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BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

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

PREHEARING ORDER NO. 27
COUNCIL ORDER NO. 728

ORDER RESPONDING TO MOTIONS
REGARDING ADEQUACY OF THE DRAFT
ENVIRONMENTAL IMPACT STATEMENT

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: EFSEC and the U.S. Forest Service (USFS), together with the federal cooperating agencies,¹ have produced a joint NEPA-SEPA draft Environmental Impact Statement (DEIS) for the Cross Cascade pipeline review. EFSEC retained an independent consultant, Jones and Stokes Associates (JSA), to draft this document, subject to the approval of the responsible officials of both EFSEC and the USFS.

On September 18, 1998, the DEIS was issued and became publicly available. On November 2, 1998, the DEIS was delivered to the Washington State Department of Ecology, SEPA Division. Written comments were due on December 17, 1998. During the ninety-day comment period, four public comment meetings were held in North Bend, Mill Creek, Ellensburg, and Pasco.

¹ The Bureau of Land Management will decide whether to grant right-of-way over federal lands through its Record of Decision (ROD). The USFS was lead agency for the issuance of the DEIS. Other cooperating agencies include the U.S. Army Corps of Engineers, the U.S. Army – Fort Lewis, and the U.S. Fish and Wildlife Service.

1 With the exception of Franklin County and the City of Snoqualmie, the moving parties² all
2 submitted written comments.

3 On January 28, 1999, Adams, Franklin, Grant, King, Kittitas, and Snohomish County submitted
4 their “Joint Motion to Continue Adjudicatory Hearings and for Revised or Supplemental Draft
5 Environmental Impact Statement.”

6 On or before February 2, 1999, parties filed the following responses:

- 7 • “Counsel for the Environment’s Response to Counties’ Joint Motion to Continue
8 Adjudicatory Hearings and for Revised or Supplemental Draft Environmental Impact
9 Statement,” dated January 29, 1999;
- 10 • “Cross Valley Water District’s and Northshore Utility District’s Motion to Continue
11 Adjudicatory Hearings and for Revised or Supplemental Draft Environmental Impact
12 Statement,” dated January 29, 1999;
- 13 • “Joinder of Tulalip Tribes and Yakama Indian Nation in Counties’ Motion for Continuance
14 and for Revised or Supplemental DEIS, dated February 2, 1999;
- 15 • Response to Joint Motion to Continue Adjudicatory Hearings and for Revised or
16 Supplemental Draft Environmental Impact Statement,” from the Department of Ecology,
17 dated February 2, 1999;
- 18 • “Response of City of North Bend, City of Snoqualmie, and Cascade Columbia Alliance to
19 Motions for Continuance,” dated February 2, 1999; and
- 20 • Olympic’s Consolidated Response to Motions for Continuance, Extension and Declaratory
21 Ruling,” dated February 2, 1999.

22 On February 5, 1999, the counties filed their “Reply in Support of Joint Motion to Continue
23 Adjudicatory Hearings and for Revised or Supplemental Draft Environmental Impact Statement.”
24 Finally, on February 18, the Tulalip Tribes filed their “Objections to Prehearing Order No. 22,”³
25 providing additional arguments for DEIS Supplementation.

26 The Council here rules on the motions and objection.

² This order will use the term “moving parties” to refer collectively to Adams, Grant, King, Kittitas, and Snohomish Counties, and other parties who joined the counties’ January 28 motion. Although Franklin County signed the joint motion, at the time of the motion it had not sought to intervene and was not a party to these proceedings

³ Per Prehearing Order No. 21, objections were due on February 16 (the first business day following the established ten-day period.) The Tulalip Tribes argued good cause for filing their objection on February 18, based on the difficulty of preparing the motion and preparing their prefiled testimony simultaneously the week before.

1 **Discussion:**

2 **A. Adequacy of the DEIS**

3 The moving parties request the Council to supplement the DEIS immediately to produce a
4 fully adequate document. They argue that

- 5 (i) The existing DEIS lacks information
regarding potentially severe impacts of the project⁴ and is therefore
inadequate as a decision-making tool for the Council.
- 6 (ii) SEPA requires a lead agency to complete a
7 fully adequate environmental review. The existence of the EFSEC
8 adjudicative process and the possibility of the supplementation of
9 environmental information during the adjudication, does not justify
10 a less-than-adequate DEIS.
- 11 (iii) Because comments to the DEIS have raised
12 significant new information indicating the potential for greater
13 project impacts than were identified in the 1998 DEIS, the SEPA
14 rules require supplementation of the DEIS. (WAC 197-11-405(a))

15 The Council believes that it is premature to rule on the adequacy of the DEIS. The
16 Council takes its responsibilities under SEPA very seriously and is committed to a
17 thorough environmental review of this project. The process underway is exactly the
18 process contemplated by SEPA.

