

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. 7
COUNCIL ORDER NO. 706

NOTICE OF CONTINUED PREHEARING
CONFERENCE (April 1, 1997, 10:00 A.M.)

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 fourth prehearing conference session on January 29, 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), Jim Cherry (Franklin County), Helen Fancher (Grant County), Derald Gaidos (Kittitas County), Ellen Haars (Department of Health), Gary Ray (Department of Transportation), and Walter Swenson (Department of Agriculture). This order sets forth the agreements emerging from this discussion.

Appearances: Appearances were entered as follows:

Applicant	Charles Blumenfeld and Karen McGaffey, attys., Seattle
Counsel for the Environment	Thomas C. Morrill, Asst. Atty. Gen., Olympia
State Agencies	Dept. Of Community, Trade & Economic Development , by Richard McCartan, Asst. Atty. Gen., Olympia Dept. Of Ecology , by Alan Reichman, Asst. Atty. Gen., 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 Joseph E. Shorin, Asst. Atty. Gen., Olympia Dept. Of Transportation , by Steve Dietrich, Asst. Atty. Gen., Olympia
Counties	King County , by Michael J. Sinsky, Senior Deputy Prosecuting Attorney, Seattle Adams, Kittitas and Grant Counties , by Dennis D. Reynolds, atty., Seattle
Cities	City of Kittitas , by Dennis Reynolds City of North Bend , by Graham Black, atty., Renton
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. Hausman, atty., Everett, and Daryl Williams, Tulalip Tribes, Marysville
Federal Agency	Dept. Of the Army , by David A. McCormick, atty., Arlington, Virginia
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 People for Puget Sound , by Greg Costello, Seattle

Discussion:**A. Hearing Guidelines**

Discussion of the hearing guidelines focused on the study group's second set of proposed revisions to EFSEC's model guidelines.¹ Based on its experience in prior proceedings, the Council raised various questions about the proposals. After discussion, the parties and the Council resolved all pending issues. The enclosed Hearing Guidelines (Appendix A) are the product of all prehearing conference discussions.

1. Filing schedule for dispositive motions. During the conference, participants agreed on a filing schedule to accommodate their various concerns. Many parties were primarily concerned that the filing schedule for motions, answers, and replies on dispositive motions² allow ample time for quality responses. Although the Council has an interest in obtaining quality responses, it is also concerned about the potential for delay a generous time-frame for responses might afford. An efficient hearing process is important for the convenience of all concerned including the Council. In addition, the Council recognizes the importance of resolving dispositive motions well in advance of relevant adjudicative sessions.

By setting separate schedules for dispositive and non-dispositive motions, and by clarifying the use of the term "hearing,"³ conference participants agreed to revised versions of Hearing Guidelines 13(b), Filing Schedule, and 13(c), Oral Argument.

The briefing schedule allows for shortened time frames when the Council finds good cause for the proponent's failure to comply with the established guideline and sufficient necessity for expedited review.⁴

2. Service by electronic mail. The study group proposed a formal process through which parties could elect service by electronic mail by waiving the statutory service requirements. The process contains a provision for filing a waiver with the Council and a method for confirmation of service among the parties. The parties accepted the proposal, and it has been incorporated into the enclosed Hearing Guidelines.⁵

The Council adopts the Hearing Guidelines in the form attached to this order.

¹ Again, the Council thanks the study group for its diligence and commends its efforts to resolve these issues.

² Dispositive motions include (without limitation) petitions or motions seeking the dismissal of any party or any portion of a proceeding.

³ The term "hearing" will refer exclusively to sessions of the adjudicative hearing.

⁴ Hearing Guideline, 13(d).

⁵ Hearing Guidelines 10(d) and 10(e).

B. Issue Identification

1. Preliminary issue identification. The Applicant distributed a preliminary list of issues on October 10, 1996, and a revised list on December 18, 1996. These lists contain in excess of 600 separate issues, which the Applicant has attempted to organize into twelve categories.⁶ Broadly, these issue statements may be viewed as (1) issue statements which frame potential issues for the adjudication and (2) issue statements which identify areas in which the parties desire or require additional information.
2. Usefulness of issues list. Although the comprehensive list continues to be useful,⁷ the parties agreed that a condensed list (approximately ten pages) would also be beneficial at this time. This list will eliminate the informational issues (second category) and focus on refining potential issues in the adjudication. The Applicant agreed to circulate a first draft of a condensed list to the parties and Council on or before February 28, 1997. Parties will send responses to the Applicant on or before March 14, 1997, and the Applicant will incorporate these responses and circulate a working draft on or before March 21, 1997.

