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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

COUNCIL ORDER NO. 736  
CLARIFICATION OF COUNCIL  
ORDER NO. 732

**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 stipulation hearing on April 27, 1999, pursuant to due and proper notice. The purpose of the hearing was for the Council to hear testimony and argument on a proposed stipulation agreement, "Stipulations Between the Olympic Pipeline Company and the Yakama Indian Nation," dated February 11, 1999. By letter dated May 6, 1999, the stipulating parties clarified their interpretation of Section III.B.1. of the agreement to Judge Heller and the Council. This agreement and letter have been marked as Exhibits 4 and 4.1 respectively in the Council's adjudicative proceeding in this matter.

On May 12, the Council entered Order No. 732, accepting the stipulation with certain conditions. On May 18, Counsel for the Environment filed an objection,<sup>1</sup> asking the Council to reconsider and rescind its order. On May 19, the Department of Transportation also filed an objection.<sup>2</sup>

<sup>1</sup> "Counsel for the Environment's Objection to Council Order No. 732: Order on Stipulations Between Applicant and Yakama Indian Nation," May 18, 1999.

<sup>2</sup> "Department of Transportation's Objection to Council Order No. 732 (Order on Stipulation Between OPL and YIN)," May 19, 1999.

1 **Discussion.**

2 **A. Relief sought**

3 Counsel for the Environment (CFE) asks the Council (i) to rescind Order No. 732; (ii) to take  
4 additional testimony regarding the stipulation; and (iii) to set a date for Olympic to file additional  
5 information regarding alternative methods for crossing the Columbia River on man-made  
6 structures.

6 **B. Major arguments**

7 **1. Arguments of Counsel for the Environment**

8 CFE argues that taken together, the stipulation, the May 6 letter of clarification, and the cross-  
9 examination of Olympic witnesses make Olympic's intentions regarding the crossing of the  
10 Columbia manifestly unclear. First, it is not clear whether Olympic's "best efforts" to obtain  
11 permits for an over-the-river crossing will include application to EFSEC for approval. If  
12 Olympic does intend to seek EFSEC approval, CFE argues, considerably more testimony  
13 regarding over-the-river crossings is required. Second, pursuant to the May 6 letter, it is no  
14 longer clear that Olympic even intends to use its "best effort to obtain necessary permits;" the  
15 letter simply indicates that Olympic will use "best efforts to address agency concerns," which  
16 may or may not include an effort to obtain permits.

17 Given these uncertainties, CFE argues, additional testimony and cross-examination is required  
18 before EFSEC can approve the stipulation.

14 **2. Arguments of Washington Department of Transportation**

15 In addition to the arguments advanced by CFE, the Department of Transportation (DOT) argues  
16 that its preparation for Phase II of the hearing is prejudiced by approval of the stipulation. DOT  
17 indicates that, based on Olympic's direct representations to DOT to date, DOT has reasonably  
18 believed that crossing on the Vantage Bridge was not under serious consideration. DOT  
19 prepared for Phase II accordingly. The information contained in the stipulation would require  
20 DOT to prepare for Phase II differently.

19 **C. Council's decision**

20 The Council has reviewed Counsel for the Environment's and the Department of  
21 Transportation's objections to Order No. 732. Some confusion regarding the scope of the  
22 Council's order appears to exist. Although the Council declines to change or rescind its order on  
23 reconsideration, it clarifies the order as follows.

24 The Council's previous stipulation orders in this matter have indicated that ordinarily the  
25 acceptance of a stipulation sets a "floor" for design, construction, and/or operation of a proposed  
26 facility, should it be certified.<sup>3</sup> In significant part, the Council's acceptance of the stipulation  
between the Yakama Indian Nation and Olympic is consistent with this model. The bulk of the

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<sup>3</sup> See Prehearing Order No. 18, December 8, 1998, p. 4. See also Council Order 732, p. 2.

1 stipulation describes mitigation measures dealing with design, construction, and operation. With  
2 respect to these provisions, the Council's order simply accepts these mitigation measures as a  
minimum standard.

3 The portions of the agreement related to river and stream crossings, including the Columbia  
4 River crossing, do not comport with this model. The paragraphs dealing with crossing  
5 methodologies cannot be easily characterized as setting a "floor" standard to which stricter  
6 standards could subsequently be added. Rather, these paragraphs discuss alternative crossings,  
7 none of which is clearly less environmentally intrusive than another. The stipulation provides  
insufficient evidence to enable the Council to assess the relative environmental effects of these  
alternatives.<sup>4</sup> Because this portion of the stipulation does not comport with the model of a "floor  
standard," the Council clearly stated that "accepting" the stipulation *did not bind it* to approve  
any particular crossing methodology if the project were approved.

8 By accepting this portion of the stipulation, the Council merely acknowledges its understanding  
9 that the Yakama Nation and Olympic intend to be bound *to each other* according to their mutual  
understanding of the stipulation.<sup>5</sup>

10 The Council notes that the evidence offered by the Applicant to date supports horizontal  
11 directional drilling of the Columbia River. The stipulation appears to contemplate that Olympic  
12 will file additional evidence concerning over-the-river crossings. In fact, as Counsel for the  
13 Environment has correctly suggested, additional evidence must be filed if Olympic wants the  
Council to consider any other crossing methodology. Olympic must seek leave from the Council  
to submit additional evidence.

14 As indicated in Order No. 732, if Olympic chooses to have the Council consider alternative  
15 crossing methodologies and files additional evidence concerning over-the-river crossings, the  
16 schedule may need to be adjusted to provide all parties a fair opportunity for discovery and  
17 response.<sup>6</sup>

18 DATED and effective at Olympia, Washington, this \_\_\_\_ day of June, 1999.

19  
20 \_\_\_\_\_  
Deborah Ross, EFSEC Chair

21  
22 \_\_\_\_\_  
23 <sup>4</sup> In any event, if the Council approves the project, it will determine crossing methodologies only after a full review  
of the evidence.

24 <sup>5</sup> The parties' letter of May 6 simply functions to inform the Council that the Yakama Indian Nation and Olympic  
25 are satisfied that they have a mutual understanding of intent. As Counsel for the Environment correctly observes,  
the letter is not evidence in this case.

26 <sup>6</sup> The Council has taken no position about whether such evidence would require an amendment to the application or  
a supplemental draft environmental impact statement.