

March 9, 2016

Via E-mail and First Class Mail

The Honorable Cassandra Noble
Administrative Law Judge
Energy Facility Site Evaluation Council
PO Box 43172
Olympia, WA 98504-3172
cnoble@utc.wa.gov; efsec@utc.wa.gov

Re: Vancouver Energy Project – Application No. 2013-01
EFSEC Case No. 15-001

Dear Judge Noble:

This letter provides a list of issues and questions that the parties have agreed require attention at the pre-hearing conference scheduled for March 11, 2016. In the interest of a productive and efficient pre-hearing conference, the parties convened a call on March 3, 2016 to discuss topics that require clarification or further information. The parties also sought to reach consensus on additional procedures and deadlines that will promote more efficient adjudication of the issues in this case.

The list below represents those issues that the parties request that you address during the pre-hearing conference. Although the parties have not reached consensus on the resolution of some issues, the list identifies those matters where there is agreement. The parties will be prepared to discuss these issues at the pre-hearing conference later this week, and look forward to a constructive dialogue.

PARTIES' AGREED LIST OF ISSUES & QUESTIONS

Adjudication Schedule and Format:

- Confirm Hearing locations.
- Daily hearing schedule:
 - **Agreed:** Parties propose full hearing days, from 9:00 AM to 5:00 PM, with one hour for lunch and two 15-minute breaks.
 - **Agreed:** Parties propose that during the week of July 4, the hearing days be Tuesday through Friday to allow for a full four day hearing week.

- Audiovisual support:
 - Parties' needs;
 - EFSEC/facility capabilities; and
 - Deadline for requests to EFSEC.
- Court Reporter:
 - Option for requesting same day transcripts; and
 - Option for party retained court reporters to provide unofficial same day transcripts.
- Format for exhibits to be provided to the ALJ and/or Council members:
 - Electronic or hard copy; and
 - Number of copies.
- Allocation of time:
 - **Agreed:** Parties propose using the chess clock method;
 - Time divided equally between Vancouver Energy & Port of Vancouver ("Proponents") on the one hand and Intervenor Project Opponents ("Opponents") on the other. Proponents and opponents to divide their allocated time among their respective parties;
 - Time limits to apply to direct, cross and rebuttal; and
 - Allocation of time for EFSEC Council questions.
- Format for adjudication:
 - The parties disagree as to the most efficient way to present the issues. Applicants propose organizing by issue and subject matter with presentation of all evidence related to specific issues and related subject matter on a designated day(s); other parties propose organizing by traditional trial approach, with presentation of Proponents' case(s) in chief, followed by Opponents' case(s) in chief, followed by Proponent's rebuttal.
- Role of Council in examining witnesses and/or directing the parties to address specific issues or subject matter.
- Time and nature of public participation.
- Adjudication of related permit issues (air, water).
- Site visit:
 - Necessity, time, scope, and rules.
- Closing statements:
 - **Agreed:** Parties propose written post-hearing briefs only.

Witness Testimony and Exhibits:

- Appearance of unavailable witnesses:
 - **Agreed:** Presentation of witnesses out of order as primary accommodation;
 - **Agreed:** Video or telephonic testimony on an exception basis; and
 - **Agreed:** Requests for special accommodation to be no later than June 13, 2016 (with final witness list).
- Format of written pre-trial testimony:
 - **Agreed:** The parties propose use of declaration format.

- The parties disagree about setting limitations on live witness summaries of pre-filed testimony.
- Written rebuttal of pre-filed testimony:
 - **Agreed:** The parties propose a **June 13, 2016** deadline for any written rebuttal; and
 - Some parties request the option to stipulate to written direct and rebuttal testimony in lieu of live testimony.
- Stipulation to Exhibits:
 - **Agreed:** The parties propose a **June 3, 2016** deadline for exchange of proposed stipulated exhibits; and
 - **Agreed:** The parties propose a **June 13, 2016** deadline for filing final stipulated exhibit list.
- Stipulations of Fact:
 - **Agreed:** The parties propose a **May 7, 2016** deadline for exchange of proposed stipulations of fact; and
 - **Agreed:** The parties proposed a **May 17, 2016** deadline for filing stipulations of fact.
- Motions in Limine:
 - **Agreed:** The parties propose a **June 17, 2016** deadline for filing motions in limine; **June 22, 2016** deadline for response; and, **June 23, 2016** deadline for reply.
- Some parties seek clarification regarding written and/or live objections to pre-filed testimony.
- Presence of witnesses in the hearing room.

Discovery:

- **Agreed:** Depositions are unnecessary for witnesses who file pre-filed testimony;
- **Agreed:** A discovery cutoff date is appropriate;
 - The parties propose a **May 20, 2016** discovery cutoff date; and
- **Agreed:** The parties will post their DEIS comments and attachments to an FTP site and provide the access information to the other parties no later than **March 8, 2016**.

Service:

- **Agreed:** E-mail service will be accepted among the parties.

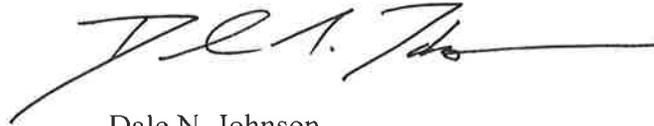
Motions:

- Adjustment of response and rebuttal deadlines.

We look forward to addressing these issues at the pre-hearing conference scheduled for March 11, 2016.

Sincerely,

VAN NESS FELDMAN LLP



Dale N. Johnson

DNJ/aka

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