19 **The Council has no reason to believe that the DEIS is not fully adequate: it
20 retained an independent consultant to analyze environmental impacts and
21 alternatives to the proposal in appropriate depth within reasonable page
22 limits recognized by NEPA and SEPA.⁵ The Council has never suggested
23 that its contractor prepare a less-than-adequate document on the assumption
24 that missing information will be produced during the adjudication. The
25 Council's manager, as responsible official, reviewed the DEIS and decided
26 that it met the Council's standards for issuance.⁶**

SEPA contemplates that an agency will evaluate public comments on a DEIS and other
information received to decide whether supplementation is required. Historically, EFSEC
has considered not only the comments received but the entire adjudicative record in
deciding whether the DEIS is adequate and in developing the final Environmental Impact
Statement (FEIS). In general, EFSEC believes that an efficient use of resources requires

⁴ The motions assert that the DEIS is deficient in the following areas: geotechnical information, particularly regarding landslides; baseline stream data; alternatives, including alternative routes for stream crossings; wetland impacts; scour analysis; fire suppression; traffic; crossing of the Columbia River; and "many more."

⁵ See 40 CFR Section 1502.7 and WAC 197-11-425.

⁶ For reasons explained in the Council's recent policy statement, Policy 101, the Council delegates responsibility for issuance of the DEIS to its manager, as responsible official for SEPA.

it to make this decision *once* upon completion of the adjudicative and land use phases of the case.⁷ On rare occasion, the Council may determine that an SEIS or an

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⁷ Consistent with the SEPA rules, WAC 197-11-405(4), the Council will consider whether there have been “substantial changes to the proposal” or whether there is “significant new information,” as it decides whether to prepare a supplemental EIS (SEIS).

1 addendum to the DEIS should be issued prior to the adjudicative phase, with the
2 possibility that additional supplementation may be required later. Consistent with SEPA,
3 the Council will issue a complete FEIS (or SEIS if required) to use as a decision-making
4 tool.

5 Finally, as a practical matter, the Council can not rule on the adequacy of the DEIS at this
6 time. Because of the uniqueness of the EFSEC process, Council members have not yet
7 reviewed the document.⁸

8 In summary, consistent with all requirements of SEPA, the Council is in the process of
9 preparing a fully adequate FEIS that will provide complete environmental information for
10 its use as a decision-making tool. At the appropriate time and according to applicable law,
11 the Council will determine whether supplementation is necessary.

12 **B. Scheduling of the adjudication**

13 1. Arguments of the Parties

14 The moving parties request the Council to delay the opening of the adjudication to
15 allow time for supplementation of the DEIS *prior* to the commencement of
16 hearings. The parties argue that the lack of essential information in the DEIS
17 precludes their effective participation in the adjudication. Because the DEIS
18 lacks the “bare essential” information, the parties are forced to fill “major gaps” in
19 the DEIS, rather than concentrate on filling the “small gaps” with information
20 unique to the particular issues for which they were granted intervention.

21 The parties argue that this unjustifiably shifts the expense for a significant body of
22 analysis away from the lead agency/applicant and onto the parties and the public.
23 In effect, by opening the adjudication with an inadequate DEIS, the Council is
24 relying on the parties to supply information to fill the gaps. If the Council delays
25 the adjudication and has its consultant supplement the DEIS, the expense would
26 not be transferred to the parties.

Without more information prior to the opening of the hearing, the parties argue
that there is a real possibility that the hearing may need to be reopened later. This
would be a significant waste of resources. Some parties anticipate taking the
position that the Council must deny site certification because it lacks essential
information on which to make an informed decision. Other parties anticipate
seeking judicial review and project that a court will find the DEIS inadequate. In
either of these scenarios, the parties argue, additional hearings would be required
at a later date.

⁸ EFSEC Policy 101 explains how the Council interprets its statutory obligations both to hold an adjudicatory proceeding under the Administrative Procedure Act, chapter 34.05 RCW, and to comply with the State Environmental Policy Act, chapter 43.21RCW in processing applications to site energy facilities.

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2. Conclusions of the Council

The Council believes that the primary purpose of SEPA is to provide complete environmental information to the decision-makers. While the SEPA process does serve to inform the public, state agencies, and local jurisdictions about the environmental impacts associated with a project, that is not its main function.

By the conclusion of its three-phase review,⁹ EFSEC will have the information it needs to reach a fully informed decision. During the adjudication, EFSEC encourages the parties to provide the information they believe will be helpful to the Council in its decision.

During the adjudication, any party may argue that EFSEC does not have sufficient environmental information on which to make a decision. EFSEC will consider such arguments. Whether or not an addendum to the DEIS or a supplemental EIS is ultimately deemed necessary, EFSEC believes that the information it gains during the scheduled hearings will advance its decision-making process. Accordingly, the motion to continue the adjudication is denied.

DATED and effective at Olympia, Washington, this 8th day of March 1999.

/s/ Deborah Ross
Deborah Ross, EFSEC Chair

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.

⁹ EFSEC's review process consists of a land use consistency determination, a SEPA review, and an adjudication.