



A P P E A R A N C E S

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Jaime Rossman, Department of Commerce  
Cullen Stephenson, Department of Ecology  
Joe Stohr, Department of Fish and Wildlife  
Dennis Moss, Utilities and Transportation Commission  
Dan Siemann, Department of Natural Resources

Local Government and Optional State Agency:

Ken Stone, Department of Transportation  
Bryan Snodgrass, City of Vancouver  
Greg Shafer, Clark County  
Larry Paulson, Port of Vancouver

A P P E A R A N C E S (Continued)

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A P P E A R A N C E S (Continued)

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ALSO PRESENT:

Amanda Kleiss, Paralegal  
Faron Scissons, Legal Administrative Assistant

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1 Vancouver, Washington, June 27, 2016

2 8:19 a.m.

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4  
5 P R O C E E D I N G S

6 JUDGE NOBLE: We're going to go on the  
7 record, so I'll have to informally open the record and  
8 introduce all of you very briefly, but at 9:00, we'll  
9 have more of a formal introduction and then all of you  
10 will identify yourselves and who you're representing.

11 But in the meantime, I'm hoping that you  
12 will give your card to our poor, helpless court reporter  
13 so that the court reporter will have the spelling of  
14 your name, and you will also be asked to identify  
15 yourselves for the record when you speak because there's  
16 just too many of you for all of us to recognize you by  
17 sight, at least for a while. So maybe you can just  
18 identify yourselves before you speak now, and then when  
19 we have a little bit of a break before 9:00, just come  
20 up and give your cards to the court reporter. All  
21 right?

22 Good morning. This is before the State of  
23 Washington Energy Facility Site Evaluation Council in  
24 the Matter of Application No. 2013-01, Tesoro Savage LLC  
25 Vancouver Energy Distribution Terminal. This is Case

1 No. 15-001. My name is Cassandra Noble. I am the  
2 administrative law judge that has been assigned to  
3 conduct this hearing today and for the subsequent weeks.

4 This is just the preliminary part of the  
5 hearing. We will have more formal introductions when  
6 the council comes in. The council is not present in the  
7 hearing room at this time, and we're going to go over  
8 some matters that will help us to get through the day  
9 efficiently.

10 There are a number of things that we need to  
11 go over, but first, I need to have all of you identify  
12 yourselves for the record just very briefly. You'll  
13 have more of a chance when the council comes in, but  
14 just so we know who you are. So could we have the  
15 attorneys for Tesoro Savage, please.

16 MR. JOHNSON: Yes, Your Honor. This is Dale  
17 Johnson representing the applicant.

18 JUDGE NOBLE: Thank you. And is anyone else  
19 present here today with you?

20 MR. JOHNSON: Yes, Your Honor. My colleague  
21 Tadas Kisielius and my colleague Jay Derr, who is not in  
22 the room now, will be down in a few minutes.

23 JUDGE NOBLE: All right. At 9:00 all of you  
24 will introduce yourselves more formally, so Mr. Derr I  
25 assume will be here at that time.

1 And Counsel for the Environment?

2 MR. KERNUTT: Yes, Matt Kernutt here.

3 JUDGE NOBLE: Thank you. City of Spokane?  
4 City of Vancouver?

5 MS. REED: Karen Reed here for the City of  
6 Vancouver, and also Bronson Potter and Susan Drummond.

7 MS. DRUMMOND: Morning.

8 JUDGE NOBLE: Morning. Ms. Reed, it's not  
9 necessary for you to stand if you don't wish to. I  
10 understand that there is an issue.

11 MS. DRUMMOND: Thank you. I appreciate  
12 that.

13 JUDGE NOBLE: City of Washougal?  
14 Clark County?

15 MR. HALLVIK: Taylor Hallvik.

16 JUDGE NOBLE: Columbia River Inter-Tribal  
17 Fish Commission?

18 MS. CARTER: Julie Carter.

19 MR. LOTHROP: Rob Lothrop.

20 JUDGE NOBLE: I'm noticing that it's  
21 difficult to hear you, and I'm sure the court reporter  
22 is having trouble too, so you will have to -- when you  
23 have anything lengthy to say, you'll have to step up to  
24 the microphones. I don't believe there are any  
25 microphones at the tables back there. Okay.

1 I'll check on that and see -- I had expected  
2 that there would be microphones.

3 MR. POTTER: There is a hand microphone.

4 JUDGE NOBLE: All right. We'll get  
5 instructions on how to use that. But I'll see if we can  
6 improve that situation; I'm not sure we can, but  
7 hopefully we'll be able to do that.

8 Columbia Waterfront?

9 MS. LARSON: Linda Larson, and Daniel  
10 Timmons is with me.

11 JUDGE NOBLE: Thank you.

12 Brent Hall?

13 MR. HALL: Here, Your Honor.

14 JUDGE NOBLE: Confederated Tribes of the  
15 Umatilla Indian Reservation?

16 MR. HALL: That's correct.

17 JUDGE NOBLE: Thank you. Confederated  
18 Tribes and Bands of the Yakama Nation?

19 Department of Natural Resources?

20 MR. PRUIT: Terry Pruit.

21 JUDGE NOBLE: The parties represented by  
22 Earthjustice: Columbia Riverkeeper, Climate Solutions,  
23 ForestEthics, Friends of the Columbia Gorge, Fruit  
24 Valley Neighborhood Association, Sierra Club, Spokane  
25 Riverkeeper, Washington Environmental Council?

1 MS. BOYLES: Christen Boyles with Anna  
2 Sewell here.

3 JUDGE NOBLE: Thank you.  
4 International Longshore Warehouse Union  
5 Local 4?

6 Port of Vancouver?

7 MR. BARTZ: David Bartz, and my partner  
8 Connie Sue Martin.

9 JUDGE NOBLE: Thank you. So here's what  
10 we're going to do between now and 9:00. First of all, I  
11 have to rule on the efforts to admit the DEIS as an  
12 exhibit and have expert testimony concerning that, as  
13 well as attachments to that expert testimony. I need to  
14 ask you about the situation with regard to all of your  
15 exhibits in the joint exhibit list.

16 I have several agreed exhibits and I had  
17 intended to admit all of those agreed exhibits this  
18 morning, but I don't think I'm going to be able to do  
19 that and I'm hoping to be able to do that tomorrow. And  
20 we'll get into that in a minute.

21 I need to rule on prefiled expert testimony,  
22 but I'm only going to be able to do that in a few days  
23 because I have just gotten through some of it, and I  
24 want to give it a complete study before I make those  
25 rulings, but today I will be ruling on the expert of the

1 proponents of Tesoro Savage, particularly Fred Millar.  
2 So I'll be ruling on that this morning.

3 I need to confirm with you the site -- oh,  
4 yes.

5 MS. LARSON: Mr. Millar is not a Tesoro  
6 Savage witness; he's a witness for Columbia Riverkeeper.

7 JUDGE NOBLE: All right. Thanks. Sorry.

8 MS. LARSON: There's some time there.

9 MR. JOHNSON: Your Honor, there is an  
10 outstanding objection to our witness John Hack. So I  
11 don't know if that's --

12 JUDGE NOBLE: That's the one. John Hack.  
13 I'm sorry. And I need to confirm with you the details  
14 of the site visit, which will happen today at -- we'll  
15 close this hearing at 4:00 today so that the site visit  
16 can take place. Some of you are going with the council  
17 on the bus. I just want to confirm a few details about  
18 that.

19 We have prepared a joint witness list and  
20 Tesoro Savage has also prepared one. And so I want to  
21 ask a few details about that, make sure everyone has a  
22 copy and has it available and we can work from that  
23 today.

24 MR. JOHNSON: Yes, Your Honor, everyone  
25 should have a copy.

1 JUDGE NOBLE: All right.

2 MR. JOHNSON: Looks like we do. There are,  
3 I think, some updates. Obviously, we were compiling  
4 this as recently as last Friday. We've received some  
5 updates from folks with regard to willingness to  
6 stipulate. So there could be additional stipulations to  
7 some of these exhibits, but everyone is working from  
8 the --

9 JUDGE NOBLE: The joint --

10 MR. JOHNSON: -- list that we provided last  
11 week.

12 JUDGE NOBLE: Good. And I appreciate that.  
13 I think it will help everybody to keep on the same track  
14 with regard to exhibits. There are many, many exhibits  
15 and sometimes they can be missed. People will forget to  
16 offer them, or I may forget to rule on them or the  
17 opportunity may not have come up. So at the end of the  
18 day, we'll try to go through that a little bit and make  
19 sure that we don't leave any exhibits behind. So I  
20 think you'll be glad you did that.

21 MR. JOHNSON: And, Your Honor, just -- and  
22 you may be getting there, but just to clarify, in terms  
23 of today's testimony, if we haven't preadmitted exhibits  
24 at this point, then will we need to go ahead and offer  
25 those exhibits throughout our testimony?

1 JUDGE NOBLE: Right. In the usual way.

2 MR. JOHNSON: Okay. All right.

3 JUDGE NOBLE: And then when you want to lay  
4 the foundation, you would not ask Mrs. Mastro -- Tammy  
5 Mastro is here. She's going to be able to put your  
6 exhibits up on the screen, as needed. And if you want  
7 to just lay the foundation for that and then offer and  
8 it gets admitted, then she'll be able to put it up on  
9 the screen for all to see the contents of the witness --  
10 of the exhibit.

11 MR. JOHNSON: All right.

12 JUDGE NOBLE: Just deal with them in the  
13 normal way as you would in any litigation.

14 MR. JOHNSON: Okay. I guess my concern is,  
15 is that obviously -- and we can do that certainly today,  
16 but the advantage of preadmission is then we don't have  
17 to be laying all these foundations and it would help  
18 speed the process up. It's my understanding you're  
19 going to try to get there.

20 JUDGE NOBLE: I am -- I am -- had planned on  
21 being able to do that and to get everything into the  
22 record, but a lot of them have to do with the draft EIS.  
23 So I have to study them first to see whether, in fact, I  
24 can agree that they should be admitted.

25 MR. JOHNSON: Okay. All right. Your Honor,

1 for today we'll lay the -- we'll work to lay the  
2 foundation prior to displaying the exhibit and then move  
3 to admit and get them up.

4 JUDGE NOBLE: Yes. And if the exhibit is  
5 nothing -- has nothing to do with the draft EIS, then  
6 you can point that out. And if it's an agreed exhibit,  
7 then it can just be admitted.

8 MR. JOHNSON: Okay.

9 JUDGE NOBLE: And you won't have to lay the  
10 foundation for that.

11 MR. JOHNSON: Fine. All right.

12 JUDGE NOBLE: But I've only now just gotten  
13 the actual exhibits and so I haven't had a chance to  
14 analyze that yet.

15 MR. JOHNSON: Okay.

16 JUDGE NOBLE: It just takes a little bit of  
17 time to do that.

18 So -- and then, since we're getting into the  
19 logistical questions, there's certain witnesses that the  
20 parties had intended on admitting just their testimony  
21 and not cross-examining, and we had some correspondence  
22 about that last week and I don't want you to have to  
23 bring a witness physically here just for a few council  
24 questions, but the council did have questions about some  
25 of these -- for some of these witnesses. And so it

1 would be good if we could find a way to have them appear  
2 by telephone just to answer those questions and any  
3 questions you might have in response to council  
4 questions. But I don't know how we will do that because  
5 we don't have a phone set up here. So if you would just  
6 be thinking about that, that would be good. I don't  
7 even know if when we're in Olympia next week, we will  
8 have that capability, but we'll try. We'll really try  
9 to work with you so you don't have to bring a witness  
10 here just for a few questions.

11 MR. JOHNSON: And, Your Honor, in that  
12 regard, it would be our preference -- I think most of  
13 those were applicant witnesses. If we could take them  
14 in a block at the -- what we were hoping to do would be  
15 to take them in, you know, a block at the end of the --  
16 at the end of the adjudication so that we're not trying  
17 to slot them in, if you will, into our case-in-chief.  
18 But if we could somehow do those all at the end, whether  
19 it's at the end of the adjudication or at the end of our  
20 case-in-chief, if you will, as opposed to, for instance,  
21 trying to slot them in by subject matter or something.

22 JUDGE NOBLE: Right.

23 MR. JOHNSON: That would be pretty awkward.

24 JUDGE NOBLE: Recognizing that we do have  
25 that rule that requires us to have our hearing by

1 subject matter, we'll try to conform with that to the  
2 extent we can; but in this kind of adjudication with  
3 this size, it's going to be very difficult to confine  
4 all the evidence about one subject to a particular time  
5 frame because of witness availability and so on. And so  
6 I'll try to work with you on that. But if it's part of  
7 your case-in-chief, it's going to have to go in as part  
8 of your case-in-chief rather than at the end because it  
9 wouldn't allow the other parties to cross-examine about  
10 those questions.

11 MR. JOHNSON: Okay. And on that point, Your  
12 Honor, just so we all understand how you intend the  
13 questioning of witnesses to proceed, it's our  
14 understanding that we will -- the sponsoring party will  
15 bring the witness to the stand to conduct, essentially,  
16 direct examination.

17 JUDGE NOBLE: Right.

18 MR. JOHNSON: At that point, the opposing  
19 party would then have an opportunity to cross-examine.

20 JUDGE NOBLE: Not quite right.

21 MR. JOHNSON: Okay.

22 JUDGE NOBLE: The council will have an  
23 opportunity to ask questions based upon the direct  
24 examination before the cross starts.

25 MR. JOHNSON: All right.

1 JUDGE NOBLE: And then the cross-examination  
2 will take place, and then redirect. And it's my  
3 intention, instead of having the council come in three  
4 times with questions, then at the end of the redirect,  
5 they could ask questions based upon the cross and the  
6 redirect.

7 MR. JOHNSON: Okay.

8 JUDGE NOBLE: Now, the council still can ask  
9 questions at any time, and they're pretty active  
10 sometimes and they may interrupt and ask a question.  
11 And they're not all attorneys, so it's possible that  
12 they may ask a question on cross-examination that wasn't  
13 part of direct examination. And so I don't know what  
14 you want to do about that, but they have been  
15 explained -- they have -- I have explained to them in --  
16 a number of times about how it all works and what a  
17 direct examination is and the restriction of  
18 cross-examination to the direct, but I can't promise  
19 that they will be following that. So just be patient if  
20 that happens, and if you deem it to be appropriate to  
21 object, then you'll have to object.

22 MR. JOHNSON: And with regard to objections,  
23 will you want those to be an oral objection or do you  
24 want us to request a sidebar with you or to do a written  
25 objection or something, when it's a council question?

1                   JUDGE NOBLE: I can't -- well, I think you  
2 should just do an oral objection. And you're free to do  
3 a sidebar if you want to, if you're worried about  
4 objecting to a council question or something like that.  
5 I would be happy to do a sidebar. But in general, just  
6 an oral objection and then any responses to that and  
7 then I'll have to rule on it. I'm hoping, because we're  
8 so limited on time, that we don't have too many and that  
9 we don't get into a cycle of a lot of objecting, but,  
10 you know, it's -- it's litigation so I understand.

11                   MR. JOHNSON: All right. Thank you. And,  
12 Your Honor -- and I'm not trying to hijack the --

13                   JUDGE NOBLE: Not at all. This is what this  
14 is for.

15                   MR. JOHNSON: There's one other issue and I  
16 was only able to mention this to Ms. Boyles early this  
17 morning. We have one witness who underwent heart  
18 surgery on Friday, and his name is Chris Barkan. And  
19 what we are proposing to do, because he is now under a  
20 travel restriction, would be to bring him at the end of  
21 this adjudication, that is, the latest point possible.  
22 It would be outside our case-in-chief.

23                   However, we have been working with the other  
24 parties to accommodate one another and hopefully we can  
25 work that out. If he cannot travel, then we -- and

1 we'll know, you know, in a few weeks or a week or some  
2 period of time, then we will need to work with you and  
3 the other parties to figure out an alternative way to  
4 present his testimony, whether that's through video or  
5 phone or something else. We hope to get him here live,  
6 but it's going to have to be at the end of the --

7 JUDGE NOBLE: No, I understand. And  
8 normally what would happen would be a request to reopen  
9 your direct for the purpose of his testimony. And I  
10 wouldn't have an objection to that, and I don't know  
11 what the other -- what the other parties would be saying  
12 about that.

13 Can I ask you just informally now whether  
14 anyone anticipates objecting to reopening the direct for  
15 that witness? Of course you'd have a chance to  
16 cross-examine.

17 MS. BOYLES: No, informally, and I haven't  
18 talked to everybody, but we want to work with counsel to  
19 make it work.

20 JUDGE NOBLE: Okay. So that should work.

21 Let's go over the other informal -- I have  
22 logistical things before we get into the DEIS argument.  
23 And I want to add to that how the questioning of  
24 witnesses will go. When your witness comes forward,  
25 I'll just swear the witness at that time, just so that

1 you know. And I've already told you to give -- this is  
2 Micheal Johnson. He's our court reporter, and he needs  
3 your cards and he needs you to identify yourselves  
4 because he won't be able to identify everybody.  
5 Certainly I'm sure he's really good at that, but it'll  
6 take him a while, so many of you.

7 Can I ask if this morning there are other  
8 motions in limine coming after we do the DEIS argument?  
9 Okay. I don't see any. All right.

10 And the site visit, have you-all -- if you  
11 want to be the one that travels on the bus with the  
12 council, have you notified the staff already? Staff?  
13 Kali Wraspir? And Ms. Wraspir will let you know what  
14 the details of that are. Again, there will be no  
15 talking, no discussions. We don't have a court reporter  
16 with us for this visit. It's just so that everyone can  
17 see. And I wanted you-all to be able to see the same  
18 thing the council sees.

19 I will get to the agreed exhibits just as  
20 soon as I can, hopefully tomorrow, and I'll rule on the  
21 prefiled expert testimony as soon as I can as well, but  
22 it might take a few days to get through that.

23 The witnesses having to appear or testify by  
24 phone for the council questions, would you talk to  
25 Ms. Wraspir about that and see if we can make some kind

1 of an arrangement. I don't want to forget about that,  
2 but we'll have to know how you want to proceed.

3 Are there any other process questions or  
4 procedure questions that I can answer at this time?  
5 None?

6 We'll just go through the DEIS issue, and  
7 then at 9:00 I'll go up and get the council and we'll  
8 start. And we'll have more formal introduction of the  
9 case at that time, and since the public is going to be  
10 watching this when it is posted up on the EFSEC website  
11 and since the public is going to be restricted in their  
12 arguments on Friday, the 29th of July to the evidence,  
13 only the evidence in this adjudication, I need to make  
14 sure that they have full information generally about how  
15 this is going to go. So the injunction will take a  
16 little bit longer when we do the 9:00 introduction.  
17 Anything else?

18 MR. JOHNSON: Your Honor?

19 JUDGE NOBLE: Yes?

20 MR. JOHNSON: There are a couple of other  
21 things at least to put on the record now, and we may not  
22 have time to deal with them.

23 JUDGE NOBLE: All right.

24 MR. JOHNSON: But one of them is looking  
25 down toward -- a month from now, the ground rules for

1 public testimony, which I think Ms. Boyles sent a letter  
2 about and certainly, as we move forward, it would  
3 benefit us to have some more guidance about how that  
4 will proceed.

5 We also, at an appropriate time, would like  
6 to discuss how the briefing will proceed with regard to  
7 the revised site application. You will recall there was  
8 some motion practice on that and there's been a ruling,  
9 but we have some concerns about the need to limit the  
10 responses to the site application, or there could be a  
11 real free-for-all at the end of this process.

12 And so, again, this is not something we need  
13 to take up this morning, but I would like to get it on  
14 the record. Just briefly, what we would propose is that  
15 you solicit from the parties a list of issues about  
16 which they intend to provide supplemental briefing on  
17 the revised application and then you could let the  
18 parties know what you will accept or not accept; and the  
19 intent there would be to limit that post-hearing  
20 briefing to issues that, in fact, were first presented  
21 in the application. So that's the -- that's the basic  
22 request.

23 JUDGE NOBLE: Issues that were presented  
24 first in the revised application?

25 MR. JOHNSON: Yes.

1 JUDGE NOBLE: Okay. All right. I'll think  
2 about a good way to do that. I think that's a pretty  
3 reasonable request.

4 MR. JOHNSON: And then the final issue, Your  
5 Honor, just relates to social media and whether or not  
6 the council has or would be given any kind of  
7 prophylactic instruction regarding consideration of  
8 ongoing social media as opposed to the evidence that's  
9 put in at the hearing itself.

10 JUDGE NOBLE: Well, I can certainly tell you  
11 they've had ongoing advice from me about that. They  
12 know to consider in this adjudication only the evidence  
13 in the adjudication. And we have talked about that. As  
14 I said, many of them are not attorneys, and ever since  
15 the beginning of my involvement in this, that's been a  
16 subject that I have gone over numerous times and I think  
17 that's understood. And I can tell you that I'll go back  
18 over it with regard to social media, but I don't think  
19 you have a concern about that.

20 MR. JOHNSON: All right. Thank you, Your  
21 Honor. That was all that was on my list.

22 JUDGE NOBLE: But, you know, you reminded me  
23 that there's another small thing that I haven't talked  
24 to you about, and that is Joan is over at that  
25 computer -- that laptop over there and she's in charge

1 of the clock. So she's the boss of the clock, so, you  
2 know, she probably will accept gifts -- no.

3 So if you want to know how much time you  
4 have left, then you can speak with Joan and also look at  
5 that timer she is running. The way I calculate it, the  
6 proponents, that Tesoro Savage and the port have nine  
7 days, council for the environment has one day, and the  
8 opponents have nine days. And every day, given the  
9 schedule we have, from 5 to -- from 9 to 5, one hour for  
10 lunch, two ten-minute breaks, we have about six hours  
11 per day. And so it's broken up in terms of hours, but  
12 if you think of it in terms of days, it might be easier.

13 Joan is going to stop the clock and run it  
14 for the other side when they are -- when there's  
15 cross-examination, which is the normal practice. And we  
16 aren't going to put too fine a point on it and try to  
17 keep switching it back and forth because there's too  
18 much of a chance that it will get messed up. And so if  
19 there's not really lengthy argument, then it will just  
20 keep running for the side that has the witness on the  
21 stand. I think that will work. I have a lot of  
22 experience with running a clock for hearings, and so my  
23 experience has all been positive that it works well for  
24 the parties.

25 Yes?

1 MR. POTTER: Your Honor, when we're  
2 examining a witness and we want an exhibit displayed,  
3 will we be asking a staff member to --

4 JUDGE NOBLE: Yes. Tammy Mastro is standing  
5 over in the corner with the pink. All of your exhibits  
6 have been loaded onto her computer and you just need to  
7 tell her the number of the exhibit and she'll be able to  
8 scroll down and put it up on the screens. It will go up  
9 on all the screens, and you just need to tell her. So  
10 Ms. Mastro is in charge of that. If you have any  
11 concerns, you can talk with her and ask her. We're  
12 hoping it will all work smoothly.

13 MR. POTTER: Would it help if we provided  
14 the exhibits we know we're going to be referring to her  
15 ahead of time?

16 MS. MASTRO: Yes, please.

17 JUDGE NOBLE: Yes, it will help her. Good.  
18 And, of course, we won't be displaying exhibits that  
19 haven't been admitted.

20 MR. POTTER: Right.

21 JUDGE NOBLE: All right.

22 MR. JOHNSON: And, Your Honor, will you have  
23 a copy of the exhibit, though, so that when we call it  
24 out to lay the foundation, you will at least be able to  
25 see it without her calling it up?

