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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. 16  
COUNCIL ORDER NO. 717  
  
NOTICE OF PREHEARING  
CONFERENCE (December 1, 1998)  
  
NOTICE OF STIPULATION  
HEARING (January 14 & 15, 1999)

**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 tenth prehearing conference session on September 24, 1998, pursuant to due and proper notice, to discuss procedural matters in this adjudication. The conference was held before Chair Deborah Ross and Council members Charles Carelli (Department of Ecology), Ed Carlson (Department of the Military), Ellen Haars (Department of Health), Gary Ray (Department of Transportation), Donna Smith (Port of Royal Slope), Dave Somers (Snohomish County), C. Robert Wallis (Utilities and Transportation Commission), and Bill Woods (Kittitas County). This order sets forth the results of this discussion.

1 **Appearances:** Appearances were entered as follows:

2 Applicant	Joshua Preece and Karen McGaffey, attys., Seattle, and Claude Harshbarger, Olympic Pipe Line Company, Renton
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4 Counsel for the Environment	Thomas C. Morrill, Asst. Atty. General, Olympia
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6 State Agencies	<b>Dept. Of Natural Resources</b> , by Maryanne McGovern, Asst. Atty. Gen., Olympia, and Dave Bort and Dave Weisse, Dept. of Natural Resources, Olympia
7	<b>Parks &amp; Recreation Commission</b> , by Joseph Shorin, Asst. Atty. Gen., Olympia
8	<b>Dept. Of Transportation</b> , by Steve Dietrich, Asst. Atty. Gen., Olympia
9	<b>Utilities &amp; Transportation Commission</b> , by Ann E. Rendahl, Asst. Atty. Gen., Olympia
10	
11 Counties	<b>King County</b> , by Pete Ramels, atty., Seattle, and Randy Sandin, King County Planning Department, Seattle
12	<b>Adams, Kittitas and Grant Counties</b> , by Dennis D. Reynolds, atty., Seattle
13	
14 Cities	<b>North Bend</b> , by Graham Black, atty., Issaquah
15	
16 Federal Agencies	<b>Dept. of the Army</b> , by David McCormick, atty., Arlington, Virginia
17	
18 Tribes	<b>Tulalip Tribes</b> , by A. Reid Allison, atty., Marysville, and Daryl Williams, Tulalip Tribes, Marysville
19	
20 Businesses or other organizations	<b>Cascade Columbia Alliance</b> , by Claudia Newman and Claire Gilchrist, attys., Seattle
	<b>Tidewater Barge Lines, Inc. and Tidewater Terminal Company</b> , by Jay Waldron, atty., Portland, Oregon

21 **Discussion:**

22 **A. Environmental Impact Statement (informational item)**

23 The draft Environmental Impact Statement (DEIS) is complete, and the public comment  
24 period has begun. The DEIS was delivered to the Forest Service in Portland on  
25 September 9, and a notice of issuance was published in the Federal Register on  
26 September 18. Two copies will be delivered to the Department of Ecology, SEPA

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Division, on November 2.

With a mailing list provided by EFSEC, the state printer mailed 350 copies of the DEIS and 320 copies of the Executive Summary to interested persons around the state, including the parties to this adjudication. Attorneys for the parties were invited to pick up copies prior to leaving the conference.

The public comment period ends on December 17. During the 90-day comment period, the Council and its DEIS consultant will conduct four public meetings to receive comments at North Bend, Mill Creek, Ellensburg, and Pasco.

The text of DEIS appears on the Council’s Website at [www.efsec.wa.gov](http://www.efsec.wa.gov). Council staff is in the process of scanning the figures for inclusion.

**B. Land Use Consistency Determination (informational item)**

With the issuance of the DEIS, the counties have much of the information they need to complete their negotiations with Olympic and reach consistency determinations. Olympic and the counties indicated that they are scheduling their negotiations to occur within the timeframe set by the Council. Most of the counties are planning public hearings as part of their processes and expect to reach determinations in time to reopen the land use hearings in January.<sup>1</sup>

The text amendment process is underway in Grant and Kittitas Counties. Both counties have worked with the Department of Ecology to identify relevant issues. Each county’s process will require two public hearings: one before the planning department and one before the Commissioners. Parties in the EFSEC proceeding may request notice of these hearings through the planning departments of each county.

The stipulation agreement between Olympic and the counties has been amended, increasing the amount that Olympic will reimburse the counties to cover the costs of negotiation.

**C. Adjudication**

On September 1, Olympic submitted its prefiled direct testimony to the Council and sent copies to parties of record. The revised application will likely be the first exhibit in the hearing. The DEIS has not been designated as an exhibit in the Applicant’s case at this time.

