

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. 9  
COUNCIL ORDER NO. 708

**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 fifth prehearing conference session on April 1, 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), and Stephanie Warden (King County). 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	<b>Dept. Of Ecology</b> , by Alan Reichman, Asst. Atty. Gen., Olympia <b>Dept. Of Fish &amp; Wildlife</b> , by William C. Frymire, Asst. Atty. Gen., Olympia <b>Dept. Of Natural Resources</b> , by Maryanne McGovern, Asst. Atty. Gen., Olympia <b>Parks &amp; Recreation Commission</b> , by Joseph E. Shorin, Asst. Atty. Gen., Olympia <b>Utilities &amp; Transportation Commission</b> , by Ann E. Rendahl, Asst. Atty. Gen., Olympia
Counties	<b>King County</b> , by Michael J. Sinsky, Senior Deputy Prosecuting Attorney, Seattle <b>Adams, Kittitas and Grant Counties</b> , by Dennis D. Reynolds, atty., Seattle
Cities	<b>City of North Bend</b> , by Graham Black, atty., Renton <b>City of Snoqualmie</b> , by Patrick Anderson, atty., Snoqualmie
Water Districts	<b>Cross Valley Water District</b> , by Patricia A. Murray, atty., Seattle <b>Woodinville Water District and Northshore Utility District</b> , by Rosemary A. Larson, atty., Bellevue
Tribes	<b>Tulalip Tribes</b> , by Daryl Williams, Marysville
Federal Agency	<b>Dept. Of the Army</b> , by David A. McCormick, atty., Arlington, Virginia, and LTC Warren Foote, atty., Ft. Lewis, Washington
Businesses or other organizations	<b>Cascade Columbia Alliance</b> , by David A. Bricklin and Claudia Newman, attys., Seattle <b>Tidewater Barge Lines, Inc. and Tidewater Terminal Company</b> , by Jay Waldron, atty., Portland, Oregon

**Discussion:****A. Issue Identification**

Consistent with the schedule in Prehearing Order No. 7, on March 21, 1997, the Applicant circulated a six page Condensed List of Issues. Essentially, the list is an outline of eleven general topics<sup>1</sup> rather than a list of contested issues. Although some parties expressed concern that the issues were not drawn more precisely, all agreed that continued reworking of the list is not particularly useful at this time. When meaningful planning is possible, the Council and parties will discuss the use of the issues list in structuring the adjudicative hearing.

**B. Discovery**

In Prehearing Order No. 7, the Council reiterated its preference for informal discovery, through which reliable information would be exchanged without the use of extensive procedural formality. Apparently the concerns expressed by the parties at the January Prehearing Conference have been largely resolved, and the parties continue to work cooperatively to develop means to meet their various needs for confidentiality, timeliness, and reliability.

**C. Land Use Consistency Determination**

The counties and the Applicant updated the parties on the status of the land use negotiations.

The non-stipulating parties expressed two concerns about their role in the land use consistency decision. First, these parties wanted clarification about which materials from the negotiation process were discoverable. Second, they were concerned that adequate time be allotted after the final land use consistency analysis was submitted<sup>2</sup> to prepare for the land use consistency hearing.

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<sup>1</sup> The Applicant's eleven topics are (1) route/location, (2) design and construction, (3) impacts and mitigation during construction and operation, (4) leak detection and spill response, (5) maintenance and monitoring, (6) Kittitas Terminal, (7) decommissioning, (8) need/economic impact, (9) other potential impacts, (10) alternatives, and (11) legal requirements.

<sup>2</sup> WAC 463-42-685 Pertinent federal, state and local requirements. (1) Each application submitted to the council for site certification shall include a list of all applicable ... local codes, ordinances, statutes, rules, regulations and permits that would apply to the project if it were not under council jurisdiction. For each listed code, ordinance, statute, rule, regulation and permit, the applicant shall describe how the project would comply or fail to comply with each requirement. If the proposed project does not comply with a specific requirement, the applicant shall discuss why such compliance should be excused.

WAC 463-42-690 Amendments to applications, additional studies, procedure. (1) Applications to the council for site certification shall reflect the best available current information and intentions of the applicant. ...

The Applicant indicated an intent to amend its application when the land use evaluation is finalized and to distribute land use information to parties *at that time*. It contends that the referenced documents are a part of the negotiation process and are therefore exempt from discovery.

