

BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

| | | |
|----------------------------|---|----------------------|
| In the Matter of |) | |
| Application No. 80-1 |) | |
| WASHINGTON WATER POWER CO. |) | LAW JUDGE'S PRETRIAL |
| CRESTON GENERATING STATION |) | ORDER |
| |) | |
| A Washington Corporation |) | |
| |) | |

Application No. 80-1 was filed on September 29, 1980. The Administrative Law Judge, Patrick Biggs, was appointed by action of the Council on September 8, 1980. The first prehearing conference was held on October 21, 1980. A total of six prehearing conferences have occurred and four orders have been issued from these conferences. Besides the applicant, there are seven state agency parties actively appearing and participating. There are ten intervenors and the Counsel for the Environment for a total of eighteen separate parties which have taken part in the proceedings.

The hearing will commence at 10:00 a.m., Monday, September 21, 1981, with introductions and opening statements. All matters to be taken up with the Judge have been considered at the final prehearing conference or reserved for consideration prior to swearing the first witness on Tuesday, September 29, 1981.

I.

CASE FORMAT

- A. Commencement. The hearing shall commence at 10:00 a.m., Monday, September 21, 1981. At that time all parties and intervenors will present themselves to the Council by a statement from an attorney introducing himself and briefly describing the party's nature and special purpose, if any.
- B. Opening Statement. Opening statements will follow immediately after the introduction. Opening statements shall be efficiently prepared with an eye to brevity, clarity, and contrast of major concern areas of interest against the whole of the application. Use of visual aids for presentation of uncontroverted matter is encouraged.

Applicant will be allowed a maximum of 60 minutes for its statement. Other parties and intervenors will be allowed a maximum of 30 minutes, though it is anticipated some parties will utilize substantially less time. Parties and intervenors may reserve opening statements until the beginning of their case-in-chief.

- C. Applicant's Case-in-Chief. Each witness shall provide summary direct testimony with regard to relevant prefiled testimony and a document showing his education and qualifications, if not previously supplied. The witness will then be subject to immediate cross-examination as to all testimony he has supplied.
- D. Respondent's Cases-in-Chief. Prefiled testimony of all responding parties will be filed by September 15, 1981. The organization of the various presentations into witness panels, and consequent scheduling, shall be the subject of a

later order. All witnesses testifying will present some summary direct testimony, at least - a formal identification of the witness and the documents he filed as prefiled testimony, as well as the laying of any foundation necessary for the admission of all evidence prefiled by the witness.

- E. Public Testimony. Public testimony will be taken from residents of the area affected, at a time and place to be established. It is anticipated this will occur during the cases of the responding parties, a portion of which will be heard at a site near the proposed station.
- F. Rebuttal Testimony. Rebuttal testimony may occur but its scope and extent will be strictly limited to true rebuttal evidence, as opposed to evidence, under the guise of rebuttal, which seeks to re-plow tilled ground or branch into entirely new areas without sufficient cause.
- G. Procedural Matters. Procedural matters involving access to the judge and the record shall be dealt with at convenient times during the hearing. This shall be almost exclusively at times outside of normal hearing hours: early starts, shortened lunches, or late endings. In the event a major matter arises requiring more time, the Monday of each hearing week is available for this purpose.
- H. Closing Statement. The terms, limits, and conditions of closing statement, if any, shall be the subject of a subsequent order.

II.

TOPICAL PRESENTATION OF EVIDENCE

- A. General Policy Issues. Description of the applicant, costs, purposes, and benefits of the project.
- B. Project Description. Design, construction, operation and features of physical facility and its systems.
- C. Site Description. Characteristics of natural and human environment of the site.
- D. Environmental Consequences. Consequences to natural and human environment.
- E. Unavoidable Adverse Impacts, Project Limits and Mitigation.
- F. Procedure. The presentation of evidence shall adhere to the topical presentation of testimony. The organization of evidentiary presentations shall attempt to adhere to the sequence of topics in the outline, (Attachment A), though a single witness or witness panel may present testimony on topics not following one another in direct sequence.

Witnesses presenting testimony shall prepare and present prior to giving summary direct testimony a document showing which topics, with specific reference to the topical outline, have been addressed in that witness' prefiled testimony.

III.

SCHEDULING

- A. Hearings shall be held four days a week - Tuesday through Friday.
- B. The following schedule shall be observed for each full days' evidentiary hearing unless otherwise announced.

9:15 a.m. Evidence taken.
11:45 a.m. Lunch and recess.
1:15 p.m. Reconvene.
4:30 p.m. Afternoon recess.