C. Discovery

1. Informal and formal discovery. The Council has consistently stated a preference for informal discovery.⁸ Conference participants spent time working toward a common understanding of the meaning and implications of “informal discovery.”

The Applicant stated that it envisioned the purpose of informal discovery to be the efficient dissemination of “background information.” It was reluctant for such “background information” to be afforded evidentiary status for two reasons. First, given the sheer volume of informational requests, responding would be onerous if the Applicant were required to tailor each response to evidentiary requirements. Second, given the certain evolution of the application as information unfolds and settlements are negotiated, the Applicant wanted to be able to provide the parties with the best information about its present plans without becoming “locked into” those plans by the way its responses were used during the adjudication.

⁶ The Applicant’s categories are (1) location; (2) design, construction and maintenance; (3) leak detection and spill response; (4) need for the project; (5) alternatives; (6) impacts during construction and long-term; (7) waterborne commerce; (8) compliance with state, federal and local laws; (9) rights of way and easements; (10) transportation; (11) hazardous wastes; and (12) other.

⁷ The comprehensive list is useful to promote dialog and an exchange of information among the parties, structure discovery, and facilitate groupings of parties interested in particular issues.

⁸ See In re Application No. 96-1 of Olympic Pipeline Company, Prehearing Order No. 4, p. 9. See also, Hearing Guideline 7.

Various parties stated that if the Applicant's responses to informal discovery could not be relied upon in the adjudication, they would need to turn to formal discovery to get reliable information.

Informal discovery, as intended by the Council, is a process by which information is exchanged without the use of extensive procedural formalities. The Council did not contemplate that answers to informal discovery could be "informal" in the sense that they were less than reliable.

A response is reliable insofar as it represents the respondent's best information at the time. If the response is preliminary in nature, it should clearly state as much and describe the sense in which it is preliminary. The Council continues to prefer and expect such good faith, "informal" discovery.

2. Sharing discovery requests. Prehearing Order No. 4⁹ and Hearing Guideline 8 outline a process to streamline discovery. Both requesting and responding parties are reminded to devote sufficient effort to ensure that this process works smoothly. Smooth and efficient interactions among the parties now will enhance the quality of interactions during the entire adjudicative process.

D. Status of Land Use Negotiations

The Applicant reported that negotiations under the County/Applicant Stipulation Agreement are in progress. The Applicant has received Critical Area Ordinances from each county, will analyze the project for conformity with these ordinances, and will meet with each county to discuss its findings. These discussions may lead to stipulation agreements between the Applicant and counties.

The counties indicated that they will give substantial deference to any agreements reached between the Applicant and state/federal agencies, which affect land within their jurisdictions. Counsel for the counties are urging their clients to hold public hearings before the county commissioners sign any stipulation agreements with the Applicant.

The counties and the Applicant are striving to complete this portion of the process within 90 days. The Council currently anticipates that the land use hearings will be reopened sometime thereafter.

⁹ Id.

E. Sharing Information with Parties

In response to suggestions made at the October prehearing conference, staff has expanded the Council's web site¹⁰ to include a document log, hearing guidelines, service list, and Council orders for this case. Parties expressed an interest in staying apprised of progress in all phases of the application. To this end, a new section on the Environmental Impact Statement has been added to the Council home page.

F. Notice of Next Prehearing Conference

A continued prehearing conference in this matter will be held on April 1, 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 March 28. 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 31, again on a first-come, first-served basis.

The purpose of the conference will be to discuss matters identified for further discussion in this order and to discuss any other procedural matters relevant to the adjudication that may be raised by parties or by the Council.

DATED and effective at Olympia, Washington, this ___th day of February, 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.

¹⁰ The Council's Internet address is <http://www.energy.wsu.edu/org/efsec/>.