

BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of:)	CASE NO. 15-001
Application No. 2013-01)	
TESORO SAVAGE, LLC)	THE CONFEDERATED TRIBES OF THE
)	UMATILLA INDIAN RESERVATION'S
VANCOUVER ENERGY DISTRIBUTION)	REPLY TO APPLICANT'S
TERMINAL)	CONSOLIDATED RESPONSE TO
)	INTERVENTION
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The Confederated Tribes of the Umatilla Indian Reservation (“Umatilla Tribe” or “Tribe”) files this Reply to Applicant’s Consolidated Response to Petitions for Intervention.

I. INTRODUCTION

On March 6, 2015, Applicant Tesoro Savage Petroleum Terminal LLC (“Applicant”) filed a Consolidated Response to Petitions for Intervention (“Response”). In this Response, Applicant claims that it does not oppose admission of Petitioners as intervenors, yet then proceeds to request severe and unwarranted limitations and conditions on the Petitioners’ participation in the proceeding. The Applicant requests that these limitations and conditions apply to all Petitioners.

The Applicant goes too far in attempting to constrain this adjudication. The EFSEC rules clearly allow for the Tribe’s intervention, no other party can adequately represent the sovereign interests of the Umatilla Tribe, and the intervention will not delay the proceedings. Furthermore,

it is not appropriate at this time to cabin all of the issues for consideration in this complex adjudication.

II. ARGUMENT

A. **The plain language of the statute and rules supports the Tribe's Petition for Intervention.**

It is the policy of the State of Washington to ensure that the location and operation of new energy facilities “will produce minimal adverse effects on the environment, ecology of the land and its wildlife, and the ecology of state waters and their aquatic life.” RCW 80.50.10. In so doing, the State must “balance the increasing demands for energy facility location and operation in conjunction with the broad interests of the public.” *Id.* The Council conducts adjudicative proceedings consistent with policy. *See* RCW 80.50.030, 80.50.040. This process necessarily includes public participation. By rule and statute, any person may intervene who has “an interest in the subject matter and whose ability to protect such interest may be otherwise impaired or impeded.” WAC 463-30-091. *See also*, RCW 34.05.443.

In the Petition, the Umatilla Tribe set out many of its unique and particular sovereign interests potentially affected by the Applicant's project. Those interests are singularly unique to this sovereign: its peoples have their own history on the river since time immemorial, and its staff has spent decades of time and resources restoring the river ecosystem and managing the fishery resources. The ability of this sovereign to protect those interests would be impaired or impeded if it were not allowed to participate. Based on a plain reading of the rules, the Tribe has met the usual standards of intervention.

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B. The Umatilla Tribe's sovereign interests cannot be represented by other parties.

The Applicant not only attempts to severely limit Petitioners' participation in the proceeding, but also suggests that Petitioners' interests may be adequately represented by Counsel for the Environment or through informal means such as the Draft Environmental Impact Statement (DEIS) process. Applicant Response at 4. The Umatilla Tribe is a federal recognized tribe with its own history in the landscape of the Columbia River, one that is unique to its members. The Umatilla Tribe has been a steward of the fishery resource and ecosystems since time immemorial in order to ensure that its member tribes' treaty fishing rights continue in perpetuity. Another sovereign, such as the State of Washington, cannot represent this Tribe's interests. Nor can other tribal sovereigns or organizations represent this Tribe's interests. Similarly, the Umatilla Tribe's interests cannot be adequately represented through mere "public" processes such as the DEIS process.

C. The Umatilla Tribe's intervention will not delay the adjudication.

As discussed in the Petition, the Tribe's participation in these proceedings will not delay the adjudication. Rather, it will allow the Tribe to bring its substantial expertise and sovereign perspective on the issues raised in the proceeding. The Tribe will continue to coordinate its involvement in the adjudication with other intervenors to avoid unnecessary duplication of evidence, and to avoid any disruption of the Council's ability to conduct these proceedings.

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D. The Applicant's request to constrain the scope of the adjudication is unwarranted.

Petitioners Columbia Riverkeeper *et al.*, and Columbia Waterfront LLC, in their respective replies, accurately maintain that the Applicant unjustifiably attempts to limit the scope of issues at this time. The Umatilla Tribe joins in and incorporates their arguments by reference.

III. CONCLUSION

For the reasons discussed above and in the Tribe's Petition for Intervention, the Umatilla Tribe respectfully requests the Council grant its Petition. Further, the Tribe requests that the Council not seek to define or limit the scope of issues as requested by Applicant at this time.

Respectfully submitted this 27th day of February, 2015.



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CERTIFICATE OF SERVICE

I certify that on Friday, March 13, 2015, I served or caused to be served, by email a true and complete copy of the foregoing REPLY TO CONSOLIDATED RESPONSE TO PETITIONS TO INTERVENE on all parties or their counsel of record as follows:

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