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BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In re Application No. 96-1
of
OLYMPIC PIPELINE COMPANY
For Site Certification

PREHEARING ORDER NO. 13
COUNCIL ORDER NO. 714
NOTICE OF PREHEARING
CONFERENCE (September 24, 1998)

Nature of the Proceeding: This matter involves an application to the Washington State Energy Facility Site Evaluation Council (the Council) for certification of a proposed site in six Washington counties for construction and operation of a pipeline for the transportation of refined petroleum products between Woodinville and Pasco.

Procedural Setting: The Council convened a ninth prehearing conference session on July 7, 1998, pursuant to due and proper notice, to discuss procedural matters in this adjudication. The conference was held before Chair Deborah Ross and Council members Charles Carelli (Department of Ecology), Ed Carlson (Department of the Military), Dean Judd (Department of Community, Trade, and Economic Development), Jenene Ratassepp (Department of Fish and Wildlife), Gary Ray (Department of Transportation), and C. Robert Wallis (Utilities and Transportation Commission). This order sets forth the results of this discussion.

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Appearances: Appearances were entered as follows:

Applicant	Charles Blumenfeld, Joshua Preece, and Karen McGaffey, attys., Seattle, and Claude Harshbarger, Olympic Pipe Line Company, Renton
Counsel for the Environment	Thomas C. Morrill and Mary McCrea, Asst. Attys. General, Olympia
State Agencies	Dept. Of Ecology , by Rebecca McInteer and Kurt Peterson, Asst. Attys. Gen., Olympia, and Brenden McFarland, Dept. of Ecology, Olympia Dept. Of Fish & Wildlife , by William Frymire, Asst. Atty. Gen., Olympia, and Gary Sprague, Dept. of Fish & Wildlife, Olympia Dept. Of Natural Resources , by James Schwarz, Asst. Atty. Gen., Olympia Parks & Recreation Commission , by Pat Butler, Parks & Recreation Commission, Olympia Utilities & Transportation Commission , by Ann E. Rendahl, Asst. Atty. Gen., Olympia, and Jon Neill, Law Clerk, Olympia
Counties	King County , by Pete Ramels, atty., Seattle Adams, Kittitas and Grant Counties , by Dennis D. Reynolds, atty., Seattle
Cities	City of Ellensburg , by Jeffrey Watson, Ellensburg
Water Districts	Cross Valley Water District , by Patricia A. Murray, atty., Seattle Woodinville Water District and Northshore Utility District , by Rosemary Larson, atty., Bellevue
Tribes	Tulalip Tribes , by Jim Jones, atty., Everett
Businesses or other organizations	Cascade Columbia Alliance , by Michael Gendler, atty., Seattle Tidewater Barge Lines, Inc. and Tidewater Terminal Company , by Corey Parks, atty., Portland, Oregon Washington Environmental Council and People for Puget Sound , by Grahame Bell, atty., Seattle

1 **Discussion:**

2 **A. Environmental Impact Statement**

3 The Council has distributed copies of a “preliminary” draft Environmental Impact
4 Statement to the attorneys for each party in the adjudication. *This is not the official draft
Environmental Impact Statement.*

5 The preliminary draft was released at the parties’ request in order to meet their stated
6 needs for preparation. It is subject to change and may not be cited for any purpose.

7 The draft Environmental Impact Statement (DEIS) is projected to be published in the
8 Federal Register and publicly available by the end of July 1998.¹ The Council will
9 endeavor to provide a 90-day period for comments. Three public meetings will be held
10 toward the end of the comment period in locations near the proposed route.

11 Parties were asked to inform Mr. Fiksdal by the end of the week how many copies of the
12 DEIS they desired. The DEIS will also appear on the Council’s Website at
13 www.efsec.wa.gov.

14 **B. Land Use Consistency Determination**

15 Olympic Pipe Line Company (Olympic) and the counties indicated continued progress in
16 the land use review. Olympic has delivered draft consistency reports to each county and
17 to North Bend.

18 At this point,

- 19 • Olympic and county staff are waiting for the completion of the DEIS and for
20 decisions on pending text amendments in Grant and Kittitas counties in order in order
21 to continue the land use process;
- 22 • Mitigation agreements for the eastern counties have been drafted. The agreement for
23 Adams county has been submitted to the county commissioners for approval; the
24 agreements for Grant and Kittitas counties are “on hold,” pending completion of the
25 text amendments; and
- 26 • King County has requested additional information.
Snohomish County was not present to report.

Various parties expressed interest in receiving copies of the proposed text amendments.
Dennis Reynolds, attorney for Adams, Grant, and Kittitas counties, indicated that he
would make copies available as soon as they are submitted to the county planning
commissions and become public records.

¹ Although the DEIS has not been issued at the date of this order, EFSEC’s most recent word from the Forest Service, as federal DEIS coordinator, is that EFSEC and the Forest Service will be able to proceed to issuance of a joint document in August.

