

BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In re Application No. 96-1

of

OLYMPIC PIPE LINE COMPANY

For Site Certification

PREHEARING ORDER NO. 14
COUNCIL ORDER NO. 715

ORDER SETTING SCHEDULE
FOR APPLICATION REVIEW

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: With the draft Environmental Impact Statement complete, the Council now finds that it is feasible and useful to project a timeframe for the remaining portions of the review of Olympic Pipe Line Company's (Olympic's) application. To this end, the Council solicited and received written comments from parties in the Olympic adjudication, expressing their preferences and suggestions for the scheduling of the remainder of the application review.¹ From these suggestions and its own experiences, the Council offered a proposed schedule at the July 7, 1998 prehearing conference. Following discussion at the conference, the Council invited and received additional written comments from the parties.² After considering the interests of the parties, the Council's need to coordinate with relevant federal agencies, the logistics of arranging times and locations, and its own experience in similar complex proceedings, the Council enters this order regarding scheduling for the remainder of the proceeding.

¹ In Prehearing Order No. 12, served on April 27, 1998, the Council invited scheduling comments from parties. The following parties submitted comments and suggestions: Adams County, Cascade Columbia Alliance, Counsel for the Environment, Department of Ecology, Department of Fish & Wildlife, Department of Natural Resources, Grant County, King County, Kittitas County, Maritime Environmental Coalition, Northshore Utility District, Olympic Pipe Line Company, Parks and Recreation Commission, Snohomish County, Tidewater Barge Lines, Tulalip Tribes, Utilities and Transportation Commission, and Woodinville Water District.

² The following parties submitted comments and suggestions: Cascade Columbia Alliance, Counsel for the Environment, Olympic Pipe Line Company, and Tidewater Barge Lines.

Discussion:

A. Scheduling Considerations

The Council's goal is to reach a well-informed decision about the Olympic application through a fair and lawful process. The schedule is designed to promote that goal. First, it allows the parties to negotiate and settle as many of their concerns as possible³ and to develop quality information to enhance the Council's decision-making process. Parties have consistently requested that the time allotted to particular tasks be sequenced to allow full concentration on the task at hand and sufficient to allow quality efforts and results. This schedule allows ample time for all aspects of preparation while at the same time provides the impetus for parties to focus their efforts in moving forward. Second, the schedule will allow the flow of information among the three distinct phases of review, so that information is available when it is needed.⁴

By committing to an overall timeframe, the schedule serves various pragmatic needs, particularly the need of parties and Council members to plan ahead. The parties to the adjudication have expressed a need for such certainty in order to plan their preparation, to retain experts at the appropriate times, and to schedule expert testimony. Council members must schedule their Council commitments together with their other professional commitments. And, as a practical matter, the Council must arrange and commit to suitable facilities.

The Council intends that this schedule will remain firm. With so many parties and entities relying on an established schedule, significant changes will be difficult. Nonetheless, the Council has recognized and previously stated that it will have sufficient flexibility to respond to unforeseen circumstances. If unanticipated circumstances arise, parties may petition the Council for scheduling changes. The Council will expect any request for substantial changes to meet a relatively high burden of necessity, given that the parties have had significant preparation time to date and that the Council has invited their input and developed a schedule to meet the majority of expressed needs.

B. Schedule for SEPA Review

The Council adopts the following schedule for the SEPA review for the project. Minor adjustments may be necessary based on the availability of facilities. Notices of exact dates will be given pursuant to applicable laws and rules.

³ Under the Council's rules, parties are encouraged to reach settlements and file stipulations with the Council. As indicated at the July 7, 1998 Prehearing Conference, the Council expects to give a preliminary indication whether the stipulation is within its range of acceptability for the protection of public health, safety, and welfare. The Council's final decision on all stipulations will be made in its final order at the close of the adjudication.

⁴ The counties have indicated a desire to use information contained in the DEIS in their land use determinations. Various parties have indicated a desire to have information from the land use hearings before the commencement of the adjudicative hearing.