1 JUDGE NOBLE: Yes. We have them all behind  
2 us.

3 MR. JOHNSON: Pardon me.

4 JUDGE NOBLE: And that will be a bit of a  
5 challenge. I have not seen them until today. I also  
6 have them on my laptop. So hopefully I'll be able to  
7 quickly locate it. We'll see.

8 So I think we have -- if there are no more  
9 questions, I think we can proceed into the arguments  
10 about the draft EIS. Let me just introduce that issue.

11 Several of the parties have indicated in  
12 briefing and in their exhibits that they wish to have me  
13 admit the EFSEC draft EIS for this project into evidence  
14 in this adjudication, and I have indicated to the  
15 parties that that is an issue. I issued an order in  
16 February, February 3, 2016, I think, that laid out  
17 EFSEC's process, and we still have the parties wishing  
18 to admit the draft EIS into evidence in this case. And  
19 so I would like to hear arguments on that, and I suggest  
20 that you decide which of you wants to go forward first  
21 on the arguments about the draft EIS.

22 MS. LARSON: Good morning, Linda Larson  
23 representing Columbia Waterfront LLC. I guess I drew  
24 the short stick for the intervenors. As you've  
25 indicated, all of the parties have stipulated to the

1 admission of the DEIS as a joint exhibit. I'm not going  
2 to speak on behalf of the applicant, but I believe after  
3 consulting with Mr. Johnson, that he generally concurs  
4 with what I'm going to say.

5 As Your Honor noted in some of your earlier  
6 correspondence, the DEIS was entered as an exhibit in an  
7 earlier adjudication in the Kittitas Valley Wind Power  
8 Project. That was council Order No. 816. There in that  
9 case, the Counsel for the Environment moved to admit it  
10 on the same practical grounds that the parties here are  
11 asking you to admit it.

12 We understand completely that this is not  
13 the forum to debate the adequacy of the DEIS. What we  
14 really are talking about is just a very practical  
15 solution to helping you and the council navigate some  
16 very complicated technical issues.

17 The DEIS is referenced by many, if not the  
18 majority, of the witnesses in their prefiled testimony.  
19 We simply believe that it would be useful to have it in  
20 the record and that, in fact, was the ruling of the  
21 council in the Kittitas Valley Wind Power Project. It  
22 was just simply a useful piece of information to have.  
23 The DEIS in this situation is the -- really a  
24 compilation of some very complex information. Multiple  
25 witnesses used the information in the DEIS in presenting

1 their opinions. Much of what is in the DEIS is also  
2 presented in the application.

3 For example, the -- one of the exhibits that  
4 will be used by my expert witness Jerry Johnson, which  
5 is Exhibit 4001-000020-CWF, is Appendix O of the DEIS  
6 and that is the version that we presented, but it was  
7 also Exhibit K to the application. So in that instance  
8 it's just a reproduction as part of that compilation of  
9 information, and we can certainly present it as  
10 Appendix K as part of the application, but it seems a  
11 little bit of form over substance.

12 The other thing I would say is that the DEIS  
13 does meet the standards for admissible evidence under  
14 RCW 34.05.452(1). It is something that reasonably  
15 prudent people would rely upon in conducting their  
16 affairs.

17 Again, we're not intending to debate the  
18 adequacy of the DEIS. We think that admitting it as a  
19 joint exhibit will make it more understandable for the  
20 council. It will allow everyone to know what's being  
21 referred to with one single Bates range. It will simply  
22 be useful to have in the record as the council and you  
23 work your way through this very complicated, lengthy  
24 procedure.

25 JUDGE NOBLE: Thank you. Is there an

1 argument from the project proponents?

2 MR. JOHNSON: Yes, Your Honor. And, again,  
3 we concur with Ms. Larson's argument. I would just add  
4 that as the council is aware, this adjudication and the  
5 rules for it and what it is to consider derives from the  
6 charge to the council and RCW 80.50.010, which  
7 essentially requires that during the adjudication, the  
8 council balance the need for new energy facilities  
9 against the environmental and other societal  
10 considerations. And at least with regard to those  
11 issues that aren't specifically addressed in WAC 463-62,  
12 the council has the authority to weigh that legislative  
13 policy against the broad public interest and consider  
14 that there are not, you know, adverse impacts on the  
15 environment, ecology, water, et cetera. And these  
16 issues are precisely what the DEIS speaks to.

17 I think, as has been clear from the briefing  
18 on this matter, we have all agreed that this is not an  
19 adjudication of DEIS adequacy. This is not arguments  
20 about the SEPA process per se, but to the extent the  
21 environmental analyses that is included in the DEIS bear  
22 on the issues that the council must consider during this  
23 adjudication, it is important to have that in the  
24 record. And that is not to suggest that the parties  
25 agree with everything that's in the DEIS, but there are

1 certainly things -- in fact, we disagree, as you are  
2 aware, with some of the things in the DEIS. But it is  
3 still evidence that can and should be considered as  
4 appropriate by the council.

5           And as a practical matter, it's difficult to  
6 discern the distinction between the consideration of the  
7 DEIS and, for instance, the air and water permits. As  
8 you have pointed out to us, both in some of your rulings  
9 and I think at our last prehearing conference, it's not  
10 crystal clear as to how those processes play into this  
11 adjudication, but you did indicate that you expected  
12 that we would be presenting issues related to, for  
13 instance, air emissions and things that are covered by  
14 that permitting process, same with water permitting  
15 processes. And I think that similarly with regard to  
16 the DEIS, it's appropriate to consider evidence that has  
17 been subject to the SEPA review.

18           And then as a practical matter, you know, we  
19 awaited the issuance of the DEIS before commencing this  
20 adjudication. So it seems that that wouldn't have been  
21 necessary if we weren't going to be able to utilize the  
22 DEIS and the comments and other evidence related to it  
23 during this adjudication.

24           So given that the parties are on record that  
25 we are not conducting an adequacy hearing here, we would

1     urge the council to enter the DEIS as an exhibit for  
2     that limited purpose.

3             JUDGE NOBLE: I did hear everything you  
4     said, Mr. Johnson.

5             MR. JOHNSON: I didn't know they were back  
6     there, Your Honor, or I would have shut up.

7             JUDGE NOBLE: Anything further?

8             MR. JOHNSON: No, Your Honor.

9             JUDGE NOBLE: All right. Well,  
10    preliminarily, I want to say that when the parties asked  
11    that we await the issuance of the draft EIS to commence  
12    them -- to commence the adjudication evidentiary  
13    hearing, it was my hope that the parties would review  
14    the draft EIS and see that some matters had been  
15    adequately dealt with and that they may not need to  
16    bring evidence and go to the expense of litigating on  
17    every subject, and waiting for the draft EIS issuance  
18    was not meant to be an indication that it would become  
19    part of the adjudication.

20            And I understand your arguments on both  
21    sides that it is useful, a useful piece of information,  
22    and also the difficulty of the fact that the mention of  
23    the DEIS, as I've observed, has been interwoven through  
24    the testimony. And so I want to make this a nuanced  
25    enough ruling that you will be able to work with it.

1           But first of all, I wanted to say that the  
2 EFSEC statutory process is four parts essentially, and  
3 each part is separate. That's been recognized by the  
4 state Supreme Court, which have said that EFSEC -- and  
5 I'm sure you know -- has a unique statutory framework.  
6 And that was in the Friends of the Columbia Gorge, the  
7 Whistling Ridge case, 178 Washington 2d 320 in 2013.  
8 And even before that in the Kittitas turbines case, in  
9 2008, the Supreme Court recognized the separate strands  
10 of EFSEC's process and, again, the uniqueness of it, in  
11 165 Washington 2d 275. The court in that case licensed  
12 EFSEC's process to -- or likened EFSEC's process to  
13 licensing and stressed the need to focus on the process  
14 of procedures used by the issuing agency, noting that an  
15 appellate court affords deference to an agency's  
16 construction of its own rules and statutes.

17           As has been mentioned, the parties were  
18 informed of the separate nature of EFSEC's processes and  
19 how the council sees it. I recognized in one earlier  
20 case, the Kittitas Valley case, the DEIS was entered  
21 into the adjudication record along with comments from  
22 the public in connection with the DEIS process. It's my  
23 view that that was in error. And in speaking with  
24 council members that have been involved in the past,  
25 it's my understanding that was the only time that

1 happened, but I can't say for sure. It is essentially  
2 the council's position that the draft EIS should not be  
3 coming into evidence.

4           And my analysis is as follows: First of  
5 all, SEPA provides for either an administrative internal  
6 appeal process or no administrative appeal. EFSEC has  
7 no immediate administrative appeal for good reasons.  
8 One is its multipart structure of four separate  
9 processes, and the second -- one of the second -- the  
10 other reasons is that it's -- the DEIS is not a final  
11 decision, nor is the EFSEC the final decision-maker.  
12 And so if an entity permits an appeal of a threshold  
13 SEPA determination, for instance, that appeal must be  
14 tied to underlying government action of -- which would  
15 be a final action; and that is, if an agency doesn't  
16 provide for a hearing or appeal on the underlying  
17 governmental action, either a hearing on the agency's  
18 recommendation or an agency appeal hearing after the  
19 decision is made, the agency may not hold a SEPA  
20 administrative appeal except under circumstances that  
21 don't apply here.

22           The governmental entity permitting the SEPA  
23 appeal shall consolidate the appeal of the SEPA  
24 determination with a hearing on the appeal of the  
25 underlying governmental action. But again, that has to

1 be a final action providing for a single simultaneous  
2 hearing, which is not the case with EFSEC with the  
3 statutes that we operate under. EFSEC statutes do not  
4 provide for an internal appeal of its recommendation,  
5 which is not a final decision. A final decision,  
6 obviously, is made by the governor of the State of  
7 Washington by statute. The appeal of the governor's  
8 decision, including the appeal of the SEPA process, goes  
9 to the state Supreme Court.

10 EFSEC recommends a course of action to the  
11 governor that is informed by all of its different four  
12 processes. EFSEC's four processes are laid out, for  
13 example, not only in the statutory framework but in  
14 EFSEC's rule, WAC 463-14-080, which clearly sets out  
15 four different processes, one being the land use  
16 hearing, and this -- that has taken place already and an  
17 order was issued from that on August 1, 2014; the SEPA  
18 review, which is ongoing and still not complete and a  
19 work in progress; an EFSEC-initiated independent study  
20 is the third process. In this case, EFSEC has not  
21 chosen to do that. And finally, this adjudication is  
22 the fourth separate process.

23 Various rules of the EFSEC reflect the  
24 separateness of the process that I have pointed to  
25 before, one being the fact that none of EFSEC's staff or

1 its consultants, those people working on the draft EIS,  
2 can be called as witnesses in this adjudication.

3 So there is no SEPA appeal to EFSEC and  
4 EFSEC's proceeding on in this case with its separate  
5 adjudication which cannot consist of any appeal of the  
6 SEPA documents. And you've recognized that in your  
7 arguments that that's the case.

8 So then we come to whether or not the DEIS  
9 is proper evidence in the adjudication. Well, first of  
10 all, this DEIS is a draft and you have all sent in your  
11 preliminary and your final proposed issues. Whether  
12 EFSEC's DEIS is adequate, et cetera, is not at issue in  
13 this adjudication. No findings and conclusions will be  
14 written concerning the draft EIS at all. EFSEC's rules  
15 provide that we all do not have to await the issuance of  
16 the final EIS before commencing and conducting the  
17 adjudication.

18 As a piece of evidence, the DEIS is  
19 irrelevant. Relevant evidence, as you-all know, is  
20 evidence that is having any tendency to make the  
21 existence of any fact that is of consequence to the  
22 determination of the action more probable or less  
23 probable than it would be without the evidence. You-all  
24 know ER 401, while there are no issues about the draft  
25 EIS or the EIS process. And so quite plainly the draft

1 EIS is not evidence. It may be a useful piece of  
2 evidence -- excuse me, piece of information, but it  
3 isn't a piece of evidence.

4 And so I understand that it has been  
5 presented in various pieces throughout the various  
6 things that are being offered as evidence, but the draft  
7 EIS itself cannot be admitted as an exhibit and will not  
8 be.

9 Now, I get to the problem of having the  
10 mention of the draft EIS by various witnesses. And I  
11 understand that the witnesses came to be involved often  
12 in this case in their review of the draft EIS. And so  
13 their expert testimony and thinking and analysis has  
14 started at that place. And so I'm not going to try to  
15 strike out every mention of the draft EIS that the  
16 witnesses may make, but I won't allow the witnesses to  
17 talk at any length at all about their opinion about its  
18 adequacy, except to say that that is the place where  
19 they start. And, of course, they can say that they  
20 don't agree, but they cannot testify at any length about  
21 it. And so the mention of the draft EIS and anything  
22 that is said by any witness about the draft EIS will be  
23 simply background. It will not be substantive evidence.  
24 And I will try to walk that fine line to allow smooth  
25 testimony by the witnesses without trying to chop it up

1 and exclude any -- even the very mention of the draft  
2 EIS. So it will only be considered -- it will only be  
3 background, not substantive evidence, no finding and  
4 conclusion about the draft EIS.

5 The draft itself will not come in. I have  
6 to take a look at the other exhibits. If they contain  
7 large sections of the draft EIS, I may have to revise  
8 this ruling and exclude those large sections as  
9 irrelevant. But I haven't seen the exhibits until this  
10 morning. They're just here and I haven't been able to  
11 read through them and see if any of them are problematic  
12 in that regard. But the entire draft EIS will not be  
13 coming in as an exhibit.

14 The applications, the revised application  
15 that was submitted about a month ago, is a relevant  
16 piece of evidence and that will be admitted. And I  
17 understand that that contains portions and references to  
18 the PDEIS, the preliminary DEIS. And to the extent that  
19 that is referential and background, I don't see that's a  
20 problem, but that also will not be substantive evidence.

21 So that's a rather long ruling. I'm sorry  
22 to put you through a long ruling like that, but we've  
23 all made our record and we need to move forward.

24 Does anyone have a question at this point  
25 about this ruling?

1           MR. JOHNSON: Your Honor, does the ruling  
2 extend to, for instance, comment letters that were --  
3 may be appended to witness prefiled testimony that were  
4 incorporated by reference? And what I mean there, and  
5 you may have noticed this, there are a number of  
6 exhibits, I believe, to prefiled testimony that include  
7 a particular expert's comment letter -- or comments  
8 related to the draft EIS, but they are substantive in  
9 nature. So, for instance, if it were a water issue or  
10 an air issue, it's not being presented because it was a  
11 comment to the DEIS; it's being presented because it  
12 is -- they're a substantive analysis of that issue which  
13 is an issue that we're considering, for instance.

14           JUDGE NOBLE: Thank you for that question.  
15 I will be examining these prefiled exhibits very closely  
16 about that. And to answer your question, those would be  
17 admissible because those are focusing on the experts'  
18 testimony moving forward from the point of background,  
19 which is their view of whatever part of the draft EIS  
20 they were analyzing. So the essence of that is not what  
21 they are saying at that point about the draft EIS,  
22 although it can't be a lengthy critique. It has to be  
23 the witness' own testimony and expertise that they're  
24 presenting their view.

25           There are -- and I didn't mention this,

1 there are also prefiled exhibits that have to do with  
2 data requests which I don't find relevant at all, but I  
3 need to look at the actual exhibit to make sure that I'm  
4 ruling correctly on each one of those. So I just --  
5 initially, just looking at the titles of those exhibits,  
6 they do not look to be relevant, but I'll have to look  
7 at them before I can rule on them.

8 MR. JOHNSON: All right, Your Honor, because  
9 the data requests are -- many of them are responding to  
10 issues associated with the application and in some cases  
11 supplementing information that's in the application. So  
12 to the extent those bear on the technical issues, for  
13 instance, related to the project design or other things,  
14 I would submit that those are relevant, just as relevant  
15 as the application.

16 JUDGE NOBLE: Yes. The application is  
17 totally relevant and needs to come in. And if they  
18 relate to the application, I would think those would be  
19 relevant as well. But it's difficult for me to say in  
20 the abstract what I would rule on any given exhibit  
21 without actually looking at it and studying it.

22 MR. JOHNSON: I understand.

23 JUDGE NOBLE: But I wanted to give you the  
24 framework I have if they're related to the draft EIS,  
25 then they might have to be excluded.

1 MR. JOHNSON: Thank you. I understand.

2 JUDGE NOBLE: Does anyone else have any  
3 questions? Yes? Identify yourself for the record,  
4 first.

5 MS. REED: Your Honor, Karen Reed for the  
6 City of Vancouver. If we use -- if we referred to the  
7 DEIS in order to provide factual information, in other  
8 words, we referred to factual information contained in  
9 the DEIS and -- rather than the underlying report or  
10 document from which that factual information was  
11 derived, will we have an opportunity to move for the  
12 admission of the underlying report that contains that  
13 information given your ruling on the DE -- the  
14 admissibility of the DEIS?

15 JUDGE NOBLE: Initially, I think that would  
16 be reasonable and I think that would be acceptable. If  
17 there is an objection to that, I have to hear it at the  
18 time. I don't know what would be in the report and  
19 neither does -- do your opponents.

20 MS. REED: Okay. Thank you, Your Honor.

21 JUDGE NOBLE: I think that audio is going to  
22 be an issue. I had expected that there would be more in  
23 the way of microphones for everyone. So sometimes  
24 people are going to have to speak up so that both the  
25 court reporter and those that are videoing this process

1 are going to be able to hear. Thank you.

2 And the attorneys in the back, you have to  
3 let me know if you're unable to hear the people in the  
4 front. We'll really work on that. I had expected all  
5 the tables would have microphones.

6 Anything else that we need to do  
7 preliminarily before I go up and get the council?

8 MR. JOHNSON: One quick issue, Your Honor.  
9 We've noticed this morning, at least early in the  
10 morning that, because of the crowd outside, some of  
11 the -- getting the attorneys and witnesses moved in and  
12 out is presenting a bit of an issue. Is there any way  
13 we could work with staff maybe to get some kind of a  
14 badge or something for, you know, attorneys and  
15 witnesses so that they could kind of jump to the front  
16 of the line when they're moving through if it gets  
17 crowded?

18 JUDGE NOBLE: I think there is. Would you  
19 talk to Ms. Wraspir about that and also Pam -- I've  
20 forgotten Pam's last name.

21 MR. JOHNSON: McDonald.

22 JUDGE NOBLE: -- Pam McDonald, who is the  
23 facility manager here, and we'll do what we can to make  
24 sure that happens.

25 MR. JOHNSON: Thank you.

1 JUDGE NOBLE: And we have bag check and  
2 wandering going on, as well, for everyone's safety and  
3 security. So it will take longer than it would  
4 normally. Anything else before I get the council? All  
5 right. We'll be off the record.

6 (Recess taken from 9:12 a.m. to 9:29 a.m.)

7 JUDGE NOBLE: Good morning. This is before  
8 the State of Washington Energy Facility Site Evaluation  
9 Council in the Matter of Application No. 2013-01, Tesoro  
10 Savage LLC Vancouver Energy Distribution Terminal, Case  
11 No. 15-001.

12 This hearing is being held pursuant to due  
13 and proper notice to all interested parties by EFSEC  
14 order dated February 3rd, 2016, to take place commencing  
15 today, June 27, 2016, at 9:00 a.m. through July 25,  
16 2016, at approximately 5 p.m.

17 It is an adjudication pursuant to RCW  
18 Chapter 80.50, and Washington Administrative Code,  
19 Chapter 463, and it is a separate proceeding, part of  
20 EFSEC's multipart energy project review process. At the  
21 close of the record in this adjudication, the council  
22 will issue findings and conclusions on all litigated  
23 issues brought by the parties in this adjudication.  
24 After that, EFSEC will consider all it has learned from  
25 its separate processes, including this adjudication, the

1 environmental review and the land use decision and make  
2 a recommendation to the governor of the State of  
3 Washington on this application.

4 I would like to say that the parties have  
5 agreed to divide the adjudication time as follows: Nine  
6 days for the proponents; the Tesoro Savage LLC and Port  
7 of Vancouver USA are the proponents in this matter. One  
8 day has been allocated to the Counsel for the  
9 Environment from the Attorney General's office of the  
10 State of Washington, and nine days for the project  
11 opponents.

12 We expect that the last day, if the  
13 proponents do not reserve any time, will be on July 12th  
14 for the proponent's case, although I don't know whether  
15 any reservation of time will be made, and then the  
16 Counsel for the Environment and the opponents will  
17 present their case.

18 We are going to keep track of the time with  
19 a time clock and one of the EFSEC employees is in charge  
20 of that. And so anyone can check and see how much time  
21 is left and also check to see when, approximately,  
22 certain parties will be presenting their case.

23 The last day of the hearing on July 29 will  
24 be for closing arguments and for the public comment, but  
25 the public comment must be based only on the evidence in

1 this adjudication. That is an important detail. The  
2 public is going to be able to follow this adjudication  
3 and pay attention to the evidence in it, both by  
4 observing here in person and then also we have video  
5 staff here from Clark County TV that is going to be  
6 presenting on their website -- hosting the video so that  
7 everyone will be able to watch the entire proceedings at  
8 home on their computers. And the way to get to that is  
9 to go to the EFSEC website. There will be a link at  
10 [www.efsec.wa.gov](http://www.efsec.wa.gov).

11 EFSEC staff is to the left of -- at those  
12 tables, and I want to introduce Ms. Tammy Mastro.  
13 Ms. Mastro is in charge of the exhibits and she will be  
14 presenting the exhibits once they're exhibit -- once  
15 they're admitted up on the screens that you see around  
16 the room, so that the folks in the back will be able to  
17 look on that screen back there and see the exhibits  
18 about which there is testimony.

19 We have a court reporter today from Buell  
20 Realtime Reporting and his name is Mr. Micheal Johnson.  
21 He needs to be able to understand and hear everything  
22 that the parties are saying and that the witnesses are  
23 saying. So, again, it's very important that we are  
24 quiet in the hearing room.

25 So I would like to proceed now with

1 introduction of the council members. And I'll start to  
2 my -- to my immediate right is Bill Lynch, who is the  
3 chair of the Energy Facilities Site Evaluation Council.  
4 Would you raise your hand? Thank you.

5           And then I'll go off to my far right. Larry  
6 Paulson is a member of the council, a non-voting member  
7 from the Port of Vancouver; Mr. Greg Shafer works for  
8 Clark County; Mr. Bryan Snodgrass for the City of  
9 Vancouver; Mr. Ken Stone, Department of Transportation;  
10 Joe Stohr from the State Department of Fish & Wildlife.  
11 My name is Cassandra Noble. I am the administrative  
12 appeal judge who is managing this hearing; Mr. Cullen  
13 Stephenson is here from the Department of Ecology;  
14 Mr. Dennis Moss, the Utilities and Transportation  
15 Commission; Mr. Dan Siemann, Department of  
16 Transportation -- Natural Resources, sorry; and  
17 Mr. Jaime Rossman from the Department of Commerce. It's  
18 been a long morning already.

19           And now for the council's sake, I would like  
20 all the parties to introduce themselves and who they  
21 represent. And it might be helpful if I called the  
22 names of the parties. We'll start with Tesoro Savage  
23 LLC.

24           MR. DERR: Thank you. Good morning, my name  
25 is Jay Derr. I am here representing the applicant, and

1 additionally with me here representing the applicant is  
2 Dale Johnson and Tadas Kisielius, and then Mandie Kleiss  
3 who is keeping track of all of our documents. And then  
4 we have representatives from the company and the  
5 applicant that are in the audience, but I don't think I  
6 need to introduce everybody that's here for the record.