1 **C. Adjudication**

2 Olympic delivered a revised application to the Council on May 11, 1998. The Council
3 sent copies to all entities that had received the original application and to other entities on
4 request. The revised application is also available on the Council's Website.

5 Olympic and various state agencies have begun negotiations, directed toward reaching
6 settlements or stipulations on certain issues. Among the state entities in negotiation with
7 Olympic are the Department of Fish and Wildlife, the Department of Ecology, the Parks
8 & Recreation Commission, and co-Counsel for the Environment.

9 Olympic does not intend to submit another revision to the application prior to the
10 adjudication. Rather, it intends to inform the Council (and parties) of changes arising
11 during the negotiation process by filing proposed stipulations for the Council's approval
12 and distributing them to the service list.

13 **D. Scheduling**

14 The Council distributed a proposed schedule for all remaining phases of the application
15 review. This schedule was designed to incorporate both the written requests of the
16 parties and the experience of the Council. It is structured to streamline the evidentiary
17 hearings by providing ample time for meaningful negotiations and settlements.

18 With minor changes in the suggested time intervals, parties appeared to be comfortable
19 with the proposed schedule. The Council asked the parties to submit any further
20 comments on the schedule by July 17, 1998. In order to arrange meeting and hearing
21 facilities, the Council must finalize the schedule soon and intends to enter an order on
22 scheduling matters in the near future.

23 Olympic indicated that it would be able to comply with an early filing date but that its
24 prefiled testimony may consist largely of the application.² Based on this representation
25 and neither approving nor disapproving Olympic's plan, the Council directs that
26 Olympic's prefiled evidence be filed and distributed to parties no later than September 1,
1998. Through October 15, 1998, the parties may engage in formal discovery.

With no intent to reflect any ultimate Council decision about the intervention status of
Cascade Columbia Alliance (CCA), the Council asked CCA to participate in all phases of
the application review as though the scope of its intervention included representation of

² In written comments, the applicant has speculated that its lack of direct expert testimony could affect its need to present rebuttal evidence. While the applicant is free to structure its own participation in the proceeding within very broad limits and has the right to rebut the testimony of others, and while amendments to the application are anticipated, these factors will not, of themselves, allow the applicant to submit a substantially new case in rebuttal. In its direct case, the applicant is expected to present whatever evidence it believes is necessary to support its application in the adjudication. If the applicant believes there is a difficulty with the September deadline, it should request an extension of the September date.

1 Trout Unlimited. The Council's purpose in this request was to avoid potential later
2 delays.

3 **E. Appearance of Fairness and Ex Parte Communication**

4 Council Chair Deborah Ross informed all parties that her husband, Brian Hovis, is a
5 planner for the Parks and Recreation Commission, a party to this proceeding. Chair Ross
6 described the measures that she has taken to prevent any unauthorized communication
7 between herself and the Parks & Recreation Commission:

- 8 • Ms. Ross and Mr. Hovis do not discuss the Olympic Pipe Line proceeding.
- 9 • Mr. Hovis is not a member of the Parks & Recreation team responsible for
10 negotiating with Olympic or commenting on the DEIS.
- 11 • The Parks & Recreation Commission has agreed to insulate Mr. Hovis from all
12 communications regarding the Olympic proposal.

13 The Council set July 17, 1998 as the deadline for parties to submit objections on this
14 issue.³

15 The Council reminded the parties of its procedures to avoid potential ex parte
16 communications. Parties were reminded not to send communications directly to Council
17 members. Rather, parties have been asked to send thirty copies of intended
18 communications to Allen Fiksdal. Before forwarding copies to Council members, Mr.
19 Fiksdal, with the advice of the Council's assistant attorney general, will review the
20 communications for potential ex parte concerns. If any are noted, Mr. Fiksdal will notify
21 the sending party, and a solution will be sought. The Council also reiterated an earlier
22 direction that when parties send communications to the Council, they will send copies to
23 the Service List.

24 **F. Notice of Next Prehearing Conference**

25 The next prehearing conference in this matter will be held September 24, 1998, beginning
26 at 10:00 a.m., at the Kent DSHS Office, 1313 W. Meeker, Suite 102, Kent, Washington,
98032.

Parties may participate by teleconference, subject to the limitations of available facilities.
Because a limited number of ports are available, parties who desire to attend by
teleconference must reserve a port with Ms. Joleen Karl of the Council staff at
(360) 956-2121 no later than September 22. Reservations will be taken on a first-come,
first-served basis and allocated one to a party while they are available. If unused ports
remain, parties may reserve a second port on September 23, again on a first-come, first-
served basis.

The purpose of the conference will be to discuss matters identified in this order and any

³ The Council received no objections.

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other procedural matters relevant to the adjudication that may be raised by parties or by the Council. Parties are encouraged to submit agenda topics to the Council in preparation for the conference.

DATED and effective at Olympia, Washington, this ____ day of August 1998.

C. Robert Wallis, Presiding Officer

Notice to Participants. 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.