

BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In re Application No. 96-1

of

OLYMPIC PIPELINE COMPANY

For Site Certification

PREHEARING ORDER NO. 10

COUNCIL ORDER NO. 710

NOTICE OF PREHEARING CONFERENCE
(December 4, 1997)

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 sixth prehearing conference session on September 22, 1997, pursuant to due and proper notice, to discuss procedural matters in this adjudication. The conference was held before Acting Chairman C. Robert Wallis (Utilities and Transportation Commission) and Council members Charles Carelli (Department of Ecology), Ellen Haars (Department of Health), and Gary Ray (Department of Transportation). This order sets forth the agreements emerging from this discussion.

Appearances: Appearances were entered as follows:

Applicant	Charles Blumenfeld, Joshua Preece, and Karen McGaffey, attys., Seattle
Counsel for the Environment	Thomas C. Morrill and Mary E. McCrea, Asst. Attys. General, Olympia
State Agencies	Dept. Of Ecology , by Alan Reichman and Rebecca McInteer, Asst. Attys. Gen., Olympia, and Marvin Vialle, Dept. of Ecology, Olympia Dept. Of Fish & Wildlife , by William C. Frymire, Asst. Atty. Gen., Olympia Dept. Of Natural Resources , by Maryanne McGovern, Asst. Atty. Gen., Olympia Parks & Recreation Commission , by Pat Butler, Parks & Recreation Commission, Olympia
Counties	King County , by Michael J. Sinsky, Senior Deputy Prosecuting Attorney, Seattle, and Randy Sandin, King County Planning Department, Renton Adams, Kittitas and Grant Counties , by Dennis D. Reynolds, atty., Seattle
Cities	City of North Bend , by Graham Black, atty., Issaquah
Water Districts	Cross Valley Water District , by Patricia A. Murray, atty., Seattle Woodinville Water District and Northshore Utility District , by Rosemary A. Larson, atty., Bellevue
Tribes	Tulalip Tribes , by K. Hausmann, atty., Everett, and Daryl Williams, Tulalip Tribes, Marysville
Federal Agency	Dept. Of the Army , by David A. McCormick, atty., Arlington, Virginia, and LTC Warren Foote, atty., Ft. Lewis, Washington
Businesses or other organizations	Cascade Columbia Alliance , by David A. Bricklin and Claudia Newman, attys., Seattle Tidewater Barge Lines, Inc. and Tidewater Terminal Company , by Jay Waldron, atty., Portland, Oregon Washington Environmental Council and People for Puget Sound , by Toby Thaler, atty., Seattle

Discussion:

A. Environmental Impact Statement¹

1. Scheduling.

The Applicant has submitted the technical information which had been delayed by snow and flood conditions. This information is expected to be sufficient to enable EFSEC's consultant to proceed with the drafting of the draft environmental impact statement (DEIS). A tentative time frame for the preparation of the DEIS follows:

Winter, 1997	EFSEC's consultant, Jones & Stokes Associates (JSA), will complete an in-house draft of the DEIS.
Winter, 1997	Per a Memorandum of Agreement among the cooperating federal agencies ² and EFSEC, the in-house draft will be distributed to these agencies for comment. The federal agencies will have sixty days to review the draft.
Spring, 1998	JSA will complete the DEIS, and the responsible official will issue the document.
Spring, 1998	Issuance of the DEIS will open a 45-day comment period, ³ during which the Council will hear public comments on the document at locations along the proposed route.

2. Scoping.

The parties raised concerns regarding their involvement in the scoping process. Council Manager, Jason Zeller, the Council's responsible official for SEPA issues, commented generally about the scoping process and is responding to individual questions via correspondence.

3. Availability of Information.

The parties requested access to the information that has been submitted for the consultant's use in preparing the DEIS. Through the public disclosure process, the Council has consistently provided access to all technical information submitted. Per its contract with EFSEC, the consultant will perform an independent analysis of that information based on its own technical expertise.

¹ Although the EIS is not governed by the adjudicative process, the Council recognized the parties' interest in the EIS process and allowed discussions regarding that topic.

² The lead federal agency is the Forest Service; the cooperating federal agencies are the Bureau of Land Management, the Bureau of Reclamation, the Army Corps of Engineers, the Department of the Army, and the Department of Fish and Wildlife. This is a complete list, supplementing the list that was given at the conference.

³ The Council may extend this period.

The DEIS, a public document subject to further comment, will reflect the consultant's analysis.