7 JUDGE NOBLE: Thank you. Thank you,  
8 Mr. Derr.

9 And the Counsel for the Environment?

10 MR. KERNUTT: Matthew Kernutt, Counsel for  
11 the Environment.

12 JUDGE NOBLE: Port of Vancouver USA?

13 MS. MARTIN: Thank you, Judge. Connie Sue  
14 Martin on behalf of the Port of Vancouver, along with my  
15 partner David Bartz and our paralegal at the end of the  
16 table, Annalisa Provence. There are representatives of  
17 the Port of Vancouver also in the audience.

18 JUDGE NOBLE: Thank you.

19 The City of Spokane?

20 City of Vancouver?

21 MS. REED: Your Honor -- is it working?  
22 Your Honor, my name is Karen Reed. I'm with the City of  
23 Vancouver, and also at the table with me is Bronson  
24 Potter and Susan Drummond.

25 JUDGE NOBLE: Thank you, Ms. Reed.

1 City of Washougal?

2 Clark County?

3 MR. HALLVIK: Taylor Hallvik on behalf of  
4 Clark County.

5 JUDGE NOBLE: Columbia River Inter-Tribal  
6 Fish Commission?

7 MR. LOTHROP: Good morning, Your Honor. I'm  
8 Rob Lothrop with the Columbia River Inter-Tribal Fish  
9 Commission. With me is Julie Carter and Faron Scissons,  
10 our administrative assistant.

11 JUDGE NOBLE: Thank you. Columbia  
12 Waterfront LLC?

13 MS. LARSON: Linda Larson, and with me is  
14 Daniel Timmons.

15 JUDGE NOBLE: Confederated Tribes of the  
16 Umatilla Indian Reservation?

17 MR. HALL: Good morning, Your Honor, Chair  
18 Lynch, members of the council. Brent Hall on behalf of  
19 Umatilla Reservation.

20 JUDGE NOBLE: Confederated Tribes and Bands  
21 of the Yakama Nation?

22 MS. PENN-ROCO: Amber Penn-Roco representing  
23 the Yakama Nation.

24 JUDGE NOBLE: Department of Natural  
25 Resources?

1 MR. PRUIT: Terry Pruit for DNR.

2 JUDGE NOBLE: And representing several  
3 parties, Earthjustice, and Earthjustice is representing  
4 the Columbia Riverkeeper, Climate Solutions,  
5 ForestEthics, Friends of the Columbia Gorge, Fruit  
6 Valley Neighborhood Association, Sierra Club, Spokane  
7 Riverkeeper and the Washington Environmental Council.

8 MS. BOYLES: Good morning, council members.  
9 My name is Kristen Boyles. I'm here with Janette  
10 Brimmer and Anna Sewell.

11 JUDGE NOBLE: Thank you. The International  
12 Longshore Warehouse Union Local 4?

13 And have I forgotten any party? Thank you.

14 Are there any matters that we need to  
15 dispose of before proceeding today, either on or off the  
16 record before we proceed to opening statements? Hearing  
17 none, let me ask if the parties want to present opening  
18 statements today?

19 MR. DERR: The applicant would like to  
20 present a statement, Your Honor.

21 JUDGE NOBLE: And are any of the other  
22 parties, either the opponents or Counsel for the  
23 Environment, presenting openings today?

24 MS. DRUMMOND: Yes, the City of Vancouver  
25 will be presenting an opening argument, Your Honor.

1 JUDGE NOBLE: All right. And Counsel for  
2 the Environment?

3 MS. BRIMMER: I will be speaking briefly,  
4 yes, Your Honor.

5 JUDGE NOBLE: All right. And Ms. Boyles?

6 MS. BOYLES: Yes, Your Honor, I will be  
7 briefly.

8 MR. HALL: And, Your Honor, Brent Hall, and  
9 I will be briefly following Ms. Boyles.

10 JUDGE NOBLE: All right. Well, it is  
11 anticipated that we're going to have short breaks, two  
12 breaks every morning, two breaks in the afternoon, but  
13 we were late starting today, so with the indulgence of  
14 our court reporter, we won't have a break and we'll just  
15 proceed on with the arguments until possibly 11:00, if  
16 that's acceptable.

17 MS. MARTIN: Judge Noble, just briefly, the  
18 Port of Vancouver also has an opening statement.

19 JUDGE NOBLE: All right. Thank you.

20 All right. Please proceed with opening,  
21 Mr. Derr.

22 MR. DERR: Thank you, Your Honor, Chair  
23 Lynch, members of the council. I want to open by  
24 expressing my recognition and appreciation for the time  
25 and attention the EFSEC council and staff have -- and

1 are continuing to put into the evaluation of the  
2 proposed Vancouver Energy terminal project. Goes  
3 without saying it's a lot of information and a lot of  
4 information for us to explain to you over the next few  
5 weeks and we'll do our best to do that.

6           There is no doubt this is a very important  
7 decision for the energy future of this state, as well as  
8 the region, and therefore a very important decision for  
9 EFSEC. The project has become controversial with very  
10 strong views on all sides. The debate has ranged from  
11 specific aspects of the terminal itself, to much broader  
12 policy questions about the country's fossil fuel future  
13 and how or how fast we might transition to alternative  
14 fuels. These are very important policy debates, but  
15 they are not the decision that faces EFSEC with this  
16 application. EFSEC will not change our region's  
17 dependence on fossil fuels with this site certificate  
18 decision.

19           The evidence will show the current constant,  
20 if not growing, needs of our transportation sector  
21 continue to rely on a plentiful and stable supply of  
22 crude oil. We ask that EFSEC's review should be focused  
23 on the facility site, a heavy industrial site in the  
24 middle of a heavy industrial zone with rail and marine  
25 infrastructure already in place to accommodate the

1 Vancouver Energy terminal. That's how we've organized  
2 our presentation to you first and foremost on the  
3 terminal itself.

4           When you focus on the terminal, it's not  
5 really that complicated. It may be controversial, but  
6 it's not that complicated. The project is not a  
7 refinery; it's not a petroleum-processing facility.  
8 It's simply a transfer operation where crude oil arrives  
9 by train, is unloaded into a storage tank and then  
10 loaded on the vessels for shipment to refineries on the  
11 West Coast, including Washington.

12           You will hear evidence of how the terminal  
13 will be designed and operated to meet or, in many cases,  
14 exceed the very latest regulatory and industry standards  
15 for safe operation that protects the people of the local  
16 community and preserves and protects a healthy  
17 environment.

18           Rail and marine vessel transport risks have  
19 generated the most public attention during project  
20 review. It's important to remember the applicant does  
21 not own, operate or control rail or vessel  
22 transportation to or from the facility. That is handled  
23 by others.

24           It's also important to remember that rail  
25 transportation, including crude-by-rail transportation

1 in many aspects of marine vessel transportation are  
2 already occurring on these same transportation corridors  
3 and will continue to occur with or without the Vancouver  
4 Energy terminal.

5 Additionally, both of these modes of  
6 transportation are thoroughly regulated by the federal  
7 government. Nonetheless, the evidence we will present  
8 will explain how those transportation sectors operate to  
9 give EFSEC confidence that the regulatory oversight of  
10 those industries is sufficient.

11 Under the EFSEC enabling statute, your  
12 decision must accommodate increasing demands for energy  
13 with the other public interests. This consideration  
14 must be based on several factors, three of which will be  
15 the focus during this hearing: abundant energy at  
16 reasonable costs, protecting and preserving the quality  
17 of the environment, and operational safeguards at least  
18 as stringent as federal standards.

19 EFSEC regulations in Washington  
20 Administrative Code 463-62 provide very specific  
21 guidance on how several elements of the environment  
22 should be addressed in this proceeding. For seismicity,  
23 noise, fish and wildlife, wetlands, water quality and  
24 air quality, EFSEC regulations state that compliance  
25 with the regulatory standards specified in the

1 administrative code shall satisfy the requirements for  
2 issuance of the site certificate.

3 The evidence will demonstrate how the  
4 project meets or exceed those standards for each of  
5 those respective subject areas. That compliance is  
6 sufficient for the site certificate.

7 You will hear quite a bit about risk,  
8 especially risk associated with rail and vessel  
9 transportation. This risk was brought even closer to  
10 home after the recent derailment in Mosier. You will  
11 see pictures of fiery derailments that some will argue  
12 prove the risk is too great. However, the evidence to  
13 be presented by the risk experts using risk science  
14 rather than fiery photos will demonstrate the risks are  
15 remote and therefore reasonable in the light of the  
16 demonstrated need for the proposed energy facility.

17 You will hear explanations of the scope of  
18 existing state and federal regulations in place and  
19 under review that address design and operational issues  
20 necessary to minimize risk and encourage vital  
21 interstate commerce.

22 You will also hear testimony that the  
23 planning, training and equipment is in place to respond  
24 to these remote risks and they're constantly being  
25 tested and upgraded. In fact, some of the most recent

1 reports of the incident in Mosier indicate that the  
2 response planning, training and equipment were ready and  
3 worked.

4 I want to come back to the public interest  
5 as described in the policy statement in the EFSEC  
6 statute that recognizes a pressing need for energy  
7 facilities, what the statute also describes as an  
8 obligation to provide abundant energy at reasonable  
9 costs. Our first witness will explain why this facility  
10 is needed to meet the increasing energy demands of this  
11 state, as well as the West Coast in general. He will  
12 show that the demand for crude oil in Washington and on  
13 the West Coast is steadily increasing, while historic  
14 supplies from Alaska and California are declining. He  
15 will explain that crude oil is particularly important  
16 for the transportation sector of our economy. He will  
17 also explain the transportation sector's need for crude  
18 oil-based fuels is not simply for fueling personal  
19 automobiles that brought us here today, but is vital to  
20 many other segments of our state economy such as  
21 agriculture, aviation and trade.

22 Like it or not, we continue to be a state  
23 economy dependent on petroleum fuels and therefore our  
24 crude oil to manufacture those petroleum fuels. This  
25 project responds to that need at a time when other

1 domestic services are declining and thus provides a  
2 vital bridge to our state's energy future.

3 In summary, the evidence you will be  
4 reviewing over the next several weeks supports a  
5 decision that the Vancouver Energy terminal at the Port  
6 of Vancouver is the best option for addressing the  
7 state's need for new supplies of petroleum fuels to  
8 supply our West Coast refineries and fuel our economy.  
9 The necessary infrastructure is in place at this  
10 location and therefore the environmental impacts and  
11 risks can be mitigated to a degree that protects the  
12 public interest and the quality of our environment.

13 Thank you.

14 MS. MARTIN: Good morning, Chair Lynch,  
15 members of the council and Judge Noble. My name is  
16 Connie Sue Martin from the law firm Schwabe,  
17 Williamson & Wyatt, and together with my partners David  
18 Bartz and Lisa Lowe, I represent the Port of Vancouver  
19 USA.

20 The Energy Facilities Site Locations Act  
21 recognizes the pressing need for energy facilities such  
22 as this one. This council is charged with evaluating  
23 the proposed project and concluding whether or not after  
24 evaluating impacts there is a net benefit. The Port of  
25 Vancouver will offer evidence and testimony during this

1 adjudication to establish the benefits to the public of  
2 allowing this project to be sited at the Port of  
3 Vancouver.

4 Alastair Smith, the port's chief marketing  
5 and sales officer, will testify to a number of these  
6 public benefits. First, there is a long-term market  
7 viability for US crude oil, making this a wise  
8 investment for the Port of Vancouver, for the port to  
9 support future economic growth through increased  
10 revenues.

11 The region will benefit from increased jobs  
12 established by this project. Tax revenue will provide  
13 more funding for our local schools, roads, police, fire  
14 and other public services, as well as allowing the port  
15 to reinvest in its infrastructure to attract even more  
16 business and jobs to Clark County. And, of course,  
17 economic development is the mandate to public ports in  
18 the state of Washington established under its  
19 legislature creating them.

20 The project is the end result of  
21 opportunities created by the port through its  
22 development of the West Vancouver Freight Access  
23 project, the WVFA, which was done to reduce congestion  
24 and increase the movement of freight by rail. Multiple  
25 sources of funding and many public and private parties

1 contributed to the WVFA, which is expected to reduce  
2 rail congestion by up to 40 percent, improve the use of  
3 port infrastructure for existing and yet-to-be-developed  
4 tenants and to open up the waterfront to the public and  
5 for new development.

6 The WVFA was a concerted effort by the port  
7 to create jobs and generate economic benefit by  
8 investing in its freight rail infrastructure and, in  
9 particular, infrastructure designed to facilitate more  
10 unit train traffic.

11 The design of the Tesoro Savage facility  
12 enables the port to use otherwise underutilized heavy  
13 industrial property zoned for uses such as this without  
14 impacting existing port tenants and uses.

15 And finally the port -- excuse me, the  
16 project is consistent with the port's mission, which is  
17 to provide economic benefit to the community through  
18 leadership, stewardship and partnership in marine,  
19 industrial and waterfront development.

20 Larry Guthrie, the port's rail expert, has  
21 already testified in his prefiled written testimony that  
22 the port has taken a well-designed rail system and made  
23 it even better and safer by implementing recommendations  
24 he made for the rails that the oil trains will traverse  
25 at the port. Mr. Guthrie has also testified that the

1 port is committed to maintaining its rails at a  
2 higher-than-industry standard to further enhance safety.

3 David Sawicki, the port's site safety and  
4 emergency response planning expert witness who has over  
5 40 years of experience working with industry, public  
6 agencies and oil spill response cooperatives, testified  
7 in his prefiled written testimony that the project has  
8 been designed and engineered to be as safe as possible  
9 and will be safe and suitable at the proposed location  
10 at the Port of Vancouver. Mr. Sawicki also testified  
11 that the project location will be suitable with regard  
12 to other port tenants and uses.

13 Finally, Dr. Christopher Earle, the port's  
14 expert ecologist, testified in his prefiled testimony  
15 that impacts from vessel wakes are and, under the  
16 proposed project, would remain uncommon and minor.  
17 There are two reasons for this, according to Dr. Earle.

18 First, the Lower Columbia River has been  
19 subjected to numerous engineered modifications during  
20 the history of its development as a transportation  
21 corridor. Fill has been placed, riprap has been  
22 installed and it has substantially reduced the portion  
23 of the river where native vegetation and prehistoric  
24 sediment may occur.

25 Second, there are only a limited number of

1 sites where wake stranding of salmonids can occur  
2 because the site has to be both close enough to the  
3 transportation corridor and also possess the low-angle  
4 beach and other topographic features that allow the full  
5 exposure of wake effects to occur.

6 The testimony and evidence offered during  
7 the adjudication will show that the property of the Port  
8 of Vancouver provides a suitable place through which to  
9 move crude oil to meet the needs of West Coast  
10 refineries and that the benefits of siting the project  
11 at the Port of Vancouver outweigh the impacts. Thank  
12 you.

13 JUDGE NOBLE: Thank you. I'll let the  
14 parties, the opponent parties come forward in the order  
15 they wish.

16 MS. DRUMMOND: Thank you, Your Honor. Susan  
17 Drummond on behalf of the City of Vancouver. With me  
18 today at the counsel table, Bronson Potter, City  
19 attorney, and Karen Reed, assistant City attorney.

20 Before the council is a proposal to  
21 transport and handle 15 million gallons of Bakken crude  
22 per day in the heart of the fourth largest city in  
23 Washington state. In other words, this is a proposal to  
24 handle what is the equivalent of 1,667 tanker trucks  
25 every day in a city of 165,000, and more than that, will

1 be stored on site.

2 The City is opposed to this project because  
3 it jeopardizes the safety of its citizens. It threatens  
4 the environment upon which the city depends and it puts  
5 at risk its land use planning and its financial  
6 investments.

7 Captain Smith of the Titanic stated before  
8 he sailed, "I will say that I cannot imagine any  
9 condition which would cause the ship to founder. I  
10 cannot conceive of any vital disaster happening to this  
11 vessel. Modern shipbuilding has gone beyond that." In  
12 1912, the Titanic hit an iceberg and 1500 people  
13 drowned.

14 The applicant in this proceeding will look  
15 to statistical analysis, mathematical equations,  
16 algorithms in an attempt to deliver a message not unlike  
17 Captain Smith. The City will look to reality. The  
18 City's witnesses will detail the alarming number of  
19 accidents which have been occurring over the last  
20 decade. They will detail the 25 very serious rail  
21 accidents which have been occurring at an average of  
22 over two per year.

23 I think everyone in this room is familiar  
24 with the tragedy which occurred in Lac-Megantic Canada  
25 in 2013. In that catastrophe, 59 tank cars released and

1 1.6 million gallons of Bakken crude spewed forth  
2 creating an inferno which eviscerated that downtown,  
3 taking with it 47 people.

4 Closer to home in Mosier we had yet another  
5 accident. That was on June 3rd. In that accident,  
6 42,000 gallons were released. And more generally on  
7 BNSF tracks in Washington state, there are accidents  
8 every single month. Accidents happen. Most are not  
9 catastrophic, but it only takes one.

10 Fortunately, EFSEC is required in its  
11 decision-making to account for the public interest, and  
12 in accounting for the public interest. Public safety is  
13 paramount. The applicant has a duty to ensure that its  
14 project will not put the citizens of this state at risk  
15 and EFSEC has a duty to take all practicable measures to  
16 ensure the safety.

17 Now, protecting the public safety is not  
18 only about protecting against direct injury, say from  
19 fire and explosion; it is also about protecting against  
20 injury to the environment upon which we depend. Without  
21 clean water, without clean air, without functioning  
22 storm water and sewer systems which, as we learned in  
23 Mosier, are vulnerable in these accidents, we are not  
24 safe.

25 Both EFSEC regulations and the State

1 Environmental Policy Act recognize that the right to a  
2 safe environment, the right to a healthful environment  
3 is a fundamental and inalienable right which is held by  
4 every single citizen of this state. As such, EFSEC has  
5 a duty to ensure that the impacts of this proposal are  
6 not simply mitigated below a level of probable  
7 significance, but are, in fact, minimal. Minimal. That  
8 is a very high standard to meet.

9 And in looking at environmental effects,  
10 EFSEC, of course, looks to the human environment. It  
11 looks to the City's land use planning and it looks to  
12 the neighboring uses. And it asks questions, such as,  
13 does the proximity of the elementary school to this  
14 site, does that put those kids in jeopardy? What about  
15 the inmates at the nearby jail facility? Are they  
16 protected? And what about the residents of the nearby  
17 Fruit Valley neighborhood? Will they be safe with that  
18 facility nearby? And, of course, what about the  
19 occupants of all the buildings along the entire route  
20 through the city, including the new city hall with its  
21 views of the tracks that these trains will run on every  
22 single day? Are we protecting them?

23 EFSEC also looks to the public cost of our  
24 project because EFSEC is charged with a duty to ensure  
25 that energy is being provided at reasonable cost. And

1 by cost, I'm not talking about the cost to the applicant  
2 to construct the facility; I am talking about the cost  
3 to the public to house it. As such, EFSEC will ask  
4 questions such as, has the applicant ensured that the  
5 enormous gaps in emergency response funding have been  
6 completely addressed? What if there is a catastrophic  
7 accident and there is injury to property, to the  
8 environment, to life itself? Is this applicant prepared  
9 to step up and make those who have been injured whole?  
10 Does it have the resources to do so? Does it have the  
11 insurance in place that it needs? Has it provided  
12 access to parent corporation funding, or is this a  
13 Delaware LLC which will declare bankruptcy and leave the  
14 City and State holding the bag?

15           The City during this proceeding, along with  
16 the other intervenors that it is aligned with, which  
17 include an extraordinary range of interests,  
18 environmental groups, developers, tribal interests,  
19 other cities and Clark County, we will all demonstrate  
20 that this proposal simply does not make sense. It is  
21 not providing Washington with energy it needs and yet at  
22 the same time it is putting our environment, our economy  
23 and our most precious resource of all, human life, at  
24 risk. Thus at the end of this proceeding, the City will  
25 be asking that EFSEC recommend to the governor that he

1 deny this project. Thank you.

2 JUDGE NOBLE: Thank you, Ms. Drummond. And  
3 I want to say to the people in the back that waving your  
4 hands is not allowed. There will be no demonstrations  
5 of approval or disapproval. Thank you.

6 MS. BOYLES: Good morning, Chair Lynch,  
7 Judge Noble and council members. My name is Kristen  
8 Boyles and with Janette Brimmer and Anna Sewell, we  
9 represent Columbia Riverkeeper, Climate Solutions,  
10 Friends of the Columbia Gorge, Fruit Valley Neighborhood  
11 Association, Sierra Club, Spokane Riverkeeper and the  
12 Washington Environmental Council. In the briefing and  
13 exhibits, we are collectively referred to as CRK for  
14 convenience. And I do not want to discuss, again, the  
15 points made so ably by Ms. Drummond. So we will go to  
16 my three additional thoughts.

17 First, I want to also thank the council and  
18 council's staff for providing this full hearing. The  
19 concerns raised by this project and this proposal have  
20 grabbed the attention of the -- Washington and  
21 communities across Washington and the people, and the  
22 adjudication is a massive undertaking, but it is vitally  
23 important. The council is providing an opportunity for  
24 all sides to be heard, and while this effort may not be  
25 painless, it is surely worthwhile. And this is a

1 question where we have to get the answer right.

2           Second, I want to remind the council that  
3 because of the way this hearing will unfold, you will  
4 hear from Tesoro Savage and the port first, as the  
5 applicant has the burden to show that its project is  
6 environmentally acceptable and doesn't pose an  
7 unacceptable risk to Washington's people and  
8 environment. There will be plenty of evidence, two or  
9 three weeks hence, to counter those presentations. So I  
10 ask that you bear in mind that the whole story won't  
11 have been told until this hearing is over.

12           Finally, I ask you to think about need. The  
13 governing statute, the EFSLA, requires the council to  
14 balance environmental and public health harms against  
15 the need for energy facilities in Washington state. For  
16 this project, that balance is entirely lopsided, as this  
17 project is simply a transfer operation, as Mr. Derr just  
18 described it, and that means it provides no energy to  
19 Washington. And the oil that will be shipped through  
20 our state will most likely not benefit Washington at  
21 all.

22           Moreover, there is no oil shortage. Despite  
23 a long-term slow decline in production from the Alaskan  
24 North Slope, our refineries are operating at capacity  
25 and, in fact, we are in the midst of an oil glut. Oil

1 companies may need to get this oil to market, but  
2 consumers, and especially Washington consumers, will not  
3 benefit. For Washington this project is all risk and no  
4 reward and that is counter to the statute and your  
5 mandates. Thank you.

6 JUDGE NOBLE: Thank you, Ms. Boyles.

7 MR. HALL: Good morning, Your Honor, Chair  
8 Lynch, members of the council. My name is Brent Hall  
9 and for the last 11 years it's been my privilege to  
10 represent the Confederated Tribes of the Umatilla Indian  
11 Reservation. I make this opening statement today on  
12 behalf of the Umatilla tribes, the Yakama Nation and the  
13 Columbia River Inter-Tribal Fish Commission. I am one  
14 of several attorneys to the tribal parties you'll be  
15 seeing through the course of this hearing. We're  
16 pooling our resources to try to ensure coverage for the  
17 length of this extraordinary endeavor.

18 I want to join in the comments of  
19 Ms. Drummond and Ms. Boyles and, for the most part,  
20 we'll try not to repeat them, but I do want to expand on  
21 the concept of risk and how that applies to the work of  
22 the tribes and its co-managers for decades done  
23 throughout the Columbia River basin. In doing so, I  
24 also hope to communicate to you the special relationship  
25 the tribes have to the Columbia River and the salmon it

1 supports, a tribal first food that the tribes have  
2 relied upon for subsistence and commerce for  
3 generations, since time immemorial.

