

4.11.95

BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In re Application No. 93-2)	PREHEARING ORDER NO. 4	675
)		
of)		
)		
KVA RESOURCES, INC., and)	PREHEARING CONFERENCE ORDER	
CSW ENERGY, INC.)		
)		
For Site Certification)		
NORTHWEST REGIONAL)		
POWER FACILITY)		
.....)		

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 a prehearing conference on March 16, 1995, before Council Chair Frederick S. Adair and members C. Robert Wallis and Ron Skinnarland.

APPEARANCES. The following parties participated in the prehearing conference.

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| Applicant | KVA Resources Inc. , by Darrell Peeples, Attorney, Olympia, Washington, and by Charles W. Lean, Attorney, Olympia, Washington. |
| Counsel for the Environment | Ms. Deborah Mull , Asst. Attorney General Olympia |
| Council Member Agencies | Dept. of Ecology , by Rebecca Vandergriff, Asst. Attorney General, Olympia |
| | Dept. of Fish and Wildlife , by William C. Frymire, Asst. Attorney General, Olympia |
| | Washington State Energy Office , by Tommy Prud'Homme, Asst. Attorney General, Olympia |
| Intervenors: | Confederated Tribes of the Colville Reservation , by Bruce Didesch, Attorney, Nespelem, Washington |

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Spokane Tribe of Indians, by Christopher B. Gray, Attorney, Wellpinit, Washington

Board of Lincoln County Commissioners, by Ron Shepherd, Prosecuting Attorney, Davenport, Washington

Lincoln County Fire Protection District No. 7, by Clarke B. Snure, Attorney, Des Moines, Washington

The Washington Water Power Company, by Jerry K. Boyd, Attorney, Spokane

Lincoln County Ag Coalition, by Daniel C. Buob, Chairman, Edwall, Washington

In this order, the Council discusses scheduling matters and responds to inquiries from Counsel for the Environment.

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 reserve April 12 at 3:30 p.m. for a further prehearing conference.¹

Summary Motion Briefing Schedule: Counsel for the Environment identified two "threshold issues" at the prehearing conference on which she stated an intention to seek a ruling from the Council: (a) whether the adjudicative hearing should be stayed until the applicant submits a more detailed plan for ancillary facilities -- i.e., the transmission facilities and natural gas pipeline, and whether the application is incomplete without that information; and (b) whether the Council must follow substantive environmental laws and regulations in siting an energy facility.

A schedule was determined for any motions on topics that could dispose of the proceeding, and answers to those motions. Any dispositive motion from any party is due in the Council offices, with supporting argument, no later than May 1, 1995. Answers are due no later than June 2, 1995. The Council does not contemplate replies to any answers. The schedule is subject to change for cause.

Inquiries regarding process. Several questions were posed at the prehearing conference, in part at the instance of Ms. Mull, Counsel for the Environment. An extemporaneous discussion ensued; the Council deems it appropriate to treat the

¹ A tentative date, March 30, proved to be too early to report progress, and was not used.

questions as a request for a policy statement and to respond to them in this order, stating Council policy for purposes of this proceeding.

Simultaneous process. Some of the questions arise from the Council's legal responsibility to follow State laws requiring separate processes to accomplish different tasks relating to the same decision. For example, the Council is required to follow the State Environmental Policy Act as well as the State Administrative Procedure Act, and to comply with provisions relating to applications for National Pollution Elimination Discharge System or NPDES (water) and Prevention of Significant Deterioration (air) as well as engage in an adjudicative hearing process on the application itself.

The Council has approached the preliminary phases of those processes in a manner to provide public notice of each matter and an opportunity for the public to participate. The informational meeting was held per published notice, and as for every new application, the various processes were described.

That persons who later chose to intervene -- or were already a party to the application -- did not choose to attend early meetings or to participate in non-adjudicative processes, does not mean that the information was hidden or that it was or is unavailable to parties to the adjudication. The ancillary processes are governed by pertinent law, with which the Council will comply.

The purpose of the adjudicative proceeding is to allow the Council to determine the nature of the recommendation it will forward to the governor: grant the application; deny the application; or grant the application with required conditions. In hearing the adjudication, the Council will follow its own rules and the pertinent provisions of Chapter 80.50 RCW, its own rules, and the APA.

To the extent feasible, the Council will delegate to Council Staff responsibility for process of matters not involved in the adjudication.

Basis for Decision. The Administrative Procedure Act requires the Council to confine its decision to the record, including testimony and exhibits that are received in evidence and submissions such as briefs that it allows parties to present. The Council will comply with that requirement. Council members will disregard case-specific information received in other contexts.

Disclosure of Documents. Persons who desire to do so may review Council meeting minutes and documents that have been presented to the Council during meetings. Other documents and correspondence between Council Staff and the Council's

consultants in which opinions are expressed constitute preliminary drafts, notes, etc., under RCW 42.17.310(1)(i) and are exempt from disclosure.

The Council believes that it should ask Council Staff to review such documents prior to disclosure to determine whether they are appropriately released, or whether their release could have adverse consequences. That could occur (a) when disclosure is a matter of timing, such as a preliminary report that will be made public as part of an institutionalized process in which all persons should have an equal opportunity to see it and work with it; or (b) when releasing a document exempt from mandatory disclosure could adversely affect the Council's ability to control the proceedings or when the Council is aware that disclosure could prejudice the rights of any party in the adjudicative process. If Council Staff have questions about it, they may ask the person requesting the document to complete a request for public records form, and refer the matter to the appropriate process to examine such requests.

Each request for disclosure will be judged on its merits and on the nature of the requested document.

Correspondence from Members of the Public. The Council will forward a copy of all correspondence that it receives from members of the public, expressing an opinion or asking a question about the proceeding, to Counsel for the Environment. Counsel may then consult directly with the correspondent, use the correspondence to assist in the preparation of the case, and may present the correspondence for inclusion in the record. It is inappropriate for Council Staff or individual council members to advise any person about Council processes or the person's legal options, and forwarding inquiries to Counsel for the Environment will facilitate communication with members of the public about the issues of the proceeding.

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.