IV.

PREFILED TESTIMONY

- A. The direct testimony to be presented by all witnesses shall be prefiled in the form of written questions and answers. All demonstrative evidence shall be described in, and submitted with, the corresponding prefiled testimony.
- B. The applicant submitted its prefiled testimony on July 31, 1981. Those responding parties participating in stipulations will file those stipulations no later than September 29, 1981. Where stipulations have been filed, the responding parties participating therein shall be allowed to file their prefiled testimony on October 13, 1981. Responding parties not participating in stipulations shall file their prefiled testimony by September 15, 1981. Late or additional prefiled testimony may be filed upon leave of the Administrative Law Judge, for good cause shown. The adverse affect of such late filing shall be considered with particular regard to any prejudicial effect on other parties and the hearing process.
- In no event shall prefiled testimony be submitted less than 28 days in advance of the date on which taking of the evidence from the party is anticipated to occur. Exception to this rule is allowed for filing supplementary testimony by the applicant in response to new or overlooked areas of the applicant's testimony revealed by the prefiled testimony of responding parties. In such an event the applicant shall file supplementary testimony and exhibits within fourteen days of the filing of the respondent's testimony which gives rise to this exception.
- C. Simultaneously with the filing of prefiled testimony, each party shall submit a position outline paper identifying their position on the issues they expect to address, the identity of their witnesses and a short description of the issues which will be addressed by each witness, keyed to the topical outline, Attachment A.
- D. Upon being sworn, each witness will be permitted not more than 15 minutes to present summary direct testimony. Additional time will be allowed for the explanation of illustrative or demonstrative evidence. A witness will not be permitted to exceed the 15 minute summary testimony limitation except upon showing the Administrative Law Judge that additional time is needed to fairly summarize the witness' testimony.
- E. Objections by responding parties to the admission of prefiled testimony of the applicant shall be made in writing no later than Monday, August 24, 1981. Replies to these objections shall be submitted in writing no later than Monday, September 7, 1981.
- F. Objections of the applicant to the admission of prefiled testimony submitted by responding parties shall be made in writing no later than Monday, October 30, 1981. Replies to these objections shall be submitted in writing no later than November 13, 1981.

V.

WITNESS PANELS

- A. All parties should attempt to establish panels of witnesses with regard to their cases, on a topical basis.
- B. Intervenors and responding parties are encouraged to establish joint witness panels on a topical basis.
- C. The cross examination of each witness panel shall be conducted as follows:
 - 1. Cross examination of the designated witness panel chairman by all parties, followed by council members' questions;
 - 2. Cross examination of other witness panel members by all parties, followed by council members' questions;
 - 3. Cross examination of the witness panel by all parties, followed by council members' questions. Panel questions shall be addressed to the panel chairman who shall assign the question to one or more witnesses.

Cross examination of panel members will be limited to questions directly referred to them or matters relating to their specific expertise.

- D. An attorney may cross examine a panel even if the attorney was not present for the entire previous cross examination of the panel, but will be expected to be familiar with previous cross examination and avoid repetition.
- E. At the close of a witness' direct testimony, each party will inform the Administrative Law Judge of the probable length of their cross examination. Those parties whose cross examination is not expected to require more than 15 minutes may then be allowed to cross examine first. At the close of their cross examination they may request to be excused from further attendance at the testimony of that witness.

VI.

MOTION PROCEDURE

- A. All motions shall be heard by the Administrative Law Judge except the following, which will be heard by the full Council:
 - 1. Motions to dismiss the application;
 - 2. Motions requiring the applicant to supplement the application;
 - 3. Other motions, at the discretion of the Administrative Law Judge, which may have a significant substantive effect on the application and/or the application process.
- B. Parties filing motions with regard to the application shall file the motion with the Council. The Administrative Law Judge will then contact the parties with regard to a date of hearing, and then note the motion for hearing. Notice shall be given to all parties and shall be made pursuant to WAC 463-30-110 which provides that notice shall not be less than twenty (20) days prior to the date set for hearing, unless waived by the Administrative Law Judge for good cause shown. Parties wishing to have an expedited hearing shall file an affidavit requesting an expedited hearing, reciting the need

therefore and providing assurances that an expedited hearing on the matter would not substantially affect the rights of other parties.

VII.