4 Now, throughout the basin, tribes and their  
5 neighboring communities have sacrificed time and tribute  
6 to try to bring back salmon and steelhead runs that were  
7 for decades disregarded for other economic endeavors.  
8 Bringing back these fish has not been easy. It has  
9 taken decades of commitment and effort and millions of  
10 dollars from federal, state and tribes. It was a happy  
11 surprise when, in 2004, I returned to my hometown of  
12 Pendleton, Oregon, nearly 20 years after I had left for  
13 college and I found now the river supported salmon and  
14 steelhead. They had been extricated when I left. The  
15 Umatilla River runs through downtown Pendleton and the  
16 Indian reservation and now daily when I run, walk or  
17 ride along the river, I see fishers casting it and  
18 others enjoying the increased flows.

19 Now, the restoration of fish to the Columbia  
20 River was spearheaded by the tribes, but it took the  
21 cumulative effort of the tribes, the co-managers, the  
22 neighboring communities and the northwest congressional  
23 delegation to negotiate the necessary agreements, secure  
24 the funding, implement the water exchanges, fix the  
25 passage barriers, implement the habitat restoration, to

1 allow the fish to begin to return. These are just a few  
2 of the things that must be done when you restore a fish  
3 run. That work still continues today.

4 And the restoration of the Umatilla River is  
5 just one of many ongoing and successful efforts of fish  
6 runs in the Columbia Basin. In the Snake River we have  
7 gone from a few fish in the early 1990s, to annual  
8 returns averaging over 22,000 adults over the last five  
9 years. The Hanford Reach supports what is believed to  
10 be the healthiest run of fall chinook in the world with  
11 over 450,000 returning adults in 2015. And last year we  
12 saw well over a million fall Chinook enter the mouth of  
13 the Columbia River. I could go on and on. We are  
14 seeing gains all over the Columbia Basin, setting  
15 records nearly every year.

16 But this work takes a continued effort of  
17 everyone in the region. All the co-managers and  
18 significant funding, as mentioned before, billions of  
19 dollars over the decades. But although we've seen these  
20 gains and good returns on the region's investment, we  
21 still have 13 listed stocks in the Columbia; some stocks  
22 are more fragile than others, with only tens or hundreds  
23 of natural returning adults each year. We have also  
24 seen declines of lamprey and sturgeon over the last  
25 20 years. We still have a lot of work to do.

1           Now, the members of the tribes before you  
2 live up and down the river. The tribes have been  
3 stewards of this fishery resource since time immemorial.  
4 The ability to access fish in the river which they  
5 relied upon for subsistence and commerce was so  
6 important to the tribes that it was a primary right they  
7 reserved and secured in the treaties of 1855. And the  
8 federal courts have upheld that right repeatedly,  
9 including the Supreme Court, in the century and a half  
10 since the treaties were signed. And the federal courts  
11 have also told us that right carries with it the right  
12 for habitat to be free from manmade exfoliation.

13           Members of the council, the project before  
14 you poses grave risks to that treaty right, to the work  
15 of the tribes and their neighbors and co-managers and  
16 the resource. A derailment can have catastrophic  
17 consequences, depending on the time of year it occurs  
18 and the location it occurs. This proceeding cries out  
19 for a detailed knowledge of the fish runs in the  
20 Columbia River that the applicant has not demonstrated  
21 to date. A spill into the river during a migration  
22 might make years of work in restoring that resource go  
23 undone. It could also make fishing sites that have been  
24 handed down by family to family over generations  
25 unusable.

1           Even in the absence of derailment and spill,  
2 the increase in traffic will make it more dangerous for  
3 the tribal members who must cross those tracks, that  
4 live near those tracks and use them multiple times each  
5 day to get to the river. All of these risks are ones  
6 the State of Washington should not and does not have to  
7 bear.

8           Thank you for your time today and the work  
9 that you do.

10           JUDGE NOBLE: Thank you, Mr. Hall.

11           MR. KERNUTT: Morning, Chair Lynch, council.  
12 My name is Matt Kernutt. I am the designated statutory  
13 Counsel for the Environment. Pursuant to statute,  
14 Attorney General Ferguson appointed me to independently  
15 represent the interests of the public and their broad  
16 interest in the quality of the environment in all  
17 proceedings before EFSEC. It's a weighty burden to  
18 bear, representing the public interest in the quality of  
19 the environment, but it's something that I think is  
20 important to present to the council. My job's not to  
21 advocate for the need of this project or against the  
22 need of this project. My job is to make sure the  
23 public's interest in the quality environment is heard;  
24 that you understand what that interest is and whether  
25 that interest can be and will be protected, pursuant to

1 this particular project.

2 Testimony from Counsel for the Environment's  
3 witnesses will show and demonstrate potential  
4 environmental impacts and damages, as well as impacts at  
5 Columbia River fisheries as a result of a worst-case  
6 discharge in two scenarios, a tanker spill and a  
7 derailment into the Columbia River above Bonneville Dam.

8 Now, there will be a lot of discussion about  
9 risks, but it is my opinion that showing the  
10 consequences in relation to those risks are just as  
11 important as the math behind the risks, if not more so.  
12 While argument will be made that the risks associated  
13 with this, that the events that my experts discuss and  
14 the events that experts from other intervening parties  
15 will discuss may be remote, those consequences can  
16 potentially be massive. These consequences must be  
17 strongly considered, and I urge you to strongly consider  
18 these potential consequences in the course of this  
19 proceeding. Thank you.

20 JUDGE NOBLE: Thank you, Mr. Kernutt.

21 Are there any more opening statements to be  
22 made?

23 Could I ask the proponents which of them is  
24 going to be going first? Mr. Derr, will you be going  
25 first for Tesoro Savage?

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1 MR. DERR: Yes, Your Honor, we're going to  
2 intersperse witnesses, but the first witness will be  
3 presented by the applicant.

4 JUDGE NOBLE: All right. Thank you. One  
5 thing we did not get done yet is the ruling on the John  
6 Hack testimony. Will Mr. Hack be called this morning?

7 MR. DERR: Not this morning, no, Your Honor.

8 JUDGE NOBLE: We'll do that just after the  
9 noon hour, then. Are you ready to call your first  
10 witness?

11 MR. DERR: Yes. I would like to call Brad  
12 Roach to the stand.

13 JUDGE NOBLE: Mr. Roach, will you approach  
14 that table over there and before you do, would you raise  
15 your right hand, please.

16 (Witness sworn.)

17 JUDGE NOBLE: Thank you. Please be seated.

18 You may proceed, Mr. Derr.

19 F. BRADLY ROACH,

20 having been first duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. DERR:

23 Q. Thank you. Mr. Roach, I would like to start  
24 out, would you please state your name and spell it for  
25 the record.

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1           A.     F. Bradly Roach.  It's -- F. is a letter  
2 obviously.  Bradly with no E, B-r-a-d-l-y.  My mom fixed  
3 that one for me.  And Roach, R-o-a-c-h.

4           **Q.     Thank you.  Mr. Roach, did you file prefiled**  
5 **testimony in this proceeding?**

6           A.     I did.

7           **Q.     And is your CV and statement of qualifications**  
8 **contained in that prefiled testimony?**

9           A.     It is.

10          **Q.     Can you just briefly summarize your experience,**  
11 **especially your experience in the petroleum industry.**

12          A.     My experience in the petroleum industry goes  
13 back almost 40 years, about 36, 37 years of experience  
14 in the oil industry, starting as an engineer, chemical  
15 engineer in refineries in the Gulf Coast and progressing  
16 up through the corporations that I worked in getting  
17 into business planning and economics.  I worked in  
18 marketing, I worked in pricing of hydrocarbon fuels and  
19 now I'm in strategy and development.

20                   JUDGE NOBLE:  Excuse me, Mr. Roach.  You are  
21 a fast speaker and we have a court reporter that's  
22 trying to keep up, so if you can, speak a little slower.

23                   THE WITNESS:  I will slow down.

24                   JUDGE NOBLE:  Thank you.

25           BY MR. DERR:

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1           Q.     Thank you, Mr. Roach. Because your prefilled  
2 testimony has already been submitted under oath, I'm not  
3 going to ask you to run through that in detail. I will  
4 let you know, however, that others may have questions of  
5 you on that. Council may have questions of you on that,  
6 but I just want to focus on a couple of key topics  
7 addressed in that.

8                   MR. DERR: The other thing is I understand  
9 the way we are doing witnesses, Mr. Roach has had a  
10 series of exhibits attached to his prefilled testimony.  
11 It's my understanding that no party objected to that  
12 prefilled. It's also my understanding no party has  
13 objected to any of those exhibits attached to the  
14 prefilled. And then a little later we have about three  
15 new exhibits that were not attached to the prefilled  
16 which is also my understanding no party has objected to.  
17 So we'll walk through the exhibits, if we may. Do you  
18 wish to rule on them one by one or just to rule on them  
19 at the end?

20                   JUDGE NOBLE: I would like to rule on the  
21 agreed exhibits at this time. Can you give me the  
22 numbers again, please?

23                   MR. DERR: Yes. So the exhibits that we  
24 will -- the exhibits that were agreed on are all the  
25 exhibits attached to his prefilled, but the ones -- you

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1 want all those or do you want the ones that we are using  
2 this morning?

3 JUDGE NOBLE: I have to admit them by  
4 number, so I can admit them as a range of numbers, but I  
5 need to have the numbers, and then Ms. Mastro will be  
6 marking them as admitted in the electronic record. And  
7 the council will be able to view them electronically  
8 or -- they're all behind me in notebooks.

9 MR. DERR: Again, I'm getting you the list  
10 of every exhibit that were prefiled earlier. We're only  
11 using about eight or ten of them this morning. So if I  
12 may, let me give you the exhibits we're using this  
13 morning and then we'll come back and get you all of the  
14 exhibits attached to the prefiled. His CV is  
15 Exhibit 322, TSS. His prefiled testimony is  
16 Exhibit 321.

17 JUDGE NOBLE: Let me just interrupt you on  
18 that, on the prefiled testimony. The prefiled testimony  
19 is not properly an exhibit and what it is, is testimony,  
20 so it will be part of the record. It doesn't need to be  
21 admitted as an exhibit. So that's the case with all of  
22 the prefiled testimony so-called exhibits, and we can  
23 make sure that the record is clear on that.

24 MR. DERR: Very good. Thank you. Then we  
25 have -- attached to his prefiled, we have Exhibits 129

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1 through 146. Those were attached to his prefiled  
2 testimony. And then we have new exhibits today that we  
3 will be referring to outside that range, principally,  
4 271 and 272.

5 JUDGE NOBLE: And you'll be laying the  
6 foundation for them --

7 MR. DERR: I can do that with his testimony  
8 at that time.

9 JUDGE NOBLE: All right. First, I will --  
10 my understanding is that there's no objection to the  
11 Exhibits 322 TSS and 129 through 146 TSS. It's my  
12 understanding that there's no objection to those  
13 exhibits and they will be admitted. Ms. Mastro will  
14 mark them as exhibit -- as admitted.

15 MR. DERR: All right.

16 JUDGE NOBLE: 321, what was the --

17 MR. DERR: 321 is prefiled, which you said  
18 does not need to be an exhibit, so that's not admitted  
19 as an exhibit.

20 JUDGE NOBLE: Thank you.

21 MR. DERR: 322 is the CV.

22 JUDGE NOBLE: All right. Thank you.

23 MR. DERR: With that, I would like to start  
24 with Exhibit 129. We'll see how this works. This was  
25 Attachment B to the prefiled testimony, for council

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1 members who have read prefiled and are tracking it that  
2 way. So this was attached to prefiled testimony.

3 BY MR. DERR:

4 **Q. Mr. Roach, can you describe what is a PADD and**  
5 **which PADD is in the state of Washington?**

6 A. A PADD is the -- a PADD is the acronym for the  
7 Petroleum Administration for Defense Districts, which  
8 are a regional designation for areas of the United  
9 States as depicted on the map which break up the  
10 regions. It was established back in World War -- I'll  
11 slow down -- in the World War II time frame to help the  
12 government and regulators monitor and measure the flow  
13 of energy amongst the various states. The PADD that  
14 we're in is PADD 5. It represents the West Coast of the  
15 United States, including Alaska and Hawaii.

16 What's notable about this PADD, this region, is  
17 its very robust economy. California alone is like the  
18 eighth largest economy in the world. When you take the  
19 whole PADD together, to include Washington and the other  
20 states, this would rank about fifth or sixth in the  
21 globe in terms of economic activity that occurs in this  
22 region, and this is a wide array. It's not any one  
23 thing, but it's a wide array of economic activities,  
24 agricultural, aerospace, entertainment, high tech, just  
25 a variety of economic activities that occur, Washington

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1 being an important part of that. Washington has its own  
2 definite presence in agriculture and high tech and  
3 aerospace that's integral to that PADD 5 economy.  
4 Underpinning that economy is the need for energy to keep  
5 that economy running very consistently.

6 **Q. Thank you.**

7 MR. DERR: Can we put up Exhibit 130.

8 BY MR. DERR:

9 **Q. This was Attachment C to prefiled testimony. As**  
10 **I'm waiting for the graphic, maybe I'll ask you the**  
11 **question in a slightly different way. Can you describe**  
12 **the available modes of transportation of crude oil to**  
13 **the refineries in PADD 5?**

14 A. The modes of transport of crude oil into PADD 5  
15 are fairly well-defined. We have a fair amount of the  
16 oil that was available within the PADD and that would be  
17 about -- available via gathering systems that aggregate  
18 the crude and send it to refineries via pipeline.  
19 Similar to that would be the pipeline in the Alaskan  
20 North Slope that brings a -- brings ANS crude down from  
21 the very north side of Alaska down through an 800-mile  
22 pipeline to the southern coast of Alaska where it's  
23 transloaded to ships which then travel another  
24 1200 miles to reach the West Coast of the mainland.  
25 Those would be your sources of crude oil within the

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1 PADD.

2 If you have to bring in additional crude, which  
3 we do, into the PADD to run the refineries to their  
4 demand, then you have to bring in crude from other  
5 sources like from Canada via pipeline. There's a small  
6 pipeline up there that supplies some into the northern  
7 part of Washington, or you have to bring it in via boat  
8 from foreign countries.

9 And the additional one that we've seen lately is  
10 the ability to bring in by rail from the mid-continent  
11 of the US where we've had a surge in production.

12 **Q. Can you explain briefly why rail is used to**  
13 **bring it in from the mid-continent?**

14 A. The rail -- as demonstrated by this map, and I  
15 should refer to this map, this map, it's a little bit of  
16 an eye test because it is seemingly small. This is a  
17 map prepared by the Canadian Association of Petroleum  
18 Producers, really just documenting where the major  
19 pipelines are in the North American continent which  
20 supply crude from the producing areas to the areas where  
21 they're refined and where they're needed. What this map  
22 is intended to show is that when you look to the West  
23 Coast, there just aren't many of those pipelines that  
24 come there.

25 And inasmuch as there was a surge of production

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1 in the mid-continent of the United States, the Bakken,  
2 the Niobrara, the Permian Basin, the Eagle Ford areas,  
3 as much as crude production increased there, there was  
4 simply no way to get it to the West Coast in a pipeline.  
5 By the nature of the pipelines being such a long  
6 endeavor, they are very expensive to build. There's  
7 significant capital investments that are required for  
8 pipelines that take long times to get the financing, get  
9 the permitting, get the project in place. So that is  
10 one of the reasons that there is not a -- an expansion  
11 of that network that you see in that map over to the  
12 West Coast. It's just very, very expensive to -- and  
13 time-consuming to accomplish. Contrast that with  
14 crude-by-rail, which has much lower costs, the rail --  
15 the pipeline systems that have been commonly talked  
16 about in the North American continent typically are  
17 things like the Keystone, the Energy East, the Northern  
18 Gateway and Trans Mountain, those all cost in the  
19 multiple billions of dollars to implement.

20 Crude-by-rail utilizes existing infrastructure,  
21 which is the existing railroad tracks, and basically  
22 requires a terminal at both ends, one to load and one to  
23 unload. And those investments are more in the millions  
24 of dollars. And it's really easy to talk about millions  
25 and billions, but the difference between those is ten,

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1 hundred, thousand times difference in cost. So it's  
2 much more lower investments and lower impacts because  
3 you're not clearing -- you're not clear-cutting  
4 right-of-ways through various parts of the country to  
5 have the pipeline, to bury it and then maintain that  
6 right-of-way.

7 But the other part that's somewhat interesting  
8 about the rail terminals, the crude-by-rail, is you're  
9 not fixed point to point; whereas a pipeline you build  
10 from point A to point B and that's all you can ship is  
11 from point A to point B, unless you put a lot more  
12 capital to do more distribution or gathering. In a  
13 crude-by-rail terminal, you can source crude to that  
14 terminal from a variety of other places and you're not  
15 limited to a point-to-point solution. You have -- you  
16 can have multiple points providing supply to that  
17 terminal. So the flexibility of a rail terminal is  
18 markedly different than the flexibility that exists in a  
19 pipeline because of its specific point-to-point  
20 configuration.

21 **Q. Thank you, Mr. Roach. Can you tell me in your**  
22 **opinion what's the likelihood that these existing modes**  
23 **of transportation of crude oil in PADD 5 will change in**  
24 **the foreseeable future?**

25 A. The modes that -- of transportation that exist,

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1 I don't see those changing in the number of modes that  
2 there are. The balance between the modes is an  
3 ever-changing picture based upon the economics of the  
4 crude oil and the markets that supply that. So those  
5 modes of getting it to the state in that way seem to be  
6 pretty static, but the balance between those modes is  
7 subject to change.

8 **Q. Thank you. I want to ask you some questions**  
9 **about the supply of crude oil to PADD 5. What are the**  
10 **current primary sources of crude oil to the refineries**  
11 **in Washington and in PADD 5?**

12 A. The current sources of oil into PADD 5 are  
13 basically from the -- into the whole PADD are, from the  
14 California crude fields, the north -- the ANS crude  
15 fields, inasmuch as we need more crude to run, we get  
16 some crude in from Canada via the Trans Mountain  
17 Pipeline, but the balance comes predominantly from  
18 offshore waterborne movements from other areas of the  
19 globe. Lately we've had some of the crude-by-rail  
20 coming in on a few designated -- to a few designated  
21 facilities in Washington and a couple of them in  
22 California.

23 **Q. Thank you.**

24 MR. DERR: Can you put up Exhibit 143 for  
25 me, please. This was also attached to his prefilled

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1 testimony.

2 BY MR. DERR:

3 **Q. Mr. Roach, can you describe what this figure**  
4 **illustrates and describe the colors?**

5 A. This figure is taken from EIA data from DOE.  
6 This represents the production of the first two nodes or  
7 the first two sources of crude that I just mentioned,  
8 the top being the ANS crude supply and production and  
9 the bottom being the California crude production. This  
10 covers a time span of some 30 years, and over that time  
11 frame there has been a continual decline of crude from  
12 the 3-million-barrels-a-day level down to approximately  
13 a million barrels a day, a reduction of two-thirds of  
14 that volume.

15 MR. DERR: Let me ask for Exhibit 144.

16 A. Before you leave that.

17 BY MR. DERR:

18 **Q. Sure.**

19 A. Before you leave that, I think it's appropriate  
20 to point out, especially in that -- if you look at the  
21 2010 to 2015, where there's still been a slight decline  
22 of the volume, if you compare that decline curve with  
23 what's happening in other regions of the country, you'll  
24 notice a significant difference.

25 If you go back to that PADD map that I had that

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1 showed all those PADDs, 1, 2, 3, and 4, all those are  
2 east of the Rockies; if you look at what's happened in  
3 crude production from 2010 to 2015, those PADDs have  
4 seen an increase in their production levels of 75 to  
5 almost 100 percent more crude produced. So they have  
6 actually been on a trend upward in production. But  
7 these two fields during that same time frame have  
8 actually decreased almost 20 percent. It's like 18 to  
9 19, 20 percent reduction. So even in the high-price  
10 environment that we had from 2010 to 2015, these fields  
11 continued to decline; whereas those other fields around  
12 have markedly changed. So there's a dynamic in this  
13 crude -- these crude fields that is important to  
14 monitor.

15 **Q. Let me -- I'm going to skip out of turn.**

16 MR. DERR: Can you go to Exhibit 271.

17 BY MR. DERR:

18 **Q. Because I think this furthers the point that you**  
19 **just made. I'm going to ask you to explain Exhibit 271**  
20 **at this point.**

21 JUDGE NOBLE: So actually you're laying the  
22 foundation for 271?

23 MR. DERR: 271, I'll lay the foundation.

24 BY MR. DERR:

25 **Q. So, Mr. Roach, can you first explain where**

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1 this -- how this graph was prepared and where the  
2 information came from.

3 A. This is a graph that shows the inventory levels  
4 within the United States by each of the PADDs that we  
5 started with when I started my testimony here. And so  
6 this is again going back over -- this is 20 years,  
7 showing how the inventory has increased. And this  
8 really speaks to the perception that there's a glut  
9 of --

10 JUDGE NOBLE: Excuse me, the witness needs  
11 to not testify about the contents until it's admitted.

12 MR. DERR: Got it.

13 BY MR. DERR:

14 **Q. So the source of the information, Mr. Roach?**

15 A. The source of the information is as is noted on  
16 the graph, the EIA, the EIA, Energy Information  
17 Administration of the Department of Energy.

18 **Q. So that's a government agency that sourced this  
19 information?**

20 A. Yes.

21 **Q. Did you prepare the graph from that data?**

22 A. Yes.

23 **Q. You prepared the graphs?**

24 A. I prepared the graph from the data.

25 MR. DERR: Thank you. I would move for

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1 admission of the exhibit so the witness can speak to it.

2 JUDGE NOBLE: Any objection? The exhibit's  
3 admitted.

4 BY MR. DERR:

5 **Q. Now, can you explain what this exhibit shows?**

6 A. This graph speaks to the concept of a glut of  
7 crude, especially in the North American -- or in the US,  
8 where we do see on this chart a very high level of  
9 crude, higher than basically historically seen where  
10 crude oil levels have increased dramatically. But this  
11 graph is oriented from top to bottom in the number of  
12 the PADD, PADD 1 at the top and PADD 2, PADD 3, PADD 4  
13 and PADD 5 at the bottom. Whereas there has been an  
14 accumulation of crude oil in the United States, it  
15 hadn't been on the West Coast. That accumulation has  
16 occurred basically in the PADD 2 and in the --  
17 predominantly in the PADD 3. PADD 2 is where Cushing is  
18 and Cushing storage adds to that quite a bit. So we had  
19 seen an accumulation of crude oil, but if you go back to  
20 the map that I showed, showing the lack of connection  
21 between the crude oil side from the rest of the country  
22 to PADD 5, that oil that's accumulated can't get to  
23 PADD 5 directly. The only mechanism that we could get  
24 that oil to PADD 5 right now might be a Jones Act ship  
25 going around either through the canal or through South

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1 America.

2 **Q. Thank you. Excuse me. Go ahead.**

3 A. So this graph really highlights that segregation  
4 of the rest of the infrastructure of the US from what  
5 exists in California.

6 **Q. Thank you.**

7 MR. DERR: Now Exhibit 144, please.

8 BY MR. DERR:

9 **Q. So, Mr. Roach, a minute ago you showed -- you**  
10 **referred to Exhibit 143 and you spoke about the**  
11 **production in Alaska and the north slope of California,**  
12 **the red and blue bars, and we're going to put up**  
13 **Exhibit 144 and I would like to ask you to explain what**  
14 **that exhibit shows. Let's refer to the top figure**  
15 **first.**

16 A. This top figure is an outlook on -- of the  
17 production for ANS crude, and below it then a table  
18 showing the volumes, and this is showing -- this is from  
19 the Alaskan Tax Authority. This is showing, then, the  
20 decline of ANS, which is anticipated to continue on into  
21 the next decade.