Week(s) of September 14, 1998	Notice of Availability of DEIS Federal Issuance of DEIS through publication in Federal Register
November 2, 1998	State Issuance of DEIS
November 9, 1998 November 16, 1998	Public meetings on DEIS
December 14, 1998	Deadline for written comments on DEIS
November 15, 1999	State Issuance of FEIS

C. Schedule for Land Use Consistency Determination

The Council adopts the following schedule for its land use consistency determination. Minor adjustments may be necessary based on the availability of facilities. Notices of exact dates will be given pursuant to applicable laws and rules.

Week(s) of January 18, 1999 January 25, 1999	Land Use Consistency Hearings
November 15, 1999	Council's Land Use determination

D. Schedule for Adjudication

The Council adopts the following schedule for its adjudication. Minor adjustments may be necessary based on the availability of facilities. Notices of exact dates and other provisions regarding these events will be given in timely fashion pursuant to applicable laws and rules.

Week(s) of August 31, 1998	Applicant's prefiled testimony Beginning of formal discovery
September 21, 1998	PHC Procedural matters
October 12, 1998	Close of formal discovery
November 30, 1998	PHC to determine structure of hearing sessions
December 28, 1998	Stipulations filed
January 11, 1999	Hearing on Stipulations

Week or weeks of	
February 8, 1999	Parties' prefiled testimony Applicant's supplemental testimony Beginning of formal discovery
March 22, 1999	Close of formal discovery Rebuttals filed
March 29, 1999	PHC to identify witnesses, mark exhibits
April 26, 1999	Beginning of hearing sessions
July 19, 1999	Conclusion of hearing sessions
August 23, 1999	Briefs due
September 6, 1999	Responses due
November 15, 1999	Council Order to governor

The attached chart shows this information graphically. The yellow arrows should be interpreted as pointing to the week beginning on a particular date, rather than to an exact date.

E. Other Related Matters

In response to other concerns voiced by the parties, the Council makes the following observations:

Prehearing conference to determine hearing structure. The structure and organization of the hearing sessions will be discussed at a prehearing conference in November, prior to the deadline for parties' prefiled testimony. The discussion should include means to assure that the allotted time is sufficient for parties' reasonable needs and that demands for time do not exceed the time allotted.

Hearing sessions. Hearing sessions will be organized primarily by subject matter. This organization may vary due to other scheduling factors. However, the Council will continue to make its best efforts to accommodate parties' needs for organization and economy.

The Council will aim to limit hearing sessions to two or three days per week. Much depends on the time required for cross-examination. Depositions may be conducted and offered in lieu of live cross-examination (or parts thereof), permitting a full and complete record.

Locations for hearing sessions will be chosen considering the availability of suitable facilities and the needs of all concerned, both Council and parties.

The hearing is projected to begin approximately four weeks after the filing of rebuttal. This allows time for appropriate discovery related to rebuttal.

Issues lists. The Council believes that an issues list may facilitate many aspects of the adjudication. Accordingly, our present thinking is to require each party to file a draft issues list at the time answering testimony is filed. After rebuttal and prior to the hearing, the Council expects to require a final list; after the evidentiary hearing, to require an amended list.

Stipulations. Stipulations must be filed two weeks prior to the stipulation hearing to be considered at the hearing. This hearing will be open to the public to the same extent as all other Council hearings.

Prefiled testimony; effect of stipulations. Ample time is afforded for preparation and updating testimony between the hearing on stipulations and the deadline for prefiled testimony. If necessary, parties may accommodate changes that result from acceptance of a stipulation by striking portions of their prefiled testimony.

Olympic should be permitted to file supplemental testimony at the time others file direct. This may reduce any burden on parties relating to rebuttal.

Discovery. The Council contemplates that informal discovery will continue on an ongoing basis throughout the adjudication. The discovery periods specifically designated in this order may be used for formal discovery pursuant to Council rules.⁵

DATED and effective at Olympia, Washington, this 21st day of August 1998.

/s/

C. Robert Wallis, Presiding Officer

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.

⁵ WAC 463-30-190.