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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. 25
COUNCIL ORDER NO. 726

ORDER ON REQUESTS FOR LATE
INTERVENTION

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 application was filed February 5, 1996. Notice of the adjudicative proceeding regarding this matter was mailed to an extensive list of potential intervenors on April 22, 1996. On July 11, 1996, the Council entered Prehearing Order No. 1, granting intervention to seven state agencies. On August 15, 1996, the Council entered Prehearing Order No. 3, granting conditioned intervention to twenty parties, including Adams, Grant, Kittitas, King, and Snohomish Counties, and denying intervention to one. On October 15, 1996, the Council entered its final order on intervention, Prehearing Order No. 5, responding to objections raised by six of the parties.

On May 11, 1998, Olympic Pipe Line Company (Olympic) submitted a revised application, including some changes in the proposed alignment. The revised application identified landowners whose property was within the study corridor for the new alignments. The Council sent individual notice to the newly identified landowners on October 7, 1998, informing them of their opportunity to petition for intervention. In addition, the Council published a legal notice in fifteen (15) newspapers, announcing a limited reopening of the opportunity to intervene. All petitions were due on or before December 30, 1998.

1 Since December 30, 1998, the Council has received three requests for late intervention as
2 follows:

- 3 • Franklin County's Motion for Late Intervention in Adjudicative Proceeding, dated February
4 5, 1999;
- Worldcom Network Services, Inc.'s Petition to Intervene and Motion for Extension of Time
5 to File Written Testimony, dated February 12, 1999; and
- Petition for Late Intervention of AT&T Corp., dated February 12, 1999.

6 By letter dated February 11, 1999, Judge Heller set February 16 as the due date for any responses
7 to Franklin County's Motion.¹ On February 17, the Council received a written response from
8 Olympic.

9 By letter dated February 16, 1999, Judge Heller set February 22 as the due date for responses to
10 Worldcom Network Services, Inc.'s (WNSI) and AT&T Corp.'s (AT&T) Petitions. The Council
11 received responses from the Department of Natural Resources, the Parks & Recreation
12 Commission, and Olympic.

13 The Council here rules on these requests for intervention.

14 **Discussion:**

15 **A. Franklin County's Motion for Late Intervention**

16 Franklin County argues that the county and its citizens have a legal interest in the
17 protection of the lands, waters, and environment within the county's jurisdiction. This
18 interest could be adversely affected by the proposed pipeline, which would traverse forty-
19 one (41) miles of the county's agricultural lands, wetlands, and river banks. The interest
20 could also be adversely affected by environmental impacts of the tank farm on the
21 Columbia River. Finally, any disruption to the trucking and barging industries caused by
22 the pipeline could negatively affect the county's ability to transport its agricultural
23 products.

24 The Council received no timely objections to the intervention of Franklin County. One
25 day after the deadline for responses, Olympic acceded to Franklin County's intervention,
26 provided that the existing schedule was not altered as a result.

Recognizing the value of the participation of affected local jurisdictions in this
proceeding, the Council grants intervention to Franklin County to protect (i) the public
interest in the lands, water, and environment within its jurisdiction and (ii) the
transportation of its agricultural products. The Council notes that Tidewater Barge Lines,
Tidewater Terminal Company, and the Maritime Environmental Coalition (Tidewater²)
were granted intervention to address, among other things, the effect of the pipeline on

¹ Counsel had immediate notice of the letter by email or fax on February 10, 1999.

² As a condition for intervention in Prehearing Order No. 3, Tidewater Barge Lines, Tidewater Terminal Company,
and Maritime Environmental Coalition were required to coordinate all aspects of their participation through one lead
counsel. Collectively, for the purposes of this order, they will be referenced as "Tidewater."

1 waterborne commerce on the Columbia River. Franklin County is encouraged to
2 coordinate with Tidewater on this issue.

3 Franklin County must accept the case schedule as it presently exists or is hereafter
4 modified.³ Accordingly, the Council will accept prefiled testimony from Franklin County
5 on or before June 25, 1999, *only* to the extent that it is consistent with the requirements of
6 Prehearing Order No. 24.

7 **B. Worldcom Network Services, Inc.'s and AT&T Corp.'s Petitions for Late
8 Intervention**

9 Worldcom Network Services, Inc. and AT&T Corp (the companies) argue that they have
10 legal interests that could be adversely affected by the proposed pipeline. Both have
11 easements from the Parks & Recreation Commission (Parks) to operate fiber optic
12 telecommunications systems and support-facilities in the John Wayne Pioneer Trail
13 (JWPT). Under the terms of these easements, any activities on the encumbered land that
14 would interfere with or impair the companies' existing facilities may not be permitted.

15 The companies list numerous reasons that construction and operation of the proposed
16 pipeline along the JWPT could adversely effect these legal interests. Because of the
17 technical nature of these impacts, the parties assert that no other party can adequately
18 represent them before the Council.

19 In addition, the companies argue that there is good cause to grant late intervention.
20 Among the reasons listed by one or both are (i) Olympic's failure to notify the companies
21 of its proposal, (ii) EFSEC's failure to notify them of its proceedings, (iii) Parks' failure
22 to notify them of Olympic's application for an easement, and (iv) the very recent
23 notification from Parks that EFSEC may have authority to determine whether the pipeline
24 should be sited in the JWPT.

25 Olympic objects to the intervention of WNSI and AT&T. First, Olympic and EFSEC
26 have complied with all relevant notice requirements. Second, both parties are adequately
represented by Parks in this proceeding. Under the express terms of the easements,
Olympic argues, Parks has a duty to protect the interests of WNSI and AT&T. Consistent
with this duty, on February 12 Parks submitted testimony regarding both easements
through its witness, Mr. Javier Figueroa. As the case proceeds, both WNSI and AT&T
may work with Parks to ensure that their interests are adequately and accurately
represented.

The Council denies late intervention to WNSI and AT&T. Although thorough
information about the potential impact of the pipeline on the existing fiber optic systems
is essential to an informed decision, the Council concludes that the interests of these
companies can and will be adequately represented by the Parks & Recreation
Commission in this proceeding. In fact, protection of the John Wayne Pioneer Trail is
one of the interests for which Parks was initially granted intervention. (See Petition for
Intervention by the Washington State Parks & Recreation Commission, dated June 7,
1996.) The Council notes that with or without notice from Olympic and EFSEC, the
companies appear to have known about the potential impacts to their systems since the
summer of 1996.

³ In its motion, Franklin County accepted the current case schedule unless modified by the Council.

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The Council does encourage AT&T, WNSI, and Parks to work together to ensure that the interests of the companies are adequately presented and protected. The matters raised by the companies appear to be issues related to publicly-owned land, for which prefiled testimony is due on June 25, consistent with Prehearing Order No. 24.

DATED and effective at Olympia, Washington, this 8th day of March 1999.

/s/ Deborah Ross
Deborah Ross, EFSEC 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.