B. Land Use Consistency Determination⁴

1. Progress Report.

Adams, Grant, and Kittitas counties and the Applicant outlined five stages in the evolving land use process: (i) the Applicant will submit a draft land use analysis to each local jurisdiction (county or city);⁵ (ii) in response, each local jurisdiction will submit comments to the Applicant; (iii) each local jurisdiction will enter a negotiation process with the Applicant, during which mitigation proposals will be exchanged;⁶ (iv) each local jurisdiction, through a public process before the relevant board,⁷ will adopt a final land use report (framed as a GMA development agreement) which discusses land use consistency and agreed mitigations; and (v) the Council land use hearings will be reopened.

Although King County reported that, to date, it has had minimal dialogue with the Applicant on land use issues, the Applicant projects that all counties will have received Olympic's draft land use consistency reports by the end of October. Negotiations have begun in most of the eastern counties. In addition, the Applicant has submitted a proposed zoning code text amendment to the utility section of the Kittitas County code; the proposal is now going through county SEPA analysis.

2. Availability of Information.

The parties reiterated their desire to receive timely information about the consistency determinations to prepare for the land use hearings. Adams, Grant, and Kittitas counties have indicated an intent to provide summaries of their consistency reports to the parties before the counties enter public hearings to adopt these reports. The final consistency reports will likely be used as exhibits

⁴ The land use consistency determination is also a distinct phase of the application process, not governed by the adjudicative process. As with the EIS, the Council recognized the parties' interest and allowed discussion on this topic.

⁵ The City of Kittitas may enter an Interlocal Government Act Agreement with Kittitas County, through which the two jurisdictions would cooperate in their land use decisions. The terms of the agreement are under consideration by the prosecuting attorneys of each. After such an agreement is executed, the City of Kittitas may seek to enter a Stipulation with the Applicant similar to the stipulations executed by the Applicant, the counties, and the cities of North Bend and Snoqualmie.

⁶ As they review the mitigation proposals, the counties may consult with regional offices of state agencies (particularly the Department of Ecology and the Department of Fish and Wildlife) for technical advice.

⁷ To promote the public nature of the process, county staff will attempt to provide a report to the parties in this adjudication prior to public hearings in the affected jurisdictions.

when the land use hearings are reopened. In addition, the Applicant indicated an intent to submit an amended EFSEC application prior to the issuance of the DEIS.⁸

The Council's expectation is that information will be made available to the parties to the adjudication as expeditiously as possible in the context of the various required processes, and that the final documents regarding land use consistency will be distributed to the parties to allow sufficient time for review.⁹

3. Scheduling.

Given the Applicant's stated intention to submit an amended application prior to the issuance of the DEIS and the projected issuance of the DEIS in the spring of 1998, the Council anticipates that the land use hearings may be reopened in the late spring of 1998. The Council may combine the land use hearings with the public comment meetings for the DEIS.

C. Adjudication

1. Discovery.

Various parties raised concerns about the effectiveness of discovery during recent months. The parties offered and discussed various alternatives, but did not favor formalizing discovery at the present. The Council notes that any party may ask the Council to resolve discovery disputes.

2. Scheduling.

If the projections for issuance of the DEIS and the reopening of the land use hearings prove reasonably accurate, the adjudicative evidentiary hearings may commence during late summer or fall, 1998. Parties' reasonable need for time to prepare will be considered in setting the schedule.

The Council's goal is to conduct the adjudicative hearings reasonably and expeditiously. To this end, the Council expects that parties will use the existing information responsibly, not waiting until the DEIS is released or the application is formally revised to develop their positions, negotiate, and prepare for the adjudication. Because much of the information about the project has been available since its early stages, the Council does not believe that minor changes in the project will necessitate significant extensions in the proposed schedule.

⁸ The Applicant does not anticipate extensive changes to the application. Amendments will include corridor changes in the Saddle Mountain and Corfu landslide areas. The final application will likely include a listing of new alternatives for crossings of the Yakima Training Center and Columbia River. These updates will be distributed to the parties shortly, well in advance of the final application.

⁹ See Prehearing Order No. 9, Order No. 708, p. 4.

D. Notice of Next Prehearing Conference

A continued prehearing conference in this matter will be held on December 4, 1997, beginning at 10:00 a.m., at the Kent DSHS Office, 1313 W. Meeker, Suite 102, Kent, Washington, 98032.

Parties may participate by teleconference, subject to the limitations of available facilities. Because a limited number of ports are available, parties who desire to attend by teleconference must reserve a port with Ms. Joleen Karl of the Council staff at (360) 956-2121 no later than December 2. Reservations will be taken on a first-come, first-served basis and allocated one to a party while they are available. If unused ports remain, parties may reserve a second port on December 3, again on a first-come, first-served basis.

The purpose of the conference will be to discuss matters identified in this order and any other procedural matters relevant to the adjudication that may be raised by parties or by the Council. Parties are encouraged to submit agenda topics to the Council in preparation for the conference.

DATED and effective at Olympia, Washington, this _____th day of October 1997.

C. Robert Wallis, EFSEC Acting 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.