22 The chart below it is indicative of where  
23 refineries source the oil that they need to make up the  
24 difference that has occurred as that ANS and that  
25 California production have diminished from their peak

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1 that was seen back in the 1990s. That oil comes  
2 predominantly from the Middle East or from Latin America  
3 or from Western Africa.

4 **Q. Thank you.**

5 MR. DERR: How about Exhibit 145? This was  
6 also attached to his prefiled testimony.

7 BY MR. DERR:

8 **Q. Mr. Roach, can you explain what this exhibit**  
9 **illustrates?**

10 A. If I segue off the prior graph which showed  
11 where the sources of the imported oil comes from that  
12 fills the need that's created by the falling ANS and  
13 California crude, those regions of Latin America, West  
14 Africa, the Middle East are shown in this graph. This  
15 is a graph compositing two different data sources, two  
16 different data representations. One is the colored  
17 global map that's the backdrop. That's based on  
18 information from Transparency International that speaks  
19 to the business risks that exist by doing business in  
20 those countries.

21 Now, this is -- this is business risk of  
22 corruption and lack of transparency in business -- in  
23 business endeavors. This isn't the geopolitical risk  
24 that would exist. But if you were to put up a  
25 geopolitical risk map, you would have somewhat the same

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1 scenario.

2 Those black circles represent the size of  
3 reserves that occur in these countries, and so these are  
4 the sources for the crude that has to fill the void that  
5 is created when ANS and California crudes decline in  
6 PADD 5 to keep those refineries running at the levels  
7 needed to meet demand within the PADD. So this is  
8 really indicative of having to source that volume from  
9 areas of the world that are challenging to do business  
10 with -- to do business in, at best.

11 **Q. Thank you.**

12 MR. DERR: I would like you to open up  
13 Exhibit 131, page 7.

14 BY MR. DERR:

15 **Q. Mr. Roach, next I'm just going to ask you a**  
16 **couple of questions from this exhibit about the nature**  
17 **of the petroleum fuel demand in Washington and in**  
18 **PADD 5. And this was also an exhibit -- a series of**  
19 **exhibits that was attached to your prefiled, page 7,**  
20 **we're going to have you take a look at, which was the**  
21 **state of Washington specifically. I'm not going to ask**  
22 **you to read the text.**

23 If you can, explain for the council what this --  
24 where this information is from and what it illustrates,  
25 describing the boxes and the bars and the colors.

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1           A.     Yes.  I provided various views of this graph for  
2 different regions that are under consideration, both the  
3 states that -- each state within PADD 5 would show a  
4 diagram like this, along with the US as a whole.  These  
5 graphs were prepared -- or produced by the Lawrence  
6 Livermore National Laboratory, a reputable endeavor that  
7 looks at energy flows and they created these graphs.

8           The graph -- if I just step back and look at  
9 what does the graph represent, the boxes on the  
10 left-hand side of this graph, small as they are by what  
11 I'm looking at, are the various types of energy that can  
12 supply -- or the various types of sources that can  
13 supply energy to the economy.

14           At the bottom you have petroleum, you've got  
15 biomass, you have coal, you have natural gas, there's  
16 nuclear, solar, wind, a variety of energy sources that  
17 can feed into the economy.  Even hydroelectric, and  
18 Washington has got a lot of hydro.  It shows up as the  
19 widths of the line.  So the width of the line emanating  
20 from those boxes on the left represents how much energy  
21 is used or provided by those sources, to be used by the  
22 boxes on the right-hand side, the shaded rose-colored  
23 boxes on the right-hand side.  Those represent how  
24 energy is used in the subject economy, whether it's  
25 residential, how we heat and cool our homes, or the

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1 commercial activities or the heavy industrial and  
2 aerospace industries. On the lower section there is the  
3 transportation sector of the energy demand.

4 So this graph is showing that the prime input to  
5 the transportation segment of the economy is petroleum.  
6 Very little comes from other sources. It's --  
7 approximately 95 to 97 percent is from petroleum and  
8 that's owing to the high energy density, the ease of  
9 distribution, the reliability, the scalability that  
10 petroleum brings to an economy, and as such, as the  
11 economic fuel of choice.

12 **Q. Can I just ask you a point to be sure, because**  
13 **I've seen leaning and squinting, so nobody's going to be**  
14 **able to read the labels. Can you just clarify the**  
15 **bottom, dark green box and bar, is that the box and bar**  
16 **that you're --**

17 A. It is.

18 **Q. -- referring to as the transportation -- the**  
19 **petroleum fuels feeding the transportation sector?**

20 A. Yes. The bottom -- the bottom bar, horizontal  
21 bar, is emanating from the petroleum source point and it  
22 is predominantly feeding the transportation box.  
23 There's a little bit that segues up to industrial for  
24 heavy industry use of diesel. But if you're looking at  
25 just the transportation box, the only input to it is

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1 petroleum. In this case there's a little bit of  
2 biofuels, which represents the ethanol which is blended  
3 into gasoline.

4 **Q. Thank you.**

5 MR. DERR: Your Honor, this is a pause for a  
6 logistical question. We're doing the best we can, but  
7 the screen -- I assume if council needs to take a closer  
8 look at it in the exhibit, they have access to those?

9 JUDGE NOBLE: They do.

10 MR. DERR: And they will do that later?  
11 Great.

12 A. The follow-up point that I would like to make on  
13 this, is if you look at any of those states for the US  
14 as a whole, you see that petroleum is the fundamental  
15 fuel in the transportation sector.

16 BY MR. DERR:

17 **Q. That was going to be my next question. The rest**  
18 **of your prefiled had other graphics that were similar.**  
19 **Were those the rest of the West Coast?**

20 A. Those were the rest of the West Coast and the US  
21 as a whole.

22 **Q. Thank you. So can you tell me a little bit**  
23 **about -- you mentioned the transportation sector.**  
24 **What's included in the transportation sector?**

25 A. The transportation sector would include almost

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1 any movement of goods and people that we see. It would  
2 be planes, trains and automobiles. It would be the  
3 personal transportation that brought many of us here  
4 today. It would be the ambulance that I saw this  
5 morning racing as a first responder somewhere. It would  
6 be the refrigerated truck that carries fruit from the  
7 Columbia River Gorge halfway across the nation to  
8 markets that people -- that support people in other  
9 parts of this country. So there's huge segments of the  
10 economy that are wrapped up in that transportation box  
11 that are very important to the functioning of this area,  
12 but also to the benefit of others around the nation.

13 **Q. So is it your opinion it's more than the oil**  
14 **companies? There are other industries that are**  
15 **dependent on these fuels?**

16 A. We're all dependent upon these fuels, yes.

17 MR. DERR: Okay. I would like to ask for  
18 Exhibit 136. This was an exhibit attached to your  
19 prefiled.

20 BY MR. DERR:

21 **Q. Can you describe what this exhibit illustrates?**

22 A. This is a representation of the energy use of  
23 that transportation sector in the PADD 5, the West Coast  
24 region, going -- starting with 1990 and coming forward  
25 to today, which is the dashed line right there around

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1 the 2015. So it's showing the change in usage of  
2 gasoline, the jet fuel, jet kerosene and the diesel  
3 component of that light product transportation.

4 What's important to show there is that dashed --  
5 that dark, dashed line across the top which shows that  
6 in about 2006, we hit a peak, and, of course, shortly  
7 thereafter we went into a significant recession. But as  
8 we have been coming out of that recession, you get to  
9 contemporary times of this 2015 dash line, we're  
10 actually seeing demand come back as the economy has  
11 recovered from that recession. And then it is showing a  
12 future view of the use of these transportation fuels on  
13 into the next decade.

14 That transportation fuel is continuing to grow a  
15 little bit. We still have a little bit of the economy  
16 left that, as it comes back, it brings in growth of  
17 transportation fuels. Underlying this graph there is a  
18 continual growth of between 1 and one and a half percent  
19 of population growth. There's a continuing growth of  
20 the economy. Those tend to increase transportation fuel  
21 demands, but there's also the offset of increasing  
22 efficiencies. And that's why this graph starts to  
23 plateau. We are showing that flow plateau at  
24 approximately 2020 and then it -- for gasoline, starts a  
25 very slight decline, but the other fuels continue to

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1 have growth. So on the whole, the expectation is for a  
2 relatively constant call on hydrocarbon fuels to power  
3 the economy into the next couple of decades.

4 **Q. Thank you. So, Mr. Roach, I would like to ask**  
5 **you, if I can, to try to summarize your opinion based on**  
6 **the comments you've made to date, what you see occurring**  
7 **with existing supplies of crude oil to PADD 5 as**  
8 **compared to the demand of crude oil in PADD 5.**

9 A. Owing to the strong economies and the strong  
10 economic performance and the embedded nature of  
11 hydrocarbon fuels to support that, we see the demand for  
12 hydrocarbon fuels continuing on through the life of the  
13 project over the next couple of decades.

14 During that same time frame, though, we continue  
15 to expect to see the indigenous -- the decline of the  
16 indigenous crudes that have historically supplied this  
17 region, that being the California and the Alaskan  
18 crudes. That will force refiners to seek -- to fill the  
19 void of that by going to the nations, the other sources  
20 of supply that I referred to with the multicolored map.

21 **Q. Can you briefly describe your opinion of the**  
22 **role of the Vancouver Energy terminal project in**  
23 **addressing the crude oil and petroleum fuel supply and**  
24 **demand issues that you've just described?**

25 A. I would join two thoughts there. The Vancouver

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1 Energy project creates another alternative to access  
2 volume that we cannot currently get today. I go back to  
3 that graph that showed the inventory levels of those  
4 various PADDs, how PADD 5 was steady but we've got a lot  
5 of crude available in the mid-continent and the Gulf  
6 Coast, a facility like Vancouver Energy would open up  
7 the ability to bring crude from those regions into the  
8 refiners in this area as an additional source and  
9 flexibility. And I have to note the quality is  
10 significantly different of that crude too. So it gives  
11 many opportunities to utilize that type of crude in  
12 refineries on the West Coast and in some situations in  
13 the Washington refinery.

14 **Q. Thank you.**

15 MR. DERR: And, Your Honor, maybe again, I  
16 just want to pause because we're about to switch gears  
17 in response to other prefiled testimony, but I wanted to  
18 clarify how you want to handled rebuttal of other party  
19 testimony. We have prefiled testimony from other  
20 witnesses that have been submitted. I've asked  
21 Mr. Roach to review some of those documents. I have  
22 questions for him. But we won't hear from those  
23 witnesses until later in this proceeding, and we do  
24 intend to reserve some time for rebuttal. And I want to  
25 be clear as to whether you want us to address the

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1 prefilled rebuttal now and any different issues in the  
2 live testimony at the end, or do you want us to address  
3 all rebuttal of other witnesses at the end? Is there a  
4 preference?

5 JUDGE NOBLE: I think addressing all the  
6 rebuttal at the end works better. Right now if you're  
7 done with your questions of this witness, it would be  
8 time for the council questions of this witness based on  
9 the prefilled testimony and his testimony this morning  
10 here.

11 MR. DERR: So with that, we have -- he has  
12 reviewed their prefilled, but we'll ask to bring  
13 Mr. Roach back at the end to deal with those issues.

14 JUDGE NOBLE: Yes.

15 MR. DERR: And then let me ask, for purposes  
16 of other witnesses, because we have had, obviously,  
17 happening, lots of subjects, I guess we need to  
18 understand whether we need to bring every witness in for  
19 the opening case and every witness in for the end of the  
20 case or whether we can deal with these issues at the  
21 front.

22 JUDGE NOBLE: Well, I don't think you need  
23 to bring every witness in for rebuttal testimony. If  
24 you -- are you saying that you have more -- not in the  
25 nature of rebuttal but additional testimony that's

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1 direct testimony from this witness today?

2 MR. DERR: This witness has comments about  
3 the prefiled testimony that has been already filed by  
4 Mr. Goodman and Mr. Johnson. So he can address those  
5 issues right now based on that prefiled. If Mr. Goodman  
6 or Mr. Johnson address other issues in their testimony  
7 later in the proceeding or any other witness addresses  
8 different issues that were not raised in their prefiled  
9 testimony, we may need to bring them back.

10 JUDGE NOBLE: I see. I think you should  
11 address what he has -- already is prepared today to  
12 address from the other witnesses' testimony. It would  
13 be only testimony that was somehow a surprise or  
14 different that you would bring back on rebuttal --

15 MR. DERR: All right.

16 JUDGE NOBLE: -- bring him back on rebuttal.

17 MR. DERR: Thank you. Appreciate the  
18 clarification.

19 BY MR. DERR:

20 Q. So with that, Mr. Roach, I'm going to ask you,  
21 have you reviewed the prefiled testimony of Mr. Ian  
22 Goodman?

23 A. Yes.

24 Q. I would like to ask you just a couple of  
25 questions about his testimony. Mr. Goodman --

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1                   MR. DERR: And for council's reference, at  
2 paragraph 33 of his prefiled testimony.

3 BY MR. DERR:

4           **Q. -- offers the opinion, and I quote, "Little, if**  
5 **any, crude from the VEDT, the Vancouver Energy**  
6 **Distribution Terminal, will be refined in Washington or**  
7 **refined elsewhere to provide products in Washington."**

8                   **Do you agree with that conclusion? And why or**  
9 **why not?**

10           A. I don't -- I don't agree with that conclusion as  
11 it might apply over the life of the project. The  
12 factors that relate to the use of the crude oil by a  
13 given refiner change with various aspects of the crude  
14 oil market. One of those -- I'll just give you a brief  
15 example. We're faced with a specification change by the  
16 International Maritime Organization. It's on the books  
17 to happen in 2020. Might happen in 2025, but it's on  
18 the books for 2020. That's going to force refiners,  
19 including Washington refiners, who produce fuel oil to  
20 have to provide a product that's very, very low in  
21 sulfur, and they're not equipped using AN S to do that.

22                   With light, sweet crude available from the  
23 mid-continent of the US, that's a natural fit to supply  
24 those refineries. So given the vagaries of the  
25 marketplace, the fluctuations that happen, things like

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1 specifications that can be put on refiners over the time  
2 span of the project, I can see several instances over  
3 that time where crude could come through this refinery  
4 to support those Washington refiners.

5 **Q. Thank you. Do you recall Mr. Goodman's**  
6 **testimony about the price of crude oil and his opinion**  
7 **regarding what that means for the need for the Vancouver**  
8 **Energy terminal project?**

9 A. I do recall that testimony. In that testimony,  
10 Mr. Goodman was indicating that the low-price  
11 environment that we're in right now obviously --  
12 basically takes away the need for that type of facility.  
13 I had two thoughts about that. One, we're already  
14 seeing a recovery of crude oil prices. We were back up  
15 to \$50 on Brent basis last week. That's almost a  
16 50 percent increase over the lows that were experienced,  
17 and the projections have been, from a variety of  
18 reputable sources that I had looked to, that crude oil  
19 prices will continue to escalate over the next couple of  
20 years. Obviously, there's ups and downs but the  
21 direction is back up. So by that logic if I applied  
22 that logic, and as crude prices come back up, as they  
23 are expected to do when you apply that logic, then the  
24 facility would be needed.

25 But secondly, I would turn just to the whole

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1 subject of crude oil price and --

2 MR. DERR: There's Exhibit 272, which was  
3 not attached to the prefiled, so we'll start with  
4 foundation.

5 BY MR. DERR:

6 **Q. So don't talk about what's in there until we**  
7 **establish the foundation for it.**

8 A. The foundation -- the basis of this chart, which  
9 somewhat looks like a spaghetti bowl, is from the --  
10 from the same source as my prior graph, which was the  
11 information -- the Energy Information Administration of  
12 the DOE. This is their annual energy outlook with data  
13 provided by them, and then using their actual shown  
14 prices also from that. So this is based upon data  
15 that's taken directly from the AEO of the EIA.

16 **Q. And could you just -- did you prepare these**  
17 **figures, or did these come off their site?**

18 A. I took their data. It was rigorous to get that.  
19 Yes, we took their data and graphed it at this point.

20 MR. DERR: Thank you. I would like to offer  
21 the exhibit for admission.

22 JUDGE NOBLE: Exhibit 272 has been offered  
23 for admission. Is there any opposition to that exhibit?  
24 It will be admitted. There's no opposition.

25 MR. DERR: Thank you.

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1 BY MR. DERR:

2 Q. Now, I'm going to ask you to interpret, since  
3 once again we can't read the -- at least I can't read  
4 the labels. Can you just briefly describe, what do the  
5 various colors represent and what's the dark black line?  
6 And we'll start with the top figure, if we can, first.

7 A. I'll make comments about the top figure that  
8 will be applicable to the bottom figure. But the top  
9 figure, each colored line represents the forecast that  
10 was made by the EIA in the year that it starts from the  
11 left side and their outlook of what the price was going  
12 to be into the future. So each year is a forecast of  
13 expected prices over the next 20-some-odd years.

14 The black line shows what the price has actually  
15 done over that period. And you can see how well, in  
16 quotes, it has matched expectations, i.e., the price has  
17 been notoriously volatile and hard to predict.

18 Q. So as someone whose job it is to keep an eye on  
19 price, to tell your employer what you think is going to  
20 happen and how they should anticipate that, does that  
21 top figure give you a reliable source of information to  
22 do your work?

23 A. I was fixing to say, it gives me heartburn, but  
24 it is a -- it is a volatile signal to be basing  
25 decisions on. And that's contrasted with the chart

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1 below, which is, again, from the same data sources but  
2 is focused upon the fundamentals of the market or the  
3 volume. And in this case it's demand. So the EIA did  
4 the same analysis, they do the same forecast for demand  
5 by year and then progressively move forward and each  
6 year is a different forecast. The black line in that  
7 graph is what demand has actually done. And by  
8 comparison, it is much more well-behaved, so to speak,  
9 and has less error involved in it and it becomes a much  
10 more stable basis for establishing projects than  
11 strictly looking at price.

12 **Q. Thank you. So when you look at those two**  
13 **exhibits together, 271 and 272, what is your response to**  
14 **Mr. Goodman's argument there is no need for Vancouver**  
15 **Energy terminal based on current or even expected price**  
16 **of crude oil?**

17 A. Well, price -- price will continue to be  
18 volatile. It is probably setting up to be more volatile  
19 in the future and, as such, becomes a very difficult  
20 basis to use as a key determinant for a project like  
21 this; whereas fundamentals provide a much more stable  
22 basis for establishing the project.

23 **Q. Thank you.**

24 MR. DERR: If you could put back up 271,  
25 which has already been admitted.

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1 BY MR. DERR:

2 Q. Mr. Roach, I'm going to put up Exhibit 271, but  
3 do you recall Mr. Goodman's suggestion in his prefiled  
4 testimony, there is more than adequate supply of oil for  
5 PADD 5 refineries given the recent decline in the price  
6 of crude?

7 A. Yes, I do. I do recollect that.

8 Q. And once we get it up, I'm going to ask you  
9 based on that figure if you could again explain what  
10 your response to that statement is.

11 MR. DERR: I'm sorry, 271.

12 MS. MASTRO: I'm waiting. I'm waiting on  
13 the computer, not you.

14 MR. DERR: Can I ask another sort of  
15 protocol question, now that we're learning with our  
16 first witness the experience. Would it be helpful going  
17 forward to try to have hard copies, at least for the  
18 witness, of the exhibits --

19 JUDGE NOBLE: Yes.

20 MR. DERR: -- so he can start even if we  
21 wait for the screen?

22 JUDGE NOBLE: That would be helpful.

23 MR. DERR: Okay. So I think what we'll --  
24 we'll do our best to try to do that. And do you want  
25 copies additionally for the council, or do they have

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1 access to it electronically on their computers?

2 JUDGE NOBLE: I think they have access  
3 electronically. I don't know whether there's a problem.  
4 We'll check at a break and then let's see from there.

5 MR. DERR: We'll try. I'm not sure we have  
6 all those printed for our next witness, but we'll try to  
7 accommodate that. If it's not working, we'll just go  
8 ahead.

9 THE WITNESS: I could voice to it.

10 BY MR. DERR:

11 **Q. Why don't you voice to it. This is the one that**  
12 **showed --**

13 A. This is the one that had the inventory levels by  
14 PADD. And the point, again, being that even in this  
15 low-price environment, when refiners and energy oil  
16 companies are storing inventory to be used, the PADD 5  
17 refiners don't get that benefit because they're not  
18 connected to the rest of that infrastructure. And as  
19 such, that impact of that glut is not something that's  
20 accruing to the West Coast refiners without a facility  
21 like this terminal that would then allow them to access  
22 that oil and bring it into the system.

23 **Q. Thank you.**

24 MR. DERR: And if I might just briefly  
25 describe, that's the exhibit that had the PADD 5 orange

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1 bar on the bottom and various other PADDs with different  
2 colors. There it is. Bingo.

3 BY MR. DERR:

4 Q. So is that -- is that the one you were thinking  
5 of when you made your comment?

6 A. Yes, that is the one that I was thinking of.

7 Q. Very good. Thank you. So, Mr. Roach, you just  
8 described sort of what happens with predicting --

9 JUDGE NOBLE: Excuse me. May I interrupt  
10 you. Councilman Rossman has a question, I think, and he  
11 wants to interrupt.

12 MR. ROSSMAN: Yeah, I think it is just a  
13 clarifying question on this image. It appears to me and  
14 I know it's a little blurry on the screen, but I have a  
15 high-resolution copy I'm looking at. And it appears at  
16 the very right-hand side of the chart there appears to  
17 be a sharp downward spike and what's apparently showing  
18 is the stock level in PADD 5. If you look, the blue and  
19 purple lines descend quite sharply right at the end of  
20 that graph.

21 THE WITNESS: I think that's --

22 MR. ROSSMAN: I'm wondering if that's  
23 accurate or some sort of artifact of the data.

24 THE WITNESS: I think that that means that  
25 this graph went to one more month, that it had zeros.

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1 So everything is dying to zero there.

2 MR. ROSSMAN: Okay.

3 THE WITNESS: So it should truncate one  
4 month earlier to clean that up.

5 MR. ROSSMAN: Okay. Thank you.

6 BY MR. DERR:

7 Q. So you've just described sort of the ability to  
8 anticipate price, and you've described in your testimony  
9 information about anticipating volumes. Was your  
10 testimony regarding the purpose and expected market  
11 needs for the Vancouver Energy terminal based on  
12 information regarding crude price trends or crude  
13 supply-and-demand volume trends?

14 A. Whereas we obviously monitor price and we can do  
15 a lot with that, the underlying basis for the work that  
16 we do, and this is the guidance I give my analysts and I  
17 follow myself, we base these things on fundamentals and  
18 that is supply and demand. That is the bedrock for then  
19 what shows up, almost like a barometer. Price is almost  
20 a barometer of what's happening underneath it and it  
21 reflects those changes, but at the fundamental level,  
22 the most predictable and the most stable signals that  
23 allow for project planning are the supply-and-demand  
24 fundamentals which are volume related.

25 Q. Thank. Switching gears. Have you also reviewed

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1 the prefiled testimony of Mr. Jerry Johnson?

2 A. I did.

3 JUDGE NOBLE: Before you start, Mr. Roach,  
4 you're speeding up again.

5 THE WITNESS: I will slow down.

6 MR. DERR: We're getting to the end, I  
7 promise.

8 THE WITNESS: Can I use my Texas drawl?

9 JUDGE NOBLE: Wonderful.

10 BY MR. DERR:

11 Q. So I believe you answered the question yes; is  
12 that correct?

13 A. I did, yes.

14 Q. I would like to just ask a couple of questions.  
15 About the section of this testimony that was titled  
16 "Long-Term Impacts and Uncertainty," that, for council's  
17 benefit, begin on page 12 of the Jerry Johnson --  
18 there's at least two or three Johnson witnesses. So  
19 this is the Jerry Johnson prefiled testimony.

