



STATE OF WASHINGTON  
Capital Projects Advisory Review Board

May 26, 2017

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**RE: CPARB PRE-HEARING ORDER – Enloe Hydroelectric Project Appeal  
Background:**

On Friday, May 19, 2017 Bill Frare, Chair of the Capital Projects Advisory Review Board (CPARB or Board) conducted a telephonic prehearing conference regarding the appeal, pursuant to RCW 39.10.290, of the approval by the Project Review Committee (PRC) of the use of the design-build alternative public works contracting method for the Okanogan Public Utility District's Enloe Hydroelectric Project. The PRC granted its approval pursuant to RCW 39.10.280 on April 27, 2017 and confirmed this action in a letter dated May 3, 2017. On May 3, 2017, Columbiana initiated this appeal of that decision pursuant to RCW 39.10.290.

**Appearances:** Appearing at the prehearing conference were the parties to the appeal: Appellant Columbia River Bioregional Education Project ("Columbiana"), represented by counsel Alyssa Englebrecht, of Smith & Lowney, PLLC; Respondent Okanogan Public Utility District No. 1 ("OPUD"), represented by counsel Colm Nelson, of Foster Pepper PLLC; and the Respondent Project Review Committee ("PRC"), represented by counsel Dawn Cortez, AAG. The Chair was assisted in the prehearing conference by CPARB's counsel, Mark S. Lyon, AAG.

**PRE-HEARING SCHEDULE AND ORDER**

After conferring with counsel for the parties and considering the statutory requirement of RCW 39.10.290 that CPARB "resolve an appeal within forty-five (45) days and send a written determination of its decision" of to the parties, the Chair sets the following pre-hearing schedule:

**Hearing Time and Location:** The hearing on the appeal filed by Columbiana will be heard at a special public meeting of the Board to be held on June 6, 2017, commencing 8 AM at The La Quinta Inns & Suites; 4600 Capitol Blvd. SE, Tumwater, WA 98501.

**Length of Argument:** As agreed by the parties, each party will be given 20 minutes to argue its position to the Board.

**Administrative Record:** The administrative record created by the PRC in the approval of the design-build contracting method for the Enloe Hydroelectric Project will be available to the parties during the week of May 23, 2017. The PRC has already posted materials constituting the administrative record on its website at <http://des.wa.gov/about/boards-committees/capital-projects-advisory-review-board/project-review-committee/project-review-committee-meetings>. The PRC will notify the CPARB Chair and counsel for the parties when a finalized administrative record is available.

As provided in the Interim Policy on Appeals under RCW 39.10.290 adopted by CPARB at their regular meeting on May 11, 2017, the Board "will limit its review to facts and arguments presented to the Project Review Committee."

**Briefing Schedule:** The Chair requires the parties to submit pre-hearing briefs of their positions to the Board. Opening briefs will be served simultaneously by the parties by close of business (5:00PM) on Tuesday, May 30 2017. Any reply briefs will be filed by close of business (5:00PM) on Friday, June 2, 2017. Briefs will be filed with the Chair and served upon counsel for each party by email as provided below.

**Stipulation to Electronic Service:** During the conference all parties agreed to electronic service by email of all notices and communications regarding this appeal by e-mail. To facilitate this service, attached is an electronic service agreement. Each party is directed to complete the agreement, sign it, and promptly return it to the Chair.

**Issues on Appeal:** During the prehearing conference, the Chair discussed pending issues on appeal and the positions of the parties. Based upon that discussion and the Chair's own independent considerations of the issues raised by the pleadings and motions filed so far by the parties, the Chair identifies the following issues to be addressed by the parties in their briefs and argument to the Board:

The ultimate issue before CPARB is whether the PRC, under the authority granted in RCW 39.10.280, properly approved the use of the design-build alternative public works contracting method for the Okanogan Public Utility District's Enloe Hydroelectric Project?

In addition, the Chair requests the parties to address the following subsidiary issues in their briefing:

1. Is an adjudicatory proceeding under the Washington Administrative Procedures Act, Chapter 34.05 RCW, *required* for approval of the use of an alternative public works contracting method (design-build) on a project under RCW 39.10.280?
2. Does CPARB have *authority or discretion* to direct an adjudicatory proceeding for approval of an alternative public works contracting method (design-build) on a project under RCW 39.10.280? Should it do so in this case?
3. Did the PRC properly determine that the use of the design-build contracting method for the Okanogan Public Utility District Enloe Hydroelectric Project met the statutory criteria set out in RCW 39.10.280(2).
4. Does the State Environmental Procedures Act (SEPA), Chapter 43.21C, apply to the approval of an alternative public works contracting method under RCW 39.10.280?
5. Is the PRC a proper party in an appeal to CPARB under RCW 39.10.290? What is the PRC's proper role in such an appeal?



**Pending Motions:** During the prehearing conference, counsel for Columbiana renewed a request that the Chair provide preliminary rulings on two motions made by Columbiana pending before CPARB. These motions are identified as (1) Petitioner's Motion to Convert Proceedings, and (2) Petitioner's Motion for a Stay of the PRC approval pending the outcome of the appeal. The Chair takes this request under advisement and will address these motions in a separate ruling.

**Procedures on Appeal:** Unless a different procedure is ordered by the Chair or the Board, the proceedings will be conducted in a manner consistent with the Interim Policy on Appeals under RCW 39.10.290 adopted by CPARB at their regular meeting on May 11, 2017 and the CPARB Bylaws adopted November 15, 2015. Both the Interim Policy and the CPARB Bylaws are available at the Board's website at <http://des.wa.gov/about/boards-committees/capital-projects-advisory-review-board>.

**Authority of the Chair:** In issuing this prehearing schedule and order the CPARB Chair is acting pursuant to the authority delegated to the Chair by the Board. The CPARB Chair is selected in accordance with RCW 39.10.220(4) by a majority vote of the members of the Board. Pursuant to the CPARB Bylaws adopted November 15, 2015, the CPARB Chair "will establish the agenda and conduct the meetings, and will be the primary spokesperson for the board." CPARB Bylaws, Article II, Section 2. In addition, as provided in the Interim Policy on Appeals under RCW 39.10.290 adopted by CPARB at their regular meeting on May 11, 2017, the Chair is delegated authority to "schedule a special meeting of the Board to hear and consider the appeal" and "to the extent necessary to facilitate the orderly hearing of the appeal," to "establish briefing schedules and make procedural rulings and orders subject to confirmation by the Board." Interim Policy on Appeals, Nos. 4 & 5.

Sincerely,



William J. Frare, Chair  
Capital Projects Advisory Review Board (CPARB)  
(360) 407-8239

CC: Mark Lyon, AAG