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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 of Cross Cascade Pipeline

COUNCIL ORDER NO. 737
ORDER DENYING MOTION FOR INDEFINITE RECESS

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: Pursuant to the Council’s prehearing orders,¹ proceedings in this matter were scheduled in two phases. The first phase commenced the adjudicative hearing, with cross-examination of prefiled testimony and rebuttal testimony. The second phase was designated for (i) completion of the adjudicative hearing, including testimony related to public lands and testimony from members of the public, (ii) completion of land use consistency hearings, and (iii) potential site visits.

The first phase began on April 27. On June 10, after seven weeks of hearings, Olympic Pipe Line Company suffered a major accident on its existing pipeline system, running from the refineries in northwestern Washington to Portland, Oregon. In response to Olympic’s request, the Council recessed the hearing for the week of June 14. By letter dated June 15, Olympic requested an indefinite recess in the hearing pending the ongoing investigation of the accident. On the basis of this request, the Council extended the recess through the week of June 21, but deemed the larger request to be a formal motion and provided the parties to the adjudication an opportunity for response.

Written responses were received from Counsel for the Environment, the Department of Natural Resources, the Parks and Recreation Commission, the Department of Ecology, the Department of Fish & Wildlife, Franklin County, Grant County, Kittitas County, King County, North Bend, Snoqualmie, Cascade Columbia Alliance, Tidewater Barge Lines and Terminal Company,

¹ Prehearing Order No. 14, August 21, 1998; Prehearing Order No. 24, March 8, 1999.

1 Maritime Environmental Coalition, Washington Environmental Council, Cross Valley Water
2 District, Worldcom Network Services, the Yakama Indian Nation, and the Tulalip Tribes. At a
3 conference on June 23, the Council heard additional argument on the motion and, after
4 deliberation, announced a decision. This order memorializes the Council's ruling.

5 **Discussion.**

6 **A. Major arguments**

7 **1. Ongoing investigation**

8 Olympic's argument. Olympic argued that an indefinite recess was necessary because EFSEC
9 was entitled to know how and why the accident occurred and how similar accidents can be
10 prevented. Although Olympic and state and federal agencies are engaged in a comprehensive
11 investigation, answers are not yet available.

12 Parties' response. The parties responded that a report on the cause of the accident is not
13 prerequisite to any of the hearing sessions scheduled in the remainder of Phase I or Phase II.
14 Whether or not information on this particular accident is relevant to the Council's decision,
15 Olympic has given no reason why this information must be available before further hearings can
16 occur. The parties contended that the hearing can proceed independently from the investigation.
17 If information relevant to the proceeding is discovered before the end of Phase II, it may be
18 placed on the record.² If information about the cause of the accident is not available by the end
19 of Phase II, the Council can decide what to do at that time.³

20 **2. Prejudice to Olympic and/or parties**

21 Olympic's argument. Olympic argued that the intervening parties would not be prejudiced by a
22 stay. In response to a question from the bench, Olympic stated that the company would be
23 prejudiced by proceeding at this time because its personnel and resources are devoted to
24 investigating the accident and assisting the community.

25 Parties' response. The intervening parties argued that an extended delay would be prejudicial.
26 First, after an extended delay, substantial time and money would be required for experts and
counsel to review the project and testimony. Moreover, the experts and counsel for the parties
may not be available at a later date. Any changes in experts or counsel would necessarily cause
some loss of continuity.

In response to a hypothetical question from the bench, parties indicated that they had little basis
to compare the costs of resuming this proceeding after an extended delay with the costs of
responding to a new application at a later date. However, as between these possibilities, some

² Citing Charles Batten, former NSTB investigator, Franklin County indicated that it was reasonable to expect a preliminary NTSB report by September or October, 1999.

³ Many parties indicated that their first preference would be for Olympic to withdraw its application. They expressed concern that the existing application continued to change such that the "true application" did not exist in one unified document, where it could be readily comprehended. They feared that this problem would be exacerbated by changes that Olympic may want to introduce in response to the accident.

1 parties indicated that their resources would be better spent evaluating a new, more complete
2 application at a later time.

3 **3. Quality of the hearing process**

4 Olympic's arguments. Olympic argued that the hearing process would be enhanced by a stay
5 pending the results of the investigation. A stay would allow an efficient, unified presentation of
6 the remainder of the testimony, through the incorporation of investigation results into testimony
7 and cross-examination, as relevant.

8 Parties' arguments. The parties argued that an extended delay would be detrimental to the
9 quality of the Council's decision. During the stay, membership on the Council would likely
10 change. New members would not have the benefit of live cross-examination to assess the
11 credibility of the witnesses who had testified thus far. Further, substantial time and money
12 would be required for "continuing" Council members to refresh their memories by reviewing the
13 testimony and transcripts. According to the parties, any lessening in the quality of the Council's
14 decision could diminish the fundamental fairness of the hearings for the participating parties and
15 for the public.

16 **B. Council's decision**

17 Sensitive to the significant effects of the given circumstances on the Applicant, intervening
18 parties, and Council members alike, the Council denied the motion for an indefinite recess.

19 First, although the Council believed that specific information about the accident may have
20 relevance to its decision on this application, the Council believed that the presentation of the
21 scheduled remaining testimony (regarding potential impacts on specific resources--fish, habitat,
22 groundwater) would not be enhanced by a more complete understanding of the accident.
23 However, the Council was prepared to consider a third phase of the proceeding to examine the
24 causes of the Bellingham explosion to the extent relevant to its decision in this case.

25 Second, after weighing the potential cost to all concerned, the Council believed that an indefinite
26 delay could negatively effect the quality of the process and decision. The best decision could be
reached while the testimony and cross-examination was fresh in the minds of all participants and
before the potential attrition of any participants.

Finally, the Council was concerned that no clear trigger had been offered for the termination of
an indefinite recess and resumption of the hearings.

27 **C. Revised schedule**

28 The two-week recess required some modifications to the earlier schedule. Although the Council
29 announced these modifications at the conference, they have become moot, in light of Olympic's
30 subsequent withdrawal of its application on June 25, 1999.

31 DATED and effective at Olympia, Washington, this ____ day of June, 1999.

32 _____
Deborah Ross, EFSEC Chair