20 At paragraph 28 of Johnson's prefiled, he states  
21 in part, and I quote, "There is considerable risk that  
22 future pipeline improvements will substantially reduce  
23 the need for rail transportation of crude oil reducing  
24 the use of the project."

25 What is your response to that statement?

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1           A.     I don't know what pipelines Mr. Johnson is  
2 referring to. We have no pipelines that are planned --  
3 that I know of, that are planned in the domestic market  
4 region from the US that might supply those. There have  
5 been proposals, but none of them had any traction.  
6 There are projects that are ongoing up in Canada, but  
7 all those are being litigated and as such the planning  
8 bases are very hard to include in our future planning.  
9 So at this point, I don't know of how pipelines would  
10 alleviate this situation.

11           **Q.     Paragraph 29 of Mr. Johnson's prefiled, he**  
12 **discusses crude price and its impact on production and**  
13 **demand. What is your response to Mr. Johnson's opinions**  
14 **in that paragraph?**

15           A.     I would simply repeat more or less the  
16 discussion that we just had referring to price. I think  
17 in that paragraph, Mr. Johnson opined that he thought  
18 crude prices were going to stay low. Of course, "low"  
19 is a relative term, but the upper trajectory that we  
20 have seen since those filings is indicative that prices  
21 are recovering. Expectations are for them to recover  
22 even more. So that's a lonely camp to be in. But for  
23 all the discussion that we just had about price, I would  
24 give indication that price is not the best indicator of  
25 the need.

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1           **Q. Referring the council to paragraphs 56 through**  
2 **64 of Mr. Johnson's prefiled, do you recall his**  
3 **statements regarding the potential effect on retail**  
4 **prices at the pump?**

5           A. I do. That's a -- I'll give two perspectives on  
6 that. And the impact -- this project is in the supply  
7 chain of oil. As such, it's not the overriding factor  
8 in that supply chain that determines cost. The  
9 overriding factor in that supply chain is the price of  
10 crude oil. And obviously, crude oil -- I mean, gasoline  
11 prices that we pay at the pump track with the price of  
12 crude.

13           So it would be difficult for me to say that a  
14 consumer would see a benefit, that they would notice a  
15 benefit because there's a much bigger dynamic occurring  
16 with crude oil prices that could mask any benefit,  
17 either way. And so to say that the consumer would see  
18 it and recognize it, that would be a challenge.

19           Do I believe that the consumer will benefit?  
20 Inasmuch as refiners are able to acquire economic crude  
21 from alternative sources reflecting their need for  
22 specific qualities that's available to them, either from  
23 the mid-con or other regions that could come in by the  
24 rail, inasmuch as we operate in a very competitive  
25 refining environment, through competition, those

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1 benefits will get transmitted to that supply -- through  
2 that supply chain and can benefit the consumer. That's  
3 the nature of -- the competitive nature of our refining  
4 business.

5 So I can't say that that's a -- that it's going  
6 to be dynamic enough that in a volatile crude oil, that  
7 a consumer will go, oh, wow, I have better prices  
8 because of that project, because there are just much  
9 bigger levers occurring in that supply chain. But  
10 directionally, through the competitive environment that  
11 we have in our refining system, the consumers will see  
12 some benefit to that type of a facility.

13 **Q. So I want to take you back to statements**  
14 **earlier. So you can't say for sure it will show up at**  
15 **the pump. Tell me again why you think this project**  
16 **benefits the transportation fuel needs of the citizens**  
17 **of the state of Washington and of the West Coast in**  
18 **general.**

19 A. It basically provides the flexibility as a cost  
20 benefit; the flexibility of refiners to access crude  
21 from much more attractive areas with quality that can  
22 meet some of their specific needs to allow them to  
23 optimize their refineries and to operate at the most  
24 cost-effective level. Again, through the competitive  
25 nature of our business, those benefits tend to get

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1 competed all the way to the retail level and the  
2 consumers see a benefit from that.

3 Q. Thank you. Mr. Roach, just kind of in summary,  
4 is there -- now that you've reviewed the prefiled  
5 testimony of Mr. Goodman and Mr. Jerry Johnson, is there  
6 anything in that testimony that's caused you to change  
7 your opinions as stated in your prefiled testimony and  
8 as further described in your testimony today at this  
9 hearing?

10 A. No, it hasn't. This project has a -- has a  
11 project life of 20 years. And it's obviously a  
12 challenge to look forward 20 years and see what's going  
13 to happen in that 20 years. But one of the best ways to  
14 do that is to look over the last 20 years and just to  
15 review what's happened in the marketplace over the last  
16 20 years. And those same types -- I can't say the same  
17 events, but those same types of events are going to  
18 continue to happen. We've seen geopolitical tensions.  
19 We've seen Russian aggression. We've seen specification  
20 changes, we've seen rapid economic growth in some  
21 regions of the world. We've seen severe recessions in  
22 other parts. We've seen the government mandate fuels  
23 that we have to use. We've seen the government lift --  
24 quickly lift bans that have been in place for many  
25 years. We've seen hurricanes. We've seen earthquakes

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1 and tidal waves. We've seen a variety of things. All  
2 of those -- all that listing I just had, all those  
3 things impact the price of crude and the economics of  
4 crude and the availability of running crude.

5 But we have also seen that what has not changed  
6 so much over that time span has been a continuing  
7 decline of the crude oil that exists to supply this  
8 region from the region itself. That is declining. And  
9 as it declines and as it declines further, that's going  
10 to force us to go further and more frequently to areas  
11 of the world to get that crude that are going to be  
12 subject to that litany of things I just described.

13 The Vancouver Energy terminal allows us, instead  
14 of that, to access crude from a different part of the  
15 world, our own country, with a quality that in some  
16 cases can be very beneficial and the volume that would  
17 readily supply it. So as such, this project has an  
18 important part for the next 20 years of energy supplied  
19 to this region.

20 **Q. Thank you, Mr. Roach.**

21 MR. DERR: I have no further questions.

22 JUDGE NOBLE: Thank you. It's time for  
23 council questions now. Does the council have any  
24 questions of this witness?

25 MR. STONE: Yes, I do.

1 JUDGE NOBLE: Thank you, Mr. Stone.

2 MR. STONE: Good morning, Mr. Roach. If I  
3 understand your prefiled testimony correctly, you  
4 testified that of the fuel produced by US West Coast  
5 refineries, two-thirds of that fuel is consumed by the  
6 state of California. So of that total amount of fuel  
7 produced by US West Coast refineries, how much is  
8 consumed by the state of Washington?

9 THE WITNESS: Let me do some math in my  
10 head. About 15 percent.

11 MR. STONE: So 15 percent of the total fuel  
12 produced by West Coast refineries is consumed in the  
13 state of Washington?

14 THE WITNESS: Hold on. I'm going to make it  
15 10 percent because I oftentimes combine Oregon and  
16 Washington because of the pioneer -- because of the  
17 Olympic Pipeline that they supply.

18 MR. STONE: Okay. So your answer is  
19 10 percent?

20 THE WITNESS: 10 percent.

21 MR. STONE: Okay. Thank you.

22 JUDGE NOBLE: Mr. Snodgrass?

23 MR. SNODGRASS: Good morning. I had a  
24 couple of additional questions on a similar line. You  
25 had mentioned in your prefiled testimony towards the

1 end, that the purpose of the project, and I'm  
2 paraphrasing here, is to meet or in some way relate to  
3 Tesoro refining capacity. So is it the case that for  
4 this project, all or a large -- what percentage of oil  
5 that this project might handle would go to any of the  
6 Tesoro refineries versus elsewhere?

7 THE WITNESS: The only -- the only point  
8 that I'm familiar with is that we have a commitment for  
9 60,000 barrels a day, which is one-sixth or roughly  
10 17 percent of that. That's the only commitment that I  
11 know that we have at this time for the facility.

12 MR. SNODGRASS: Okay.

13 MR. MOSS: Can I follow up on that?

14 JUDGE NOBLE: Yes.

15 Was that it, Mr. Snodgrass?

16 MR. SNODGRASS: Yes.

17 JUDGE NOBLE: Mr. Moss?

18 MR. MOSS: So where does the rest of it go?

19 THE WITNESS: The rest of it is commercially  
20 available for other subscribers who could come in and  
21 use the facility to supply their refineries.

22 MR. MOSS: Would that include overseas  
23 refiners?

24 THE WITNESS: The project was conceived  
25 prior to the lifting of the export ban. I did not count

1 on the lifting of the export ban at all. Thank you for  
2 making my point, but there are things that change the  
3 crude markets markedly and this being one of them. So  
4 this project was not originally conceived with any  
5 intent to export because the export ban was in place.

6 Subsequently, I think the court -- or the  
7 lease for the facility precludes exports, so at this  
8 point, no, the way the project is configured and as it  
9 stands today would not export to foreign lands. So it  
10 would be predominantly to other PADD 5 refiners.

11 MR. MOSS: I want to be sure I understand  
12 that. You're telling me that the contract that Tesoro  
13 or perhaps Tesoro and Savage, the contract they have  
14 with the Port of Vancouver precludes them from shipping  
15 any of this oil overseas? Is what you said?

16 THE WITNESS: That's my understanding.

17 MR. MOSS: Now, of course, that's a contract  
18 so that could change. That's a question. Narrative  
19 form of a question.

20 THE WITNESS: Yes. And I would be remiss to  
21 say if I knew all the details of that contract. But as  
22 it stands as I understand, the lease precludes that  
23 movement. And, again, we didn't put the basis together  
24 with exporting in mind because at that time the  
25 government said -- so now the government's saying it's

1     okay.  And that actually thinks there's benefit to  
2     refiners to do so.  But our basis was not for that to  
3     happen.

4                     MR. MOSS:  Well, the reason I'm asking, you  
5     talked a lot about fundamentals and I would have to  
6     think that the ability of US producers to ship oil  
7     overseas would affect the fundamentals of what is  
8     essentially an international market.  Am I right about  
9     that?

10                    THE WITNESS:  It does.

11                    MR. MOSS:  Okay.  So it is a factor that's  
12     important in the context of the testimony you've given  
13     today?

14                    THE WITNESS:  It is.  And I'm not -- I'm not  
15     sure exactly the best way to approach that, but the  
16     exports of crude that we see, there are some occurring,  
17     but they're typically down in the Gulf Coast region.  
18     And oddly enough, that's the region that created -- the  
19     crude that emanates in the Gulf Coast feeds those Gulf  
20     Coast refiners, which made things like the Bakken  
21     somewhat challenged to get to the Gulf Coast.  So now  
22     they're exporting that and it opens up the door.  It's a  
23     complex picture, but to your point, it does address the  
24     fundamentals of the market.  It is definitely a market  
25     change.

1 MR. MOSS: Are there pipelines running from  
2 the Gulf Coast into the Bakken fields today?

3 THE WITNESS: There are pipelines on the  
4 books, and there are pipelines that go from the  
5 Bakken -- smaller and smaller pipelines that do go from  
6 the Bakken that -- not a single pipeline, but knit  
7 together that can take barrels down to the Gulf Coast.

8 MR. MOSS: So international purchasers could  
9 access the Bakken crude through that?

10 THE WITNESS: Theoretically, yes.

11 MR. MOSS: And similarly, isn't it the case  
12 or is it the case -- I was struck by the fact that when  
13 you showed the map of the sources of West Coast  
14 refineries as far away as West Africa, various foreign  
15 sources, South America, Alaska and so forth, but I  
16 didn't see anything coming out of the Gulf of Mexico  
17 around the Panama Canal and around the tip of South  
18 America, and I was curious about that. Why don't we see  
19 that? Is it not cost-effective or is it fiscally  
20 prohibited because of the size of the canal?

21 THE WITNESS: No, it's your first point.  
22 It's not cost-effective because, to make that movement  
23 requires a Jones Act ship to make that and those are  
24 very, very costly.

25 MR. MOSS: Jones Act ship being what?

1           THE WITNESS: A Jones Act ship is the  
2 requirement that the government has -- there's a  
3 requirement that's in place in the US where any shipment  
4 between ports in the US, originating in the US port --  
5 US port and ending at a US port requires a vessel made  
6 in America and crewed by American crews, and those have  
7 a much higher cost to them. And as such, since it's  
8 required to have a Jones Act movement to do exactly what  
9 you say, it's very cost-prohibitive and it's a -- it  
10 makes foreign cargoes -- oddly enough, makes them more  
11 attractive.

12           MR. MOSS: Yeah, it's interesting to me.  
13 It's apparently cheaper to get oil from as far as West  
14 Africa than it would be from the Gulf of Mexico.

15           THE WITNESS: "Interesting" is one word to  
16 use for it.

17           MR. MOSS: Well, I suppose there would be  
18 cheap labor available to those too, the Jones Act ship.

19           THE WITNESS: I don't -- I can't speak to  
20 that.

21           MR. MOSS: I'm just speculating.

22           THE WITNESS: I can't speak to that, but  
23 that's the mechanism -- particular point, that's the  
24 mechanism that precludes that type of movement.

25           MR. MOSS: All right. I think that's all I

1 had for you, Mr. Roach. I appreciate it.

2 JUDGE NOBLE: Council members need to  
3 remember the court reporter needs to hear them as well.  
4 So you're speaking fast too, Mr. Moss.

5 MR. MOSS: Guilty as charged.

6 JUDGE NOBLE: Any other council questions?  
7 Mr. Rossman?

8 MR. ROSSMAN: Yes, thank you. I see in your  
9 testimony reference to projections of energy demand  
10 prepared by the California government. I'm wondering if  
11 you're familiar with projections of demand prepared by  
12 Washington state government, including my department?

13 THE WITNESS: I'm trying to think of that.  
14 It's very possible. I've seen many. I can't think of  
15 specifically a reference right off the top of my head.  
16 I would be happy to get it, let me put it that way.

17 MR. ROSSMAN: So you wouldn't be familiar  
18 with any differences between those projections and these  
19 projections, including whether Washington projections  
20 also share the projection of a future increase in  
21 demand?

22 THE WITNESS: I'm not familiar with it.  
23 We -- with California -- not to diminish Washington at  
24 all or any other states in the PADD, when California is  
25 two-thirds of the PADD, typically their projection, and

1 as is indicative of the economic activity of the rest of  
2 the PADD and the interrelated nature of that PADD 5  
3 economy, we tend to apply that type of thing across the  
4 rest of the PADD in our -- in the models that we use.

5 MR. ROSSMAN: So you're speculating whether  
6 the demand in Washington is projected to stay stable or  
7 increase? Your models are based on the PADD as a whole?

8 THE WITNESS: The PADD as a whole.

9 MR. ROSSMAN: So your testimony here is  
10 based on those models and not on information specific to  
11 Washington?

12 THE WITNESS: If I -- in that regard, I  
13 would say if I had projections specific to Washington, I  
14 would give consideration to them, but they're not in  
15 this current model.

16 MR. ROSSMAN: Okay.

17 THE WITNESS: But I -- yes, I'll just leave  
18 it at that.

19 MR. ROSSMAN: In response to a fellow  
20 council member's question, I think you said that Tesoro  
21 has a commitment to 60,000 barrels a day of the  
22 terminal's capacity.

23 THE WITNESS: That's my understanding.

24 MR. ROSSMAN: Is that source -- is that  
25 commitment source for a particular refinery of Tesoro's?

1 Is that going to be Anacortes' refinery?

2 THE WITNESS: That would be to the most  
3 economical placement of those barrels amongst the  
4 refineries that we can feed off the --

5 (Simultaneous discussion interrupted by  
6 reporter.)

7 JUDGE NOBLE: Mr. Rossman, I think the court  
8 reporter is struggling to keep up with you.

9 MR. ROSSMAN: Sorry.

10 THE WITNESS: It could be Alaska, it could  
11 be Anacortes, it could be Martin or it could be Los  
12 Angeles, where the optimizers would choose for the  
13 placement of that barrel.

14 MR. ROSSMAN: Thank you. And then I believe  
15 in your testimony I heard -- or your response to a  
16 council member's question, I heard reference to an  
17 Olympic Pipeline; is that right?

18 THE WITNESS: Yes.

19 MR. ROSSMAN: And I didn't see that on the  
20 exhibit showing pipelines. So can you tell me what that  
21 pipeline is.

22 THE WITNESS: I appreciate you bringing that  
23 up. And I probably should have made sure that the  
24 recognition of the pipelines that were shown on that cap  
25 map were crude oil. Those are just crude oil pipelines.

1 There's another whole set of pipelines that exist that  
2 carry refined products, like the Olympic Pipeline, but  
3 those weren't shown on that map. That was just a map  
4 showing the connectivity on the supply side of crude oil  
5 to the refineries.

6 And to your point, I mean, that's where  
7 there are many other pipelines that handle the light  
8 products and connect this market to other regions of the  
9 country.

10 MR. ROSSMAN: Okay. Thank you. And then  
11 I'm wondering in terms of sort of the disposition of the  
12 oil that's refined at Washington refineries, do you know  
13 how much of that is consumed in the state of Washington?

14 THE WITNESS: It's -- to speak to that, I  
15 need to kind of speak to the products that come out of a  
16 refinery. Okay. You bring crude oil into a refinery  
17 and it is used to produce predominantly gasoline. And  
18 it also produces diesel, but there's other products too.  
19 So when you say what's the balance of refined products  
20 into or out of the refinery, it's a little bit of a  
21 misnomer in that we tend to balance on the key product  
22 that's made and that would be more towards the gasoline  
23 type of product, and let the other ones that are of  
24 lesser value balance out as need be. So you might have  
25 fuel oil that leaves -- which is a very low-value

1 product, that leaves the state and would show up as an  
2 export, but it's not the key product which we would  
3 particularly balance on, which would be more toward the  
4 gasoline type or the distillate type. In that regards,  
5 I would speak more towards the gasoline balance, and in  
6 that regard -- and it's interesting, because Washington  
7 has an interesting configuration.

8           The refineries -- again, also have to talk  
9 about -- slowing down. We also have to delineate the  
10 time that we're talking about. If we're talking about  
11 the depths of a recession where demand is down, you're  
12 going to get a different picture than in the robust,  
13 bustling economy when the economy's really humming on  
14 all eight cylinders, right. So sometimes it's a little  
15 hard to talk about, unless we define the time frame  
16 we're talking about.

17           Now, I'm talking about today, but recognize  
18 that today we're in a growing situation where the  
19 economy is coming back in demand. We've seen huge  
20 demands. Huge -- by our metrics, very large increases  
21 in demand this year for transportation fuels, gasoline  
22 in particular. Two, 3 percent jumps year on year. So  
23 we're seeing the economy come back and consuming more  
24 and more of that gasoline in the state. That changes  
25 the balance.

1           So the refineries, I have to think about  
2 this with Oregon and Washington somewhat tied together  
3 because this is a key supply to Oregon. That's about  
4 100,000 barrels a day of supply down there. The state  
5 produces a good amount of gasoline, but it doesn't send  
6 any of that gasoline to the East Coast -- to the east --  
7 not coast -- to the east half of the state. Those  
8 counties over on the eastern part of Washington don't  
9 get the benefit -- or don't get the gasoline from the  
10 Pacific Northwest refiners. They actually import  
11 gasoline from Montana and from Utah. And so even though  
12 we make enough to supply the state, we're having to  
13 import it because the infrastructure -- which is what  
14 this type project is about, the infrastructure does not  
15 exist to use the gasoline that you're producing on the  
16 western side of the state for the eastern side of the  
17 state. That's the lack of infrastructure. And that's  
18 what this -- these types of projects are about. So I  
19 appreciate you bringing that up.

20           But that creates then a seeming imbalance  
21 because now you're bringing in 25 to 30,000 barrels a  
22 day into the eastern part of the state when you are  
23 making enough. So now you're excessing 25 to 30,000  
24 barrels a day and it looks like a net export, but on the  
25 whole, you're relatively balanced. That's just kind of

1 a broad brush overview, and, again, that's in today's  
2 environment. You need to have available capacity to  
3 accommodate increased economic growth. So as your  
4 economy grows more, then you export less and less and  
5 you become closer to balance on that.

6 That's -- I'm talking about gasoline at that  
7 point because that's the prime mover in a refinery in  
8 the US. The other products which tend to show up as --  
9 oh, as exports or something like that, are lesser valued  
10 and are not so routinely calculated into the mix of what  
11 we balance on. If that makes sense to you.

12 MR. ROSSMAN: There was a lot there, I  
13 guess. So on a net basis -- am I correct in inferring  
14 from that, that on a net basis, Washington may be an  
15 exporter of refined gas but there are regions of  
16 Washington that import refined gas?

17 THE WITNESS: It's closer to balance, but  
18 the way the fundamentals are working, since you're  
19 importing a fair amount into the eastern part of the  
20 state, it shifts that balance to look like an export.  
21 But it's more of a balancing function. That volume  
22 typically is utilized in other parts of the PADD.

23 MR. ROSSMAN: Okay. Thank you.

24 JUDGE NOBLE: Are there any other council  
25 questions?

1 MR. SHAFER: I have a question.

2 JUDGE NOBLE: Mr. Shafer.

3 MR. SHAFER: Mr. Roach, could you help us  
4 with the magnitude of the project? And what I mean by  
5 that and not to overgeneralize, but if you look at all  
6 the petroleum activity in PADD 5 that's with this  
7 project, what proportionate share would this contribute  
8 to that? What difference does it make? Is it  
9 1 percent? Is it 5 percent? Is it 10 percent? Is it  
10 50 percent? Kind of help us with the proportionate  
11 share of the impact of the project.

12 THE WITNESS: The project has a size, a  
13 capacity, a stated capacity of 360,000 barrels a day.  
14 The functional use of that is going to be somewhat a  
15 little different. Functionally maybe 330 to 360, even  
16 at capacity if running at full based upon the  
17 fluctuation of the schedules.

18 The overall demand for crude oil in PADD 5  
19 is roughly 3 million barrels a day, so 10 percent  
20 roughly of crude volume. The economic impact of that --  
21 and this goes back to the impact to the consumer, the  
22 economic impact of that can be interesting in that if  
23 you're able to bring in 300,000 barrels a day of US  
24 crude and displace 300,000 barrels a day of foreign  
25 crudes, that has a pronounced impact on the pricing

1 mechanisms that those countries have to price crude and  
2 as such can be -- can lead to some reduction in crude  
3 costs that then do translate through to the economy and  
4 benefit the consumer. I don't know if I answered your  
5 question.

6 MR. SHAFER: Thank you.

7 JUDGE NOBLE: Any other council questions?

8 Yes, Mr. Snodgrass.

9 MR. SNODGRASS: Just a follow-up question  
10 related to Councilman Rossman's questions.

11 Today, as best you can estimate, what  
12 percentage of gas consumed in -- or get gasoline at the  
13 pump consumed in western Washington was refined in  
14 Washington; and then the same question today for eastern  
15 Washington, what percentage of that was refined in  
16 Washington?

17 THE WITNESS: For the western side, all of  
18 the gasoline that is consumed would be -- have been  
19 refined in Washington with -- I'm getting a little  
20 technical here. There might be a little bit at the  
21 border, you know, that little thing up there near the  
22 Vancouver border, but those show up in the stats and so  
23 it's interesting to note that sometimes at the border  
24 you get a little bleed over from Canada both ways that  
25 sometimes shows up in stats.

