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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. 22
COUNCIL ORDER NO. 723

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: Prehearing Order No. 21 allotted two weeks for the parties in this proceeding (i) to evaluate their positions vis-à-vis the Council's jurisdiction to determine whether a facility should be sited on state-owned land, and (ii) to file any motions they deemed appropriate by January 28, 1999. Responses were due on February 2, 1999. The Council received numerous motions and responses. Some of these responses and motions address jurisdictional issues; others relate to various other issues. The Council is prepared to rule on a limited number of these motions at this time. The remainder will be addressed as expeditiously as possible, within timeframes established by the Administrative Procedure Act (chapter 34.05 RCW).

Discussion:

A. Motion of Yakama Nation for Extension

With the sudden death of its expert, the Yakama Nation (Yakama) promptly requested a 30-day extension for filing testimony on all its cultural and archeological issues. Olympic Pipe Line did not object to this extension, but requested a corresponding extension for filing rebuttal on this testimony.

The Yakama Nation may file its testimony on cultural and archeological issues on or before March 15, 1999. Olympic Pipe Line may engage in formal discovery of any Yakama experts associated with such testimony between March 15 and April 23, 1999, and file rebuttal on the Yakama's cultural and archeological testimony on or before April 23. This extension is limited to cultural and archeological issues; the Council expects that the Yakama Nation will prefile all other testimony on or before the established date, February 12, 1999.

1 **B. Motions for Extensions, not directly related to jurisdictional issues**

2 Some of the motions received were captioned “Motion to Continue Adjudicatory
3 Hearings and for Revised or Supplemental Draft Environmental Impact Statement.”¹
4 Some of these tied the requested extension to the perceived need for supplementation of
5 the DEIS; others offered no support for the requested extension. Some of these motions
6 requested extensions of the “associated scheduling deadlines,” including the February 12,
7 1999 deadline for prefiling testimony.

8 The Council’s ruling here is narrow and specific. As to those motions that request an
9 extension of the February 12 due date for reasons related to the adequacy of the DEIS or
10 other unstated reasons, the request is here denied.² This ruling addresses requests made
11 by Cross Valley Water District, Northshore Utility District, the Tulalip Tribes, the
12 Yakama Nation, Adams, Grant, King, Kittitas, and Snohomish Counties.³

13 The Council will maintain the established due date. The date was set some time ago with
14 the consent of the parties. The Council believes that parties are able to submit evidence
15 regardless of their perception of the sufficiency of the DEIS. Prefiled testimony is due in
16 the Council office on February 12, 1999.

17 DATED and effective at Olympia, Washington, this ____ day of February 1999.

18 _____
19 Ernest Heller, Senior Administrative Law Judge

20 **Notice to Participants.** Unless modified, this prehearing order will control the course of the
21 hearing. Objections to this order may be stated only by filing them in writing with the Council
22 within ten days after the date of this order.

23 _____
24 ¹ These include: “Joint Motion to Continue Adjudicatory Hearings and for Revised or Supplemental Draft
25 Environmental Impact Statement,” received on January 28, 1999, from Adams, Grant, Franklin, King, Kittitas, and
26 Snohomish Counties; Cross Valley Water District’s and Northshore Utility District’s Motion to Continue
Adjudicatory Hearings and For Revised or Supplemental Draft Environmental Impact Statement,” January 29, 1999;
and “Joinder of Tulalip Tribes and Yakama Indian Nation in Counties’ Motion for Continuance and for Revised or
Supplemental DEIS,” February 2, 1999.

² By letter dated February 2, 1999, Senior Administrative Law Judge Ernest Heller, acknowledged statements from
certain parties that they had not planned to file and would not file evidence on issues related to the jurisdictional
issue on February 12. The letter directed these parties to supply specific additional information no later than
February 12. The letter was clear that testimony NOT closely related to the jurisdictional issue would not be
accepted by the Council after February 12. This letter was sent to Counsel for the Environment and counsel for the
Department of Fish and Wildlife, the Parks and Recreation Commission, the Department of Transportation, the
Department of Natural Resources, King County, Snohomish County, the City of North Bend, the City of
Snoqualmie, Cascade Columbia Alliance, and Olympic Pipe Line Company.

³ Although Franklin County signed a joint motion with these five counties, it has not sought to intervene and is not a
party to these proceedings.