503) 230-4973

**TRIBES**

EDDIE PALMATEER, JR., CHAIRMAN  
COLVILLE BUSINESS COUNCIL  
CONFEDERATED TRIBES OF THE  
COLVILLE RESERVATION  
PO BOX 150  
NESPELEM, WA 99155

STEPHEN H. SAUGEE, ATTORNEY  
COLVILLE BUSINESS COUNCIL  
CONFEDERATED TRIBES OF THE  
COLVILLE RESERVATION  
PO BOX 150  
NESPELEM, WA 99155

(509) 634-8834 FAX (509) 634-8538

SPOKANE TRIBAL BUSINESS COUNCIL  
C/O LAWRENCE GOODROW, EXECUTIVE  
DIRECTOR  
SPOKANE TRIBE OF INDIANS  
BOX 100  
WELLPINIT, WA 99040

CHRISTOPHER B. GRAY, ATTORNEY  
SPOKANE TRIBE OF INDIANS  
ALEX SHERWOOD MEMORIAL CENTER  
PO BOX 100  
WELLPINIT, WA 99040

(509) 258-7511 FAX (509) 258-9243

**LOCAL GOVERNMENT**

IRWIN W. GRAEDEL, CHAIR  
BOARD OF LINCOLN COUNTY  
COMMISSIONERS  
450 LOGAN STREET  
DAVENPORT, WA 99122

RONALD SHEPHERD, ATTORNEY  
BOARD OF LINCOLN COUNTY  
COMMISSIONERS  
PO BOX 874  
DAVENPORT, WA 99122

(509) 725-4040 FAX (509) 725-3478

LINCOLN COUNTY FIRE PROTECTION  
DISTRICT NO. 7  
CLARKE B. SNURE, ATTORNEY  
SNURE LAW OFFICE, P.S.C.  
22513 MARINE VIEW DRIVE  
DES MOINES, WA 98198

(206) 824-5630 FAX (206) 824-9096

LESTER S. PORTNER, SUPERINTENDENT  
WILBUR PUBLIC SCHOOLS  
PO BOX 1090  
WILBUR, WA 99185

(509) 647-2221 FAX (509) 647-2509

MICHAEL E. CROWELL, SUPERINTENDENT  
CRESTON SCHOOL DISTRICT NO. 73  
PO BOX 17  
CRESTON, WA 99117

(509) 636-2721 FAX (509) 636-2910

**UTILITIES**

WASHINGTON WATER POWER COMPANY  
JERRY K. BOYD, ATTORNEY  
C/O PAINE, HAMBLEN, COFFIN, BROOKE &  
MILLER  
717 WEST SPRAGUE AVENUE, SUITE 1200  
SPOKANE WA 99204-0464

(509) 455-6000 FAX (509) 838-0007

**CITIZENS**

DANIEL C. BUOB  
LINCOLN COUNTY AG COALITION  
RT 1 BOX 122  
EDWALL, WA 99008

(509) 257-2656 FAX (509) 257-2423

KAREN JONES, ROBERT JONES  
NORMAN HOUGER, ANNIE HOUGER  
ROUTE 1, BOX 25A  
CRESTON, WA 99117

(509) 636-3621 FAX (509) 725-1665

JOE BEAN  
PO BOX 195  
WILBUR, WA 99185

(509) 647-2458 FAX (509) XXX-XXXX

MARVIN J. AND LEORA H. BEAN & SONS  
RT. 1, BOX 57  
CRESTON, WA 99117-9734

(509) 636-2975 FAX (509) XXX-XXXX