1           But otherwise, essentially, the western part  
2 of the state would be fed by supply from Washington  
3 refiners, as best I know it; whereas the eastern side,  
4 you do get an occasional barge up the Columbia that goes  
5 up through Pasco, but you have a pipeline coming from  
6 Utah that goes into that area and you have a pipeline  
7 from the Montana refiners that comes into Spokane and  
8 provides volume over there. So predominantly -- it's my  
9 understanding, the eastern side of the state is  
10 predominantly supplied by PADD 4.

11           MR. SNODGRASS: And just one unrelated  
12 question, back to the historical and I guess projected  
13 future decline of supply from Alaska and California. I  
14 was struck, looking at the last exhibit in our packet,  
15 it looks like it's 146 on EIA outlook shale production,  
16 so it sort of brought up a couple questions for me. One  
17 is obviously shale production is -- you need a supply  
18 source, but it seems very price sensitive, that in a  
19 high-price oil environment, the production of that  
20 supply increases, and in a lower one, it doesn't.

21           And the two questions it raised, one is  
22 recognizing it's a different supply environment and  
23 nonetheless, how does the future price of flow impact  
24 the supply we're likely to see from Alaska and  
25 California? I think that's just a general question on

1 sourcing. Is there an EIA estimate or perhaps an Alaska  
2 Department of Energy or the California equivalent for  
3 what their production will be in the life of this  
4 project?

5 THE WITNESS: I'm going to -- I'll answer  
6 the last -- you're asking if the EIA has an outlook for  
7 production of the shale crudes or for the Alaskan  
8 crudes?

9 MR. SNODGRASS: Not necessarily just for  
10 shale, but just for production of -- because I think  
11 that's one of the points you -- that's been made, was  
12 there a decline in the supply of crude from Alaska and  
13 California. And that's been the recent history and it's  
14 projected to continue, and I just wonder if that's sort  
15 of an official federal estimate of that or what the  
16 state-level energy department estimates of that were.  
17 That was the second question.

18 THE WITNESS: I would say that there are  
19 several outlooks for ANS production. And that's one of  
20 the challenges that we in my group are faced with, is  
21 which one do we give credence to. And we've seen a  
22 variety of forecasts. The one that we think is -- has  
23 the most credence is the one that was done by the state  
24 because they don't have shareholders, they don't have  
25 their -- shareholders in the traditional sense that

1 they're owing to or anything like that, and we believe  
2 that that gave a very good representation. We  
3 understand it to be a -- you know, a very detailed  
4 assessment of the production. Obviously, they have a  
5 keen interest in the production that's going on in their  
6 state and as such we have -- and that's the -- that's  
7 the outlook that I use for our balances in the work that  
8 we do, is the one that was done by the Alaskan taxing  
9 authority.

10 Now, your first question -- the first part  
11 of your question you might have to refresh me on that  
12 one.

13 MR. SNODGRASS: Well, it was just to what  
14 extent is the likely future crude feed stock coming from  
15 Alaska and California price sensitive in terms of what  
16 the impact is on supply.

17 THE WITNESS: I would refer to the stats  
18 that I was quoting there for 2015 -- from 2010 to 2015,  
19 how we saw in a very high-price environment and in a  
20 low-price environment that we've seen in those years.  
21 We have seen dramatic impacts on these other regions,  
22 while at the same time PADD 5, the Alaskan and  
23 California, continued a decline. It looks like it's  
24 changing, but that's actually a little bit of the change  
25 of just the normal decline curve of a crude field. But

1 what we've seen is Shell taking large capital  
2 investments away from that region and others that we  
3 understand -- I understand are re-evaluating the amount  
4 of capital they can put into those fields to keep them  
5 productive.

6 So in this environment we would expect the  
7 decline to continue. And since it takes so long for  
8 capital investment to show up, we would expect that  
9 decline to continue until -- until well after we see  
10 capital being invested to try and get the production  
11 back up. So we're not seeing that, so even that's  
12 getting delayed further down the line.

13 MR. SNODGRASS: Thank you.

14 JUDGE NOBLE: One more question,  
15 Mr. Rossman.

16 MR. ROSSMAN: Yeah, just a brief follow-up  
17 question on benefits. So my understanding is that your  
18 testimony is the benefit of this project will be  
19 approximately that it will sort of increase flexibility  
20 for West Coast refineries and that benefit will make it  
21 down to the consumer level. Would there be a benefit to  
22 eastern Washingtonians if their refined oil is supplied  
23 from PADD 4?

24 THE WITNESS: That would be -- basically  
25 what I would indicate on that would be -- my assumption

1 would be that the prices that are occurring within the  
2 state are keying off of the P&W marker, which would be a  
3 posted price in the Seattle-type area that is -- by the  
4 price discovery services, like Platts and OPIS and those  
5 things, and that they would be evaluating their pricing  
6 on that marker as there's not a similar-type marker in  
7 those other regions.

8 My assumption, this is an assumption on my  
9 part, is that would tend to translate -- any movement  
10 that you saw in the Seattle/Portland corridor, that type  
11 of price impact would bleed over into the eastern part  
12 of the state.

13 I would have to dig deeper on that to  
14 validate that. But that's my -- that's my presumption,  
15 because of the strength of the marker in the western  
16 half of the state and the commerce that -- and the  
17 transport that happens between them.

18 JUDGE NOBLE: Are there any other council  
19 questions? Let me observe that it's now 11:35. And I'm  
20 looking at a court reporter that has been working really  
21 hard, and so I'm suggesting to the parties that we stop  
22 for lunch a little early before the cross-examination  
23 takes place. This is a good time to break. Do I hear  
24 any objections to that?

25 All right. I think that's a better idea

1 than to try to take brief break and proceed on for  
2 15 minutes. We'll be in recess for one hour until,  
3 let's say, quarter of 1. Thank you.

4 (Recess taken from 11:38 a.m. to 12:47 p.m.)

5 JUDGE NOBLE: We are back on the record, and  
6 we had one council member who's not present, will be  
7 momentarily, but it is a good reminder that I want  
8 everyone to know that any council member who misses any  
9 part of this hearing will be reading the transcript, and  
10 that probably will not be necessary for any large  
11 periods of time, but that's the case.

12 And I think before we get started with the  
13 testimony and complete this witness' testimony, I would  
14 like to make a ruling on the John Hack testimony.

15 All right. I have read the testimony and  
16 also read the objections to that testimony and the  
17 response to that -- those objections, and I've also  
18 looked at the exhibits in Attachment A, which have also  
19 been given exhibit numbers, and I need those exhibit  
20 numbers.

21 MS. MASTRO: The exhibit numbers for  
22 Mr. Hack?

23 JUDGE NOBLE: Yes.

24 MS. MASTRO: One second.

25 JUDGE NOBLE: While I'm waiting for the

1 exhibit numbers, they were provided both as attachments  
2 to -- got them. They were provided as exhibits to the  
3 prefiled testimony and I have the exhibit numbers now.  
4 The exhibit numbers are 124 TSS and 125 TSS.

5           The objections to the portion of Mr. Hack's  
6 testimony were based on evidence rules 602, 901, 702 and  
7 703 relating to lack of foundation, lack of personal  
8 knowledge, lack of competency and outside the realm of  
9 this witness' expertise. And I do find that this  
10 witness, although very qualified in many other ways, is  
11 not qualified to testify about the contents of his  
12 prefiled testimony on page 12, from line 12 through  
13 line 25. And the reason is that he -- I haven't seen a  
14 CV, I don't think one was admitted in his case, but he  
15 appears not to be an engineer. I think that's been  
16 conceded. He didn't participate in the design of the  
17 cars nor the materials that make up the walls of the  
18 cars that are illustrated in the two exhibits. And he  
19 did not prepare drawings. We have no testimony from the  
20 Union Tank Car Company. And so I think the objections  
21 are well-taken and the testimony will be excised from  
22 his prefiled testimony, which is otherwise admissible.  
23 And at this time I will not be admitting the two  
24 Exhibits 124 and 125 TSS. However, that does not mean  
25 that the sponsoring witness, Tesoro Savage, cannot bring

1 in some other expert to lay a foundation for those two  
2 exhibits, and then at that time I'll consider admitting  
3 those exhibits.

4 Is my ruling clear?

5 MR. JOHNSON: Your Honor, your ruling is  
6 clear. I would ask if we could not have the witness,  
7 when he's due to testify live, lay the foundation to  
8 your satisfaction.

9 I mean, clearly these are models and we have  
10 met every element of the requirements to authenticate a  
11 model under Rule of Evidence 901. And so we would ask  
12 that Mr. Hack be given the opportunity to make a  
13 proffer, potentially outside the presence of the  
14 council, to better lay the foundation, if you will, for  
15 those exhibits.

16 I might add, those exhibits are photographs  
17 of models that Mr. Hack directed to be made. We have  
18 those models present today. You could review them, if  
19 you chose, along with the other parties. It was our  
20 intent that we would introduce the models. Mr. Hack,  
21 based on his extensive knowledge of tank car  
22 construction, tank car types, tank car regulations,  
23 would then describe the models, present them as  
24 demonstrative evidence and we would substitute the  
25 photos attached to his declaration into the record. So

1 we would ask that you reconsider your ruling, Your  
2 Honor.

3 JUDGE NOBLE: Thank you. And I think that  
4 there's some argument that -- from the other side that  
5 is ready. So I'll hear from them before I respond to  
6 what you just said.

7 MS. BRIMMER: Thank you, Your Honor. There  
8 has been ample opportunity for foundation to be laid for  
9 Mr. Hack's testimony. As the Court is aware, there was  
10 some additional submissions in response to our  
11 objections. If foundation was to be laid, we presume it  
12 would have happened then. I think the bottom line is,  
13 is that he did not design or build those and so for him  
14 to say -- he could say, I submitted and asked for them  
15 to be built, but he can't certify that they are made a  
16 certain way or they meet a certain standard.

17 JUDGE NOBLE: And I also believe he can't  
18 answer questions about these exhibits or about the  
19 model. And my ruling was that Mr. Hack is not qualified  
20 to lay a foundation for these exhibits and -- or for the  
21 model that's intended to be brought. There might be  
22 another witness who is and I'm not excluding the  
23 possibility of even telephone testimony, if you could  
24 arrange for that, to establish a foundation, but I am  
25 ruling that Mr. Hack is not qualified based upon what's

BOYLES / ROACH

1 been submitted about his qualifications. So that's the  
2 ruling.

3 MR. JOHNSON: Thank you.

4 JUDGE NOBLE: Other than that, the prefiled  
5 testimony of Mr. John Hack will be now a part of the  
6 council's available prefiled testimony to read.

7 I think we're ready to continue with the  
8 testimony of Mr. Roach. It's time for cross-exam in  
9 addition.

10 MS. BOYLES: Thank you, Judge Noble.

11 CROSS-EXAMINATION

12 BY MS. BOYLES:

13 Q. Mr. Roach, my name is Kristen Boyles and I have  
14 a few questions for you right now.

15 And I will refer from time to time to your  
16 written testimony. So do you have that in front of you,  
17 or would it --

18 A. I don't have it in front of me.

19 Q. As I understand from your testimony, both  
20 prefiled and live, there are essentially no crude oil  
21 pipelines supplying the West Coast from the rest of the  
22 United States; is that correct?

23 A. From crude oil pipelines?

24 Q. Crude oil, yes, sir.

25 A. The only pipeline that I am aware of is not in

BOYLES / ROACH

1 the US and it comes from Canada.

2 Q. And that's what I was going to ask next. And  
3 that one exception is the short pipeline that comes from  
4 British Columbia Trans Mountain Pipeline into northern  
5 California -- I mean northern Washington; is that  
6 correct?

7 A. The spur off the Trans Mountain, correct.

8 Q. And is it true that that pipeline directly  
9 connects to the four refineries in northern Washington?

10 A. It has some degree of connection to those  
11 refineries. I couldn't speak to the schematic directly.  
12 It does supply those refineries.

13 Q. All right. And isn't it correct that the four  
14 refineries in northern Washington have been retrofitted  
15 to be able to handle tar sands and heavy crudes?

16 A. Some of them can handle parts of it, but some of  
17 them are challenged to handle very much volume of  
18 those -- of those crudes.

19 Q. On page 6 of your testimony, you discuss the  
20 refining capacity for certain Tesoro refineries.

21 A. Yes, ma'am.

22 Q. Just for the clarity of the record, is it  
23 correct that the abbreviation MB PD stands for thousand  
24 barrels of crude per day?

25 A. In that document it does. That's a -- that is

BOYLES / ROACH

1 correct.

2 **Q. Has the Tesoro Anacortes refinery already built**  
3 **a crude-by-rail facility?**

4 A. Yes.

5 **Q. Do they receive Bakken or shale crude by train**  
6 **now?**

7 A. We have received it since 2012.

8 **Q. Are there crude-by-rail facilities already built**  
9 **at British Petroleum, Phillips 66 and U.S. Oil**  
10 **refineries in Washington?**

11 A. Yes.

12 **Q. And are they currently receiving Bakken or US**  
13 **shale crude-by-rail now?**

14 A. I don't have that comparative information.

15 **Q. On page 9, paragraph 21 of your testimony, you**  
16 **state that California projections are representative of**  
17 **the entire PADD 5; is that correct?**

18 A. I used that as a proxy for the entire region  
19 because at the time that I wrote -- had done that  
20 modeling, it corresponded to the prefiled; that was the  
21 best available information that I had that impacted --  
22 that reflected the impacts of the growing economy on the  
23 whole PADD.

24 **Q. And similarly, on page 14, which is paragraph 32**  
25 **of your written testimony, you are again using**

**BOYLES / ROACH**

1 California trends to represent the demand in the other  
2 PADD 5 states; is that correct?

3 A. I'm doing that because of the intricately  
4 related economies that this sector -- this PADD 5 has in  
5 general, obviously the mainland, which would be more  
6 interrelated. But because they are economically tied  
7 together, then the impact on California would tend to  
8 affect the other regions similarly.

9 Q. And will this -- I think you may have answered  
10 this to one of the council members, I apologize if it's  
11 a repeat. But will this project supply refineries other  
12 than the four Tesoro refineries that you discussed in  
13 your testimony?

14 A. It is the intent of this facility to be able to  
15 supply other refineries.

16 Q. Is it correct that the Alaskan north slope oil  
17 production started to decline around 1985?

18 A. I would defer to my diagram. I think that's the  
19 approximate year.

20 MS. BOYLES: If Ms. Mastro could bring up  
21 Exhibit 271.

22 BY MS. BOYLES:

23 Q. I just want to clarify this. This graph shows  
24 PADD 5 stock levels. That sort of a line that stays the  
25 same shape all the way through the bottom in orange,

**BOYLES / ROACH**

1 that's what's PADD 5; is that correct?

2 A. That's crude oil stock levels in thousand of  
3 barrels -- millions of barrels -- thousands of barrels.  
4 Sorry.

5 MS. BOYLES: And, Ms. Mastro, Exhibit 272.

6 BY MS. BOYLES:

7 Q. And on the bottom, the bottom one of these two,  
8 the petroleum consumption one, is it the black line  
9 there that dips at the bottom there that is the current  
10 demand, that's actual demand?

11 A. That's the actual demand that occurred in that  
12 year.

13 Q. Thank you. And then finally, to follow up a  
14 question --

15 A. Can I -- let me -- I realize I might have been a  
16 little -- a little bit inconsistent. In this case that  
17 "M" is in millions of barrels a day.

18 Q. Oh, that's "M" as in millions --

19 A. In millions of barrels.

20 JUDGE NOBLE: Mr. Roach, I do see that you  
21 are talking over counsel's questions and counsel is  
22 talking over your testimony a little bit. So it's hard  
23 for the court reporter to get that. He can't take down  
24 two people at the same time.

25 THE WITNESS: Correct.

BOYLES / ROACH

1 BY MS. BOYLES:

2 Q. And following up on one other question, if this  
3 terminal is built, will there still be no pipeline for  
4 refined products from Washington terminals to eastern  
5 Washington?

6 A. Let me just make sure I understand your  
7 question. If this terminal is built --

8 Q. If this terminal is built --

9 A. -- will there be --

10 Q. -- there will still be no pipeline --

11 (Simultaneous discussion interrupted by  
12 reporter.)

13 A. There will still be no product pipelines or  
14 crude pipelines?

15 BY MS. BOYLES:

16 Q. Product pipelines. Refined product.

17 A. I know of no product pipelines that go from west  
18 Washington to east Washington.

19 Q. So even if this terminal is in operation,  
20 eastern Washington will receive crude -- will receive  
21 refined product, excuse me, from PADD 4?

22 A. Correct.

23 Q. Thank you.

24 MS. BOYLES: Nothing further.

25 JUDGE NOBLE: Is there any other

DERR / ROACH

1 cross-examination of Mr. Roach?

2 Redirect?

3 MR. DERR: Thank you, Your Honor.

4 REDIRECT EXAMINATION

5 BY MR. DERR:

6 Q. Mr. Roach, I just have a couple questions. Pick  
7 up the last one first, the question about whether  
8 there's a refined product pipeline from western  
9 Washington to eastern Washington. Is refined product  
10 also transported by other means besides pipeline?

11 A. Truck.

12 Q. By truck. So is there the possibility of  
13 transporting refined product from the refineries in  
14 Washington to eastern Washington by truck? Is that --

15 A. It is possible.

16 Q. -- possible?

17 A. It does generally occur.

18 Q. You have to wait till I finish the question too.  
19 Thank you.

20 Question about the Olympic Pipeline, counsel  
21 asked you a question about that. Can you run crude oil  
22 through the Olympic Pipeline?

23 A. No.

24 Q. You also were asked a question about  
25 pipelines -- or you testified about pipelines of refined

**DERR / ROACH**

1 product from Utah to Montana. Can you use those  
2 finished product pipelines to ship crude to eastern  
3 Washington?

4 A. Not the way they're configured, no.

5 **Q. And lastly, Mr. Roach, you were asked some**  
6 **questions from the council about the benefits to**  
7 **Washington specifically from this project. Will crude**  
8 **oil supplies through the terminal that might also supply**  
9 **refineries in other states have a benefit to Washington,**  
10 **in your opinion?**

11 A. In my opinion, it does. And due to the  
12 interrelated nature of the industries and the commerce  
13 of that West Coast region as it is somewhat operating in  
14 an integral fashion, so that as you improve the  
15 economics of operation and supply in one region, one  
16 part of that region, it impacts the whole of the region  
17 and it would be hard to extract a single state out of  
18 that region and isolate it away from the benefits or  
19 the -- of any situation.

20 **Q. By way of example, might airplanes manufactured**  
21 **in Washington use fuels produced in Washington or in**  
22 **other refineries in PADD 5?**

23 A. Correct, it could.

24 **Q. How about the trucking industry? You mentioned**  
25 **trucks that transport agricultural products, might they**

**DERR / ROACH**

1 use products that are refined in other PADD 5  
2 refineries?

3 A. There are trucks that transit out of Washington  
4 going to another region within the PADD, would then be  
5 refilled and come back and -- so it would be very  
6 difficult to extract, again, a single state out of that  
7 region. Such a big -- as I stated early on, it is such  
8 a big powerful region of economic activity on the whole  
9 globe, but it's not any single state in isolation. It's  
10 all of those states working together. So the benefits  
11 that occur for that PADD translate to all the states of  
12 that region.

13 **Q. So is it then your opinion that crude oil that**  
14 **goes through this facility in Vancouver but is sent to**  
15 **refineries in California, will that still, in your**  
16 **opinion, benefit the economy in the state of Washington?**

17 A. In my opinion, it does because it is part of the  
18 integrated whole of the PADD 5 region.

19 MR. DERR: Thank you. No further questions.

20 JUDGE NOBLE: Thank you. It's time for  
21 council questions based upon the cross-examination and  
22 the redirect. Council have any questions?

23 All right. There are no questions from the  
24 council.

25 Then, Mr. Roach, you are excused as a

1 witness.

2 THE WITNESS: Thank you.

3 JUDGE NOBLE: Thank you.

4 You may call your next witness, Mr. Derr.

5 MR. BARTZ: Your Honor, good afternoon.

6 This is David Bartz for the Port of Vancouver. We're  
7 going to call Mr. Alastair Smith as a witness.

8 JUDGE NOBLE: Now, I have a question. I  
9 understood that there were three witnesses for today,  
10 one being Mr. Roach and then Jared Larrabee and David  
11 Corpron. Is Mr. Smith testifying in substitution of  
12 another witness?

13 MR. DERR: No, Your Honor. Mr. Smith is a  
14 Port witness. We provided you a list of witnesses we  
15 thought we might call today. Mr. Roach took longer, to  
16 be honest, than we anticipated.

17 JUDGE NOBLE: Yes.

18 MR. DERR: So we have Mr. Smith with the  
19 Port, and then depending upon how long you want to speak  
20 with him, we will be calling Mr. Larrabee next.

21 JUDGE NOBLE: All right. Mr. Corpron may be  
22 tomorrow because we're leaving early today?

23 MR. DERR: That's fine. And also it's my  
24 understanding Mr. Smith did not file prefiled testimony.

25 MR. BARTZ: That's correct. He's not a

1 prefiled expert. He's a fact witness primarily.

2 JUDGE NOBLE: All right. Thank you. So  
3 please call Mr. Smith.

4 Mr. Smith, would you raise your right hand.  
5 (Witness sworn.)

6 JUDGE NOBLE: Thank you. Please be seated.  
7 You may proceed.

8 MR. BARTZ: Your Honor, on the question of  
9 exhibits, then, we've got no objection of the exhibits  
10 and I gave the list to Ms. Mastro ahead of time and I  
11 can repeat those for you on the record now if you'd  
12 like.

13 JUDGE NOBLE: Yes, please.

14 MR. BARTZ: So POR exhibits that begin 1011  
15 and continue through 1022, but we're withdrawing  
16 Exhibits 1014 and 1016.

17 JUDGE NOBLE: Exhibits 1014 and 1016 will be  
18 withdrawn.

19 And do I hear any objections to the  
20 witnesses of the Port, 1011 and 1022?

21 There being no objections, those exhibits  
22 will all be admitted. Thank you.

23 MR. BARTZ: Thank you, Your Honor. Proceed?

24 JUDGE NOBLE: Yes, proceed.  
25

BARTZ / SMITH

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ALASTAIR SMITH,

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BARTZ:

**Q. Mr. Smith, what job do you have at the Port of Vancouver?**

A. I'm chief marketing and sales officer.

**Q. What is that job?**

**JUDGE NOBLE: Excuse me, this witness has to identify himself, the spelling of the last name for the record.**

MR. BARTZ: Yeah, I'm sorry, Your Honor.

BY MR. BARTZ:

**Q. Mr. Smith, would you please identify yourself, including your full name for the record.**

A. My name is Alastair Smith.

JUDGE NOBLE: S-m-i-t-h?

THE WITNESS: Correct.

JUDGE NOBLE: Thank you.

BY MR. BARTZ:

**Q. Can you give us a brief description of your job at the port, Mr. Smith?**

A. In the marketing and sales, our job is to go and find economic development and jobs for the community. We do that on a local basis and we do that on a domestic

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1 basis. We are charged by the State of Washington to  
2 create economic development and that is what our  
3 department does.

4 **Q. And Alastair, how long have you been at the Port**  
5 **of Vancouver?**

6 A. Since February 2013.

7 **Q. And prior to --**

8 A. Excuse me. Correct, February 2003.

9 **Q. So from 2003 to today?**

10 A. That's correct. 13 years.

11 JUDGE NOBLE: The court reporter is having a  
12 little bit of trouble following you. Just slow down, if  
13 you would, a little bit, Mr. Smith. Thanks.