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<sup>1</sup> In its Scheduling Order, the Council set the land use hearings to reopen during the week of January 18, 1999. Grant, Kittitas, and Adams Counties expect to conclude negotiations and present recommendations to their respective Commissioners by mid-November. They expect to present statements regarding consistency by mid-December.

1 The schedule allows for supplemental testimony to be received at the time the parties file  
2 direct testimony. The Council reiterated that supplemental testimony should be limited to  
3 unexpected issues that may arise during negotiations and that parties may object to any  
supplemental testimony that is filed.

4 The Council's Scheduling Order established a discovery period beginning on submission  
5 of Olympic's pre-filed testimony. Olympic has received approximately 400 discovery  
6 requests and produced over 11,000 pages of responses. Counsel for the Environment  
7 (CFE) is coordinating the deposition of Olympic's experts during the weeks of October  
8 12 and October 19. The intent is for all interested parties to coordinate their questions so  
9 that no further depositions of Olympic experts are necessary. CFE made clear that it  
10 expected Olympic to be prepared to address all major issues at these depositions.

11 The parties requested clarification about how potential disagreements during the  
12 depositions would be resolved. The Council agreed to respond prior to the scheduled  
13 depositions.<sup>2</sup>

14 Cascade Columbia Alliance indicated an intent to file a motion for intervention.

#### 15 **D. Scheduling**

16 The Council reiterated its belief that the schedule distributed in Prehearing Order No. 14  
17 would facilitate a fair and fully informed decision. No objections to the scheduling order  
18 were received within the statutory period.

19 The purpose of the December 1 prehearing conference is discuss the hearing structure  
20 and the timing of the various phases of the adjudication. The Council asked the parties to  
21 come to the conference with an idea of their cases, including who will be involved and  
22 how much time will be needed. Council staff has been exploring possibilities for leasing  
23 one room for the entire hearing.<sup>3</sup>

#### 24 **E. Appearance of Fairness and Ex Parte Communication**

25 Council members Dave Somers, Snohomish County, and Bill Woods, Kittitas County,  
26 each read a statement describing his past and present associations and communications.<sup>4</sup>

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21 <sup>2</sup> Note: At its meeting on October 6, the Executive Committee confirmed that Mr. C. Robert Wallis will be  
22 available by telephone to resolve any questions that may arise during the depositions. The committee further  
23 clarified that the Council's rules and the Washington Administrative Procedure Act, chapter 34.05 RCW, will  
govern discovery.

24 <sup>3</sup> The majority of the hearing is expected to be convened in one central location. However, the Council has  
25 indicated that it will convene hearings in each county to receive public testimony and that is open to holding some  
26 hearings along the route to allow for limited site visits.

<sup>4</sup> Copies of Mr. Somer's and Mr. Woods' statements were sent to all counsel of record.

1 Mr. Somers supplemented his written statement by explaining that he and other  
2 Snohomish families had been represented by the firm, Bricklin & Gendler, LLP, in a  
1997 land use proceeding.

3 Each indicated his belief that he could and would serve as an unbiased decision-maker in  
4 this case. On questioning, Mr. Somers explained that he had been appointed to EFSEC  
5 because he is a member of the Snohomish County Council and the pipeline crosses his  
6 district. Parties were given two weeks<sup>5</sup> to voice objections to the participation of either  
7 Mr. Somers or Mr. Woods and the reasons therefor.

8 The Council understands that Mr. Wilson, City of Kittitas, intends to make a statement as  
9 well.

10 **F. Notice of Prehearing Conference; Notice of Stipulation Hearing**

11 The next prehearing conference in this matter will be held December 1, 1998, beginning  
12 at 10:00 a.m., at the Kent DSHS Office, 1313 W. Meeker, Suite 102, Kent, Washington,  
13 98032. The purpose of the conference will be to discuss the hearing structure and the  
14 timing of the various phases of the adjudication.

15 Parties may participate by teleconference. The risk of failure of teleconference facilities  
16 rests on the parties who choose it. Because of difficulties encountered at the September  
17 24 conference, the Council will try an alternate approach for the December 1 conference.  
18 Parties who desire to attend by teleconference must make a reservation with Ms. Joleen  
19 Karl at (360) 956-2121 no later than November 20.

20 The stipulation hearing is scheduled for January 14 and 15, 1999, beginning at 10:00 a.m.  
21 at the Kent DSHS Office. The Council will consider any stipulation that has been filed  
22 on or before December 30, 1998.

23 DATED and effective at Olympia, Washington, this \_\_\_\_\_ day of October 1998.

24 \_\_\_\_\_  
25 C. Robert Wallis, Presiding Officer

26 **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.

<sup>5</sup> Note: When the Council mailed copies of the two letters, it set October 9 as the due date for objections. One  
objection was received.