

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. 11
COUNCIL ORDER NO. 712

NOTICE OF PREHEARING CONFERENCE
(March 26, 1998)

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 seventh prehearing conference session on December 4, 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), Ed Carlson (Department of the Military), Gary Ray (Department of Transportation), Walter Swenson (Department of Agriculture), and Mel Wilson (City of Kittitas). 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, and Claude Harshbarger, Olympic Pipe Line Company, Renton
Counsel for the Environment	Thomas C. Morrill and Mary E. McCrea, Asst. Attys. General, Olympia
State Agencies	Dept. of Community, Trade, and Economic Development , by Richard McCartan, Asst. Atty. Gen., Olympia Dept. Of Ecology , by Rebecca McInteer, Asst. Atty. Gen., Olympia, and Marvin Vialle, Dept. of Ecology, Olympia Dept. Of Fish & Wildlife , by Marylin Mockensturm, Asst. Atty. Gen., Olympia Dept. Of Natural Resources , by Maryanne McGovern, Asst. Atty. Gen., Olympia Parks & Recreation Commission , by Joseph Shorin, Asst. Atty. Gen., Olympia
Counties	King County , by 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 City of Ellensburg , by Jeffrey Watson, Ellensburg
Water Districts	Cross Valley Water District , by Patricia A. Murray, atty., Seattle Woodinville Water District and Northshore Utility District , by Kim McCaulou, atty., Bellevue
Tribes	Tulalip Tribes , by Jim Jones, atty., Everett
Businesses or other organizations	Cascade Columbia Alliance , by Claudia Newman, atty., Seattle Tidewater Barge Lines, Inc. and Tidewater Terminal Company , by Jay Waldron, atty., Portland, Oregon

Discussion:**A. Environmental Impact Statement**1. Administrative Draft of DEIS

The Council expects to issue the draft Environmental Impact Statement (DEIS) during the spring of 1998. Under a Memorandum of Agreement among the participating federal agencies, prior to issuance an administrative draft will be distributed to the federal agencies. The federal agencies will have sixty (60) days to review the administrative draft.

The parties sought clarification as to whether any parties to the adjudication, including the Applicant and counties, would have an opportunity to review the administrative draft. The Council's consultant, Jones and Stokes Associates (JSA), may ask the Applicant to verify the technical accuracy of the information that is cited in the draft, without further substantive comment.

JSA is presently completing its inquiry into whether any variation of a north-south pipeline alternative meets the stated purpose and need of the project. The schedule for completion of the administrative draft will depend on the consultant's ability to gather the information it needs to make a professional judgment about this alternative.

2. Availability of Information

The parties sought clarification about whether they had access to the north-south information compiled by the consultant and whether they could submit additional information for the consultant's consideration. The Council reiterated its preference that all requests to offer or receive information be submitted to the Council in writing. This allows the Council to consider the request and provide a written response.

B. Land Use Consistency Determination1. Progress Report

At the September 22, 1997 Prehearing Conference, the Applicant and eastern counties outlined five stages in the land use process.¹ The Applicant reported that the first stage has largely been accomplished: the Applicant has submitted draft land use analyses to Grant, Kittitas, Adams, King, and Snohomish counties and to North Bend. Although Franklin County did not enter the Stipulation, the Applicant has met with the Franklin planning department to discuss consistency.

¹ These five stages stem from the Stipulation for and Agreement to Commence Negotiation. They are as follows: (i) the Applicant will submit a draft land use analysis to each local jurisdiction (county or city); (ii) in response, each local jurisdiction will submit comments to the Applicant; (iii) each local jurisdiction will enter negotiations with the Applicant, during which mitigation proposals will be exchanged; (iv) each local jurisdiction, through a public process before the relevant board, 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 will reopen the land use hearings. See PHO No. 10, p. 4.

Most counties are in the midst of steps two and/or three, preparing written comments to the draft analyses and negotiating mitigations. When the Applicant and county staff reach tentative agreement, county staff will make recommendations to their respective commissioners. Because these recommendations will be framed as proposed development agreements, the commissioners are required by the Growth Management Act (GMA) to hold public hearings prior to adopting them.

The Applicant is pursuing text amendments to the zoning codes in the eastern counties to provide a conditional use for utilities.² These amendments are expected to come before the planning commissions of the respective counties in January and the county commissioners in February.

2. Scheduling

The parties discussed their preferences for the timing of the land use hearings vis-a-vis the issuance of the DEIS, the amended application, and the adoption of county land use consistency determinations (development agreements). The counties, some agencies, and Counsel for the Environment requested (i) at least a month between the issuance of the DEIS and the completion of mitigation negotiations, and (ii) two months (or more) between county adoption of the consistency determinations and the reopening of the EFSEC land use hearings. The Applicant preferred to accelerate this timeframe and expressed a belief that after parties had seen the final consistency stipulations, they would potentially be comfortable with a shorter timeframe. The discussion will be reopened when the Council has a clear idea about the timing of the DEIS.

C. Adjudication

1. Discovery

Discovery continues. Requests are extensive and responses require time, but in general the process appears to be working. Various parties have debated discoverability of GIS computer databases. The Council encourages the parties to discuss this issue among themselves to the extent possible before approaching the Council formally through a motion.

² Previously, the county codes made no provision for a conditional use for utilities, even though the counties had land devoted to utility use.

2. Amendment of the Application

The Applicant expects to amend the application prior to the issuance of the DEIS.³ It prefers to time its amendment to coincide closely with issuance of the DEIS so that both documents contain identical information. This will reduce the likelihood that further amendment or a supplemental EIS will be necessary. The Applicant stated its position that the completion of the application is not an issue for land use vesting purposes because the Applicant has committed to address *current* comprehensive plans and GMA ordinances with each jurisdiction.

D. Notice of Next Prehearing Conference

A continued prehearing conference in this matter will be held on March 26, 1998, 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 March 24. 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 March 25, 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 _____ day of December 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.

³ The Applicant has frequently stated that the amended application will have no “surprises.” It will simply incorporate the technical information that has been made available to the parties throughout this proceeding.