The Council believes that the counties' and Applicant's approach is reasonable.<sup>3</sup> The Council's expectation is that information will be made available to the parties as expeditiously as possible and that the final documents regarding land use consistency will be distributed to the parties to allow sufficient time for review. Timing of access will be considered in setting schedules.

#### **D. Sharing Information with Parties**

The recent filing of technical reports evoked suggestions for providing public access to the information. That, in turn, has raised broader questions about the Council's information management, including accessibility of information, the format of available information, security, the costs of providing access to information, and the Council's ability to provide information in a timely manner. These issues are anticipated to recur throughout this proceeding and in the Council's ongoing role as a regulatory agency.

The Council has begun a study of its information management. The Council's April 10, 1997 communication with the parties outlines areas in which the Council would value the ideas of the parties. Until the issues are addressed on a broader scale, the Council will maintain copies of all the reports and exhibits it has received. Parties may inspect these reports in the Council office or borrow them to make desired copies.

#### **E. Environmental Impact Statement**

On March 26, 1997, the Applicant submitted seven technical reports,<sup>4</sup> intended to respond to the issues raised in the EFSEC consultant's analysis of the original application.<sup>5</sup> The preparation of two remaining technical reports has been delayed by

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<sup>3</sup> Council Order 702, Prehearing Order No. 4 states, "Certain discovery need not be shared. The Council acknowledges that at times a party may be engaged in a sensitive negotiation with the Applicant as to which the sharing of discovery would be inappropriate. The process described above for sharing discovery information will not apply in such sensitive situations. It will apply only to the category of discovery described above, loosely termed "data requests." p. 9.

<sup>4</sup> These reports include a draft final report on cultural resources, a technical report on fisheries and aquatic resources, a technical report on bridge assessments, an analysis of alternatives, a biological evaluation, a product spill analysis, and a technical report on vegetation.

<sup>5</sup> Application Review of the Olympic Pipe Line Company Application for Site Certification, Jones & Stokes Associates, Inc., April 8, 1996.

snow and flood conditions, and they are projected to be submitted by the end of May.<sup>6</sup> The technical reports are under review by participating federal agencies and EFSEC's consultant to determine whether they address the issues raised in the consultant's application review<sup>7</sup> so that work on the DEIS can begin.

#### **F. Stipulation Procedure**

Stipulations and voluntary settlements are likely to play a significant role in this proceeding. The Council encourages parties to enter stipulations and voluntary settlements.

The Council's rules provide a framework for this process. Before accepting or approving a stipulation or settlement, the Council will afford relevant parties the opportunity to comment on it and to present evidence supporting or opposing it.

The Council may accept or reject a proposed stipulation or settlement, or may accept a proposal with modification, when the Council deems such modifications necessary to achieving the statutory standards under which it operates. In past proceedings, the Council has heard argument on the stipulations at the beginning of the adjudication, and made its decision on the stipulations within the context of its final decision on the application.

At the conference, the Council broached the issue of stipulations by asking whether the parties would prefer the inclusion of a stipulation procedure in the Hearing Guidelines for this proceeding.

Conference participants expressed the following concerns: (i) whether, if the Council defers its decision about a stipulation to the end of the adjudication, doing so would affect the intent of the stipulating parties to reach early resolution of their issues; (ii) whether, if the Council imposes stricter terms on the project than those contained in a stipulation between parties, the stipulating parties would be bound by the stricter terms; (iii) whether non-parties to a particular stipulation will receive sufficient notice about the stipulation; (iv) whether non-parties to a particular stipulation will have the opportunity to comment on the stipulation; and (v) whether the timeframe for all phases of the application review could be clarified any further, so that parties could better gauge the timing of their negotiations and settlements with the Applicant.

Because of the uncertainty of present schedules and parties' preferred courses of action, it appears premature to establish firm schedules at the present time. The parties and the Council will address these issues in future prehearing conferences.

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<sup>6</sup> The remaining reports involve geotechnical aspects of the project and the project's impact on rare plants.

<sup>7</sup> Application Review, Jones & Stokes Associates, April 8, 1996.

**G. Next Prehearing Conference**

A continued prehearing conference in this matter will be held in July or August, 1997. The Council staff is surveying the parties to find a date which will allow maximum participation. Notice of the conference will be sent as soon as a date and a facility are set.

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. Parties are encouraged to submit agenda topics to the Council in preparation for the conference.

DATED and effective at Olympia, Washington, this 21th day of April, 1997.

/S/

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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.