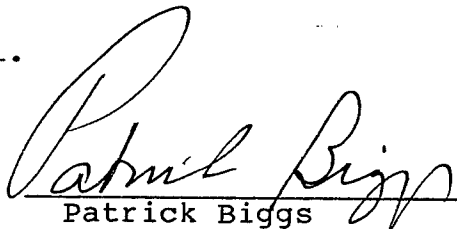
TRIAL BRIEFS AND PROPOSED FINDINGS

- A. All parties will submit their trial briefs, identifying perceived legal issues and suggested resolutions, with appropriate authority, by Friday, September 11, 1981.
- B. The applicant will submit its proposed Findings of Fact, Conclusions of Law and Order annotated with reference to the application by September 11, 1981. This will be a preliminary document in anticipation, from the applicant's view, of what its evidence will show. The other parties to the proceeding are encouraged to submit a similar document but there will be no requirement until the hearing approaches its close.
- C. Towards the close of the hearing, at a date to be assigned, all responding parties and intervenors shall submit a response to the applicant's proposed findings in either the same form, or a partial document in the same form dealing with each particular respondent's area of interest, or a critique of the applicant's submittal. Responding parties shall, in their documents, make some reference to the transcript of the proceedings in support of assertions made.
- D. The applicant shall submit a final pleading within one week after the close of the hearing which will supplement its proposed findings by adding comprehensive citations to the transcript and adjusting former sections in response to proposals made by respondents.

VIII.

No variance from the procedure outlined in this order will be permitted except upon good cause shown and upon specific consideration of the interests of the Council and of the other parties.

DATED This 17th day of August 1981.


Patrick Biggs
Administrative Law Judge

ATTACHMENT A

TOPICAL OUTLINE

I. Policy

A. Applicant

1. Ownership structure and type
2. Past and future history
3. Related activities

B. Need for Power and Project Purpose

1. Existing and planned resources
2. Load growth characteristics and projections
3. Delay consequences

C. Alternatives to the Proposed Action

1. No action
2. Alternative power sources
3. Alternative sites
4. Alternative designs
5. Alternative transmission routing
6. Alternative coal transportation

D. Project Costs and Financing

1. Planning and licensing
2. Construction
3. Operating expense
4. Tax overview

II. Project Description

A. Generating Station

1. Power generating system
2. Water use and makeup supply
3. Heat dissipation system

B. Fuel Supply, Transportation, and Storage

C. Atmospheric Emissions Control System

D. Other Waste Systems

1. Solid waste disposal
2. Waste water discharge
3. Control of rainfall runoff
4. Sewage treatment

E. Electrical Transmission System

III. Site Description

A. The Physical Environment

1. Topography, geology and soils
2. Hydrology and water quality
3. Climate, dispersion meteorology and air quality
4. Noise
5. Ecology
 - a. terrestrial flora
 - b. terrestrial fauna

c. aquatic biota

B. Human Environment

1. Water rights and water use
2. Land Use
3. Historic, archaeological, natural and aesthetic features
4. Socioeconomics
 - a. study area
 - b. region
 - c. local area
 - d. community service
 - e. private service
 - f. quality of life

IV. Environmental Consequences

A. Generating Station facilities, construction and operation

1. Topography, geology and soils
2. Hydrology and water quality
3. Water use and water rights
4. Noise
5. Ecology
6. Socioeconomic
 - a. labor
 - b. population
 - c. service needs
 - d. economy

7. Air quality

- a. SO₂
- b. steam vapors
- c. acid rain
- d. PSD, SIP

8. Land use

9. Historic, archaeological, natural and aesthetic resources

B. Transportation and Transmission Facilities

1. Topography, geology and soils
2. Noise
3. Ecology
4. Socioeconomic
5. Land use
6. Historic, archaeological, natural and aesthetic resources

C. Unavoidable Adverse Impacts

1. Short-term uses and long-term productivity
2. Irreversible and irretrievable commitments of resources

D. Possible Conflicts of Proposed Action with Policies or Expressions of Federal, State, Regional, Local, and Indian Tribe Plans, Policies and Controls

V. Mitigation

A. Physical Features

1. Topography, geology and soils
2. Hydrology and water quality
3. Climate and air quality
4. Noise
5. Ecology

B. Human Resources

1. Water use and water rights
2. Socioeconomic consequences
3. Land Use
4. Historic, archaeological, natural and aesthetic features

C. Monitoring

1. Hydrology and water quality
2. Air quality
3. Noise
4. Ecology
5. Socioeconomic

VI. Other Possible Issues and Considerations

- A. NPDES
- B. Water Rights Resolution
- C. Fuel Source, Type, and Kind
- D. BPA Role