14 THE WITNESS: Thanks.

15 BY MR. BARTZ:

16 **Q. The work you did prior to coming to the Port of**  
17 **Vancouver, what was that work briefly and how did it**  
18 **prepare you for the job you do at the port?**

19 A. I actually started a seagoing career when I was  
20 18 years old. I did an apprenticeship in the British  
21 Merchant Marine in the navigation department where I was  
22 actually doing navigation for two years on a vessel and  
23 two years at college. While I was at sea doing the  
24 practical, I was also doing correspondence courses back  
25 to the college.

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1           When I completed that four-year apprenticeship,  
2 I then sailed as a navigation officer for two years.  
3 That entailed the navigation of the vessel going from A  
4 to B, but it also included the cargo operations and  
5 stability calculations for vessels. I did that until  
6 December 1979, when I came ashore with the same company  
7 that I was working with, which is a Norwegian operative  
8 named Star Shipping. And I joined the operations  
9 department in their San Francisco office and was  
10 operations assistant, mainly looking for vessels when  
11 they came into port and arranging all of the pilots,  
12 tugs, linesmen and dealing with cargo operations of that  
13 vessel while it was in port. I was --

14           **Q. Excuse me, Alastair. I'm just going to ask you**  
15 **to speak more directly into the mic, if you could, pull**  
16 **it closer.**

17           A. In 1981, I was promoted to operations manager in  
18 the Star Shipping office in Long Beach, California.  
19 There I was actually responsible for the negotiation of  
20 stevedore contracts, port contracts, tug companies and  
21 various other vendors that we deal with, making sure  
22 that the vessels that were operating coming in and out  
23 of port were done so efficiently.

24           In 1986, I was promoted to district manager in  
25 the Star Shipping's Portland office, to where I took

BARTZ / SMITH

1 over the responsibilities of the operations as well as  
2 the commercial side of it, to where I was -- would get  
3 out and negotiating contracts with cargo owners,  
4 shippers, brokers, freight forwarders to try to bring  
5 cargo to the shipping company and ship out of the  
6 Pacific Northwest. We also were in charge of the  
7 operations of those vessels while they were in port.  
8 And in 2003 I joined the Port of Vancouver as director  
9 of marketing and operations. And in 2005 I was promoted  
10 to senior director of marketing operations.

11 **Q. So before you joined the port, it's fair to say**  
12 **you had over 20 years' experience loading ships and**  
13 **selling their cargo or their services to customers?**

14 A. That's correct.

15 **Q. And that's pretty much what you've done since**  
16 **you've been at the port?**

17 A. That is correct.

18 **Q. How is the port's results or performance been**  
19 **since you've been at the Port of Vancouver?**

20 A. They've increased steadily. Back in 2003, we  
21 actually had a different kind of operation at the port  
22 where the port had a management agreement with a  
23 stevedore company and the revenues were all shared with  
24 that stevedore.

25 The market softened and the stevedore actually

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1 asked to renegotiate the contract. We did. We  
2 front-end loaded it with the stevedore, and one month  
3 later -- after signing a five-year contract, one month  
4 later they came back and said, this is still not good  
5 enough, we may walk away from the terminal. So we  
6 accepted their proposal and the port eventually took  
7 over the operations of the terminal, which did change  
8 the way that the revenue stream actually worked. So at  
9 that time, back in 2003-2004, the terminal was making  
10 around \$6 million a year. Today that same terminal is  
11 making around \$30 million.

12 **Q. About \$30 million you said?**

13 A. That is correct on the terminal operations side.

14 **Q. And if I looked at -- if you were to look at the**  
15 **port's overall performance and impact in the community**  
16 **from 2010 or '11 to 2015, how has that changed?**

17 A. That has seen a nice growth as well. We  
18 actually have studies done with a renowned economist,  
19 John Martin & Associates, who does most of the studies  
20 for the ports around the nation. And in the reports  
21 that we had in 2010, we had about \$1.6 billion worth of  
22 economic activity in the port, and now in 2015, which  
23 was the results of the year 2014, that number actually  
24 increased to \$2.9 billion. The overall job numbers at  
25 the port went up from 17,000 to 20,200. Of that there

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1 was -- 3,200 of those were direct jobs, and there was  
2 about 3,200 of indirect jobs and there was a lot of  
3 induced jobs that were part of that makeup.

4 **Q. Let me ask you, Mr. Smith, you mentioned**  
5 **something -- I think we've got an exhibit on it.**

6 MR. BARTZ: Could I ask for an exhibit  
7 number -- it's the Port's 1019.

8 Your Honor, do you want me to wait for it to  
9 be pulled up or go ahead? It's your call.

10 JUDGE NOBLE: You could just go ahead and  
11 save a little bit of time.

12 MR. BARTZ: Thank you, Your Honor.

13 BY MR. BARTZ:

14 **Q. Mr. Smith, you mentioned jobs, and this has been**  
15 **marked as the Port's -- and admitted as Port's**  
16 **Exhibit 1019. It's up on the screen now. What does**  
17 **this reflect in terms of jobs?**

18 A. This is a 2014 economic impact of the Port of  
19 Vancouver. And this was done by John Martin &  
20 Associates, and this was conducted in the spring of  
21 2015.

22 **Q. And the results, if we could look at 2018,**  
23 **please, the Port's Exhibit 2018.**

24 MS. MASTRO: I'm sorry, you said?

25 MR. BARTZ: 2018 -- or 1018. Sorry. 2s,

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1 ls. I'm a binary person.

2 THE WITNESS: Thank you.

3 BY MR. BARTZ:

4 **Q. So, Mr. Smith, you're looking at what's been**  
5 **marked as Port's Exhibit 1018. What does that show us?**

6 A. This is an overview of our operating revenues.  
7 The blue revenue is the terminal operations, the red is  
8 the property and lease side and the green is the  
9 facilities sales and service department.

10 **Q. As part of your job, do you travel frequently?**

11 A. Yeah, I normally travel somewhere between 100  
12 and 130 days per year.

13 **Q. Have you, in those travels, gotten a sense of**  
14 **the Port of Vancouver USA's acceptance in the global**  
15 **marine community?**

16 A. Yeah, we're actually quite proud of that. When  
17 I first started to travel, people used to tell me they  
18 enjoyed taking cruises from our port and they enjoyed  
19 the mountains in the background. Today now they  
20 recognize that we're called the Port of Vancouver,  
21 Washington, not the Port of Vancouver, Canada. We enter  
22 into the offices and people have actually got  
23 documentation on the Port of Vancouver, Washington,  
24 sitting on their desks. It was quite an extensive  
25 marketing campaign to do that by translating a lot of

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1 our marketing materials into foreign languages and being  
2 able to take them, easily leaving them behind at airport  
3 lounges to make sure other people would see them when  
4 they did that.

5 But it was really encouraging to see that we are  
6 now recognized in a global basis by many very strong  
7 international companies. We have signed many long-term  
8 agreements with some of those companies and we are noted  
9 as being one of the strongest companies for handling  
10 project cargo in the country.

11 **Q. And project cargo, in simple terms, is what?**

12 A. It's oversized, overweight, overwidth cargoes.  
13 Wind energy could be a very good example of that. And  
14 we have entered into agreements with Vestas, Siemens and  
15 GE in handling wind energy components. The port looked  
16 back in 2004 and recognized that the wind energy  
17 industry was going to be in a growth pattern, but there  
18 was no facilities in US West Coast ports to be able to  
19 handle these heavy-lift components.

20 There was also a dispute between longshoremen  
21 and the crane companies where the longshoremen felt that  
22 this was your jurisdiction. The crane companies, their  
23 insurance companies would not let an outside crane  
24 operator drive their cranes. So there's a 20-year  
25 standoff where there was virtually no project cargo

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1 handled in the Pacific Northwest.

2 The Port of Vancouver went out and purchased a  
3 heavy-lift crane in order to make that work and we  
4 trained all of the crane operators in how to drive those  
5 cranes. We actually secured some long-term contracts  
6 from these wind energy companies. And in 2009 and in  
7 2011, we were actually the number one port for handling  
8 wind energy components in the US. We have signed  
9 five-year agreements with GE, we have three-year  
10 agreements with Siemens, we have three-year agreements  
11 with Vestas and we are negotiating with many others.

12 **Q. When the council takes a tour later this**  
13 **afternoon, they may see some wind energy components out**  
14 **of the port today?**

15 A. Yeah, out at Terminal 5, you'll be able to see  
16 some GE blades, that these are the latest generation.  
17 The blades themselves are about 200 feet long. So when  
18 we were talking to the wind energy companies, how do we  
19 develop our infrastructure, one of the things that they  
20 said was the components are going to get bigger and they  
21 are going to get heavier. So in 2007 we purchased a  
22 second heavy-lift crane and that allowed us to be able  
23 to lift tandem lifts and engineered picks, which are  
24 much more difficult to do. But our stevedore companies  
25 and in conjunction with them, we trained every longshore

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1 crane operator in our local to be able to handle  
2 engineered picks and tandem lifts. No other port on the  
3 West Coast had done that.

4 **Q. And you say the port purchased those cranes.**  
5 **Where does the port get the money to purchase cranes**  
6 **like that?**

7 A. That generally comes from our operating  
8 revenues, or it can come from our tax base.

9 **Q. So what are -- is your tax base for a piece of**  
10 **equipment like that?**

11 A. Yes. For -- we collect around \$10 million worth  
12 of taxes within the property taxes of the community.  
13 But that is only allowed to be invested into  
14 environmental cleanup or capital expense or pay off a  
15 debt. It is not allowed to be used for any operational  
16 expense. But also the profits that we make from our  
17 operational expenses are also reinvested back into the  
18 community. So it could be a mixture of the tax base and  
19 the operations profits.

20 **Q. And approximately how much did those cranes**  
21 **cost?**

22 A. The first one cost \$3.7 million. And we managed  
23 to pay that off in about a 14-month period. The second  
24 crane cost exactly the same value in Euros, but  
25 translated into \$5.1 million in US. The exchange rates

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1 have changed. We actually delayed purchasing it for  
2 another six months and ended up paying about 4.5 million  
3 for that second crane.

4 **Q. And that revenue you talked about in**  
5 **Exhibit 1018 that shows up here, that's the kind --**  
6 **that's the place where you get that money to make those**  
7 **investments; is that correct?**

8 A. That is correct.

9 **Q. And you recently had a chance to be examined, if**  
10 **you will, by an outside party as to the port's**  
11 **operations and success in operations.**

12 A. That is correct. We were applying for a  
13 \$40 million revenue bonding rating and Standard & Poor's  
14 actually visited the port and we presented them with a  
15 tremendous amount of financial information about how the  
16 port is doing, but they also wanted to understand the  
17 longer-term viability of the port and they were looking  
18 at all of our long-term contracts that we had in place.

19 We are a breakbulk port, project cargo,  
20 automobiles, liquid bulks and dry bulks. We do not do  
21 containers. But what we have done, is we've managed to  
22 sign a lot of long-term contracts with the breakbulk  
23 carriers, who have been signing five-year agreements  
24 with five-year options, and they have continued and some  
25 of those are in their third option period. So we have a

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1 tremendous amount of support from the breakbulk  
2 community. We've also signed long-term agreements with  
3 Subaru. We've signed an agreement with them through the  
4 year 2030 with options to extend. We have signed  
5 long-term agreements with United Grain, which is signed  
6 through 2030 with options to extend.

7 So we have a lot of long-term contracts there  
8 that create the stability and also the diversification  
9 of the amount of cargoes and types of cargoes that we  
10 handle, so that as the economy goes up and down in  
11 certain sectors, we manage to carry through with some of  
12 the other commodities not in that same cycle.

13 **Q. Thank you, Alastair. So you've mentioned**  
14 **revenue that comes from operations and you've mentioned**  
15 **taxes. Are there limits -- are there limits on the way**  
16 **the port spends the money from both of those places?**

17 A. Yes, all of that must be reinvested back into  
18 the port and port infrastructure within the port  
19 district.

20 **Q. And investments can be like those cranes we've**  
21 **talked about?**

22 A. It can be. One of the largest examples we have  
23 is the West Vancouver Freight Access project, which is  
24 approaching about \$250 million worth of investment over  
25 the last ten years or so.

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1 Q. And we'll talk some more in a minute about that.  
2 How does a port -- it's generating money through  
3 operations. How does it differ from what we might think  
4 of as your ordinary business on main street?

5 A. Port's a little bit different because we can --  
6 we can have a much longer horizon to be able to get a  
7 profit. Private business would like to come in and  
8 maybe make -- return an investment within a two- to  
9 three-year period. The port manages to make these large  
10 investments and infrastructure and sometimes a payoff  
11 may be 20 years down the line. But without that heavy  
12 investment and infrastructure, we would not be able to  
13 attract the type of long-term tenants that we are trying  
14 to market.

15 Q. And those investments and your operating  
16 contracts you talked about in those revenues up there on  
17 1018, what rating did Standard & Poor's give you?

18 A. They gave us an A rating.

19 Q. Is that on a scale? Can you help me understand  
20 if that's good?

21 A. That is good.

22 Q. There's a strategic plan in evidence, Mr. Smith,  
23 Exhibit 1021, the Port of Vancouver Strategic Plan. Are  
24 you familiar with that?

25 A. Yes, I am.

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1           **Q.     How would you summarize that in a few words?**

2           A.     It actually gives us our mission and vision  
3 statements, and our mission basically is to create  
4 economic development by -- to give economic development  
5 within our community through leadership, stewardship,  
6 partnership through marine, industrial and waterfront  
7 development. So that is what our mission is and that is  
8 what we tried to do, is to create the jobs within our  
9 community.

10          **Q.     When you say "partnership," can you give me a**  
11 **brief example of something like that?**

12          A.     We have many partnerships. We work very closely  
13 with the City, we work closely with the County, we work  
14 closely with a lot of agencies that give permits to us.  
15 We have a very strong environmental department that  
16 tells us what we need to get to people early and get  
17 there often. Some of the partnerships that we have done  
18 is in developing things like the West Vancouver Freight  
19 Access. It has -- there's a tremendous amount of  
20 partnerships that you need to prepare for a large  
21 project like that.

22          **Q.     In fact, we've got an exhibit marked 1020.**

23                   MR. BARTZ: Thank you, Ms. Mastro.

24 BY MR. BARTZ:

25          **Q.     Can you briefly tell us, Mr. Smith, what that**

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1 exhibit shows us.

2 A. I am getting a little older. Appreciate that.  
3 Thank you. This is the funding sources that we have for  
4 the West Vancouver Freight Access. The large portion in  
5 blue is the port. The port has actually spent about  
6 \$160 million so far in the funding of that project.

7 You can see some of the partnerships we have  
8 there with some of the grants that we received. About  
9 \$2.5 million was from an ARRA grant, Federal Highway  
10 Administration grant of 4.8 million, and I understand  
11 that 3.1 million of that was done through a grant with  
12 the City under the same program for the West Vancouver  
13 Freight Access project. Department of Transportation,  
14 State of Washington was 527,000. Freight Mobility  
15 Strategic Investment Board was about 13 and a half  
16 million dollars. Federal Rail Administration grant,  
17 again, for \$3.9 million. Transportation infrastructure,  
18 a TIGER grant, which is a federal program, another  
19 \$10 million.

20 We also have been applying rail infrastructure  
21 repayment fees to some of our tenants, which is about  
22 \$6.2 million. BNSF Railroad actually gave some in-kind  
23 contributions, mostly through rail that was already  
24 positioned within the right-of-way when we purchased the  
25 right-of-way back from BNSF. And we had a high-speed

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1 grant for another \$15 million.

2 **Q. Thank you, Mr. Smith.**

3 MR. BARTZ: Your Honor, at this moment I  
4 would like to move to Exhibit 12, which is a large  
5 picture. And can I make a few structural changes here?

6 JUDGE NOBLE: Yes, certainly.

7 MR. BARTZ: We have copies for the council  
8 and the parties, individual copies of this. This is the  
9 exhibit we have, which is 1012, but these are laminated  
10 copies you can look at. They're a little easier than  
11 what we're looking at on a computer screen. I  
12 appreciate your indulgence.

13 We're going to spend a little time talking  
14 about the port and the West Vancouver Freight Access and  
15 this picture actually makes some things a little more  
16 easily understood and perhaps it will help you with your  
17 site tour later today.

18 BY MR. BARTZ:

19 **Q. So, Mr. Smith, for just a few minutes if you**  
20 **would, would you walk us through -- introduce us to the**  
21 **Port of Vancouver and what this facility is we've been**  
22 **talking about?**

23 A. So this is the Port of Vancouver. Basically the  
24 state of Washington, state of Oregon. The Columbia  
25 River and the ocean is this way down at this end. Here

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1 we have the -- this is the I-5 roadway that goes all the  
2 way down -- from Seattle all the way down to San Diego.  
3 Just to position you, the mainline rail goes all the way  
4 down from the same area, Seattle all the way down to  
5 San Diego.

6 Over here is actually Terminal 1. This was the  
7 birthplace of the Port of Vancouver and the original  
8 warehouse of the port is situated right there. This was  
9 a Red Lion Hotel, which is now actually closed and is  
10 going to be part of the redevelopment that the port is  
11 going to be looking at, at Terminal 1.

12 Coming from the east, this is a prime built  
13 facility. It is by Graymor. It is going to be building  
14 a mixed-use development area down there on about 20  
15 acres. The port still remains about 10-plus acres over  
16 in this area.

17 Then we have -- coming further west, we have --  
18 this is Metro Metals. It's a scrap yard. Actually  
19 exports scrap through the port here, does about 500,000  
20 tons per year. As you go through the port, the rail  
21 line really denotes -- everything south of the rail line  
22 is the marine terminals and everything north of the rail  
23 line we classify as our industrial tenants. So we have  
24 a grain elevator here, that is United Grain, has  
25 traditionally done about 3.1, 3.2 million tons of wheat.

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1 However, they have made some expansions over in this  
2 area because of the West Vancouver Freight Access  
3 project that we can talk a little bit about later.

4 As we come in through Terminal 2, this is where  
5 we have our heavy-lift cranes and have a lot of wind  
6 energy going through here. We also have an apparatus, a  
7 steel slab operation, which does about 600,000 tons per  
8 year.

9 We have a liquid bulk facility for NuStar. We  
10 have a dry bulk facility for Kinder Morgan that does  
11 corporate concentrate and bentonite clay. We have  
12 another great bulk facility here. These warehouses  
13 are -- all of the warehouse capacity that we have is the  
14 largest of any port in the West Coast, which  
15 traditionally allows us to attract much more cargo.

16 We also have the Subaru facility which operates  
17 in about 75 acres. They do about 90,000 automobiles  
18 being exported through here. Terminal 5, this used to  
19 be the old ALCOA Aluminum facility. And within that,  
20 they were operational right up until the year 2000 and  
21 then they tried to sell us this property around 2004,  
22 but they wanted a high cost, but they also wanted us to  
23 do the cleanup, so we declined to do that.

24 They then come back in about 2008, 2009 and  
25 asked us whether or not we would be interested in

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1 purchasing it again. The deal had changed and they were  
2 going to do the cleanup, so we actually went forward and  
3 purchased this from ALCOA. So this was a brown field  
4 site that we actually put back into use. This inside  
5 rail is about 100 acres. We took about 165 acres of  
6 property from ALCOA.

7 From a geography standpoint, it's very important  
8 that we had this because we had the waterline all the  
9 way around to the very north that you see here.

10 Columbia Gateway is an area that we're looking  
11 to do future development on. It's another 500 acres  
12 that has access right onto the navigation channel and  
13 we're looking to start the permitting on that very  
14 quickly.

15 The area here is another parcel of Columbia  
16 Gateway, parcel 4 and 5. This is 600 acres. And we  
17 have just recently turned this over to Columbia Land  
18 Trust and they are going to make this into habitat.  
19 This is the Pacific flyway for a lot of the birds that  
20 migrate up and down the West Coast, and this is turned  
21 over for habitat for them to get into more wetlands and  
22 they're going to be planting food forage for them as  
23 they fly through.

24 We come back, north of the rail, we have a lot  
25 of our industrial tenants. We have about 52 industrial

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1 tenants within the port. And on that side of the  
2 ledger, we are 99.7 percent occupied. We have been for  
3 quite a few years. We have quite a diversity in our  
4 operations with trans load facilities, Boise Cascade has  
5 their lumberyard here, we have Sapa Profiles, which is  
6 an aluminum-extruding facility. Tesoro has an operation  
7 here that do some gasolines and diesel.

8 We also have Centennial Industrial Park, which  
9 is a 58-acre portion up in the Centennial Park area. We  
10 got a \$5.7 million grant from the Department of Commerce  
11 to put utilities in. We now have -- Sunlight Supply is  
12 building a 300,000-square-foot distribution center.

13 MR. BARTZ: Just a minute, Alastair. I'm  
14 not sure --

15 JUDGE NOBLE: I think the court reporter is  
16 having an issue.

17 BY MR. BARTZ:

18 **Q. Slow down, please, Alastair. I know I've given**  
19 **you a bad example, but slow down.**

20 A. So that's Centennial Industrial Park. This used  
21 to be a farm. This was the Ruffner Farm. When we took  
22 it over, there's 108 acres between parcel 7 and  
23 parcel 8. Parcel 8 we have turned into an industrial  
24 park with Sunlight Supply building a 300,000-square-foot  
25 distribution center. The port is just in permitting and

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1 ready to start constructing a warehouse that is going to  
2 be a SPANX warehouse that is about 124,000 square feet.

3           Once we are about 50 percent developed in  
4 parcel 8, we will start then the title and process of  
5 parcel 7. Parcel 6 is an environmental mitigation bank  
6 that we entered into with a local company that actually  
7 created about 165 acres of environmental mitigation. So  
8 that also helps us to be able to get some credits when  
9 we want to build some of our other infrastructure that  
10 we're working on.

11           The interesting thing is part of this was the  
12 old farm. Instead of just tearing it down, we actually  
13 deconstructed it and all of the wood that was in the  
14 barn was used in other projects throughout the camp. So  
15 we're actually quite busy with all of our industrial and  
16 our --

17           **Q. Thank you, Alastair. You can take a seat and**  
18 **we'll have you back up there in a minute. You can just**  
19 **leave that on for a second.**

20           **JUDGE NOBLE: Mr. Smith, I've noticed that**  
21 **your narrative falls off a little at the end sometimes**  
22 **of your sentences and the court reporter is shaking his**  
23 **head again. That means he didn't -- he didn't get all**  
24 **of what you said. So it's important that you want to**  
25 **make a complete record of testimony.**

**BARTZ / SMITH**

1 THE WITNESS: I felt that the mic was going  
2 in and out a little bit.

3 JUDGE NOBLE: It was. It was.

4 Mr. Moss has a question for you.

5 MR. MOSS: Yeah, I just noticed here,  
6 looking at my colleague's copy of the photograph that  
7 was distributed, that it is different in some ways from  
8 what's up there. I'm wondering if it's in any way  
9 material -- materially different. Maybe just a  
10 different time of year or something. I can't tell. But  
11 I -- there's quite a few differences actually.

12 THE WITNESS: So they may just be different  
13 versions. Maybe one was a year later than the other  
14 one.

15 JUDGE NOBLE: Could the witness see one of  
16 these rolled-up copies so he could know what Mr. Moss is  
17 talking about?

18 MR. BARTZ: This was -- Your Honor, just to  
19 clarify, this was pulled off the wall of a port employee  
20 over the weekend when we learned that the screens --  
21 there were some concerns about whether the screens were  
22 working. So we grabbed this off the wall of a current  
23 port employee. So it's relatively accurate.

24 The photograph on the wall, the -- or the  
25 photograph on the screen, the photograph that's in

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1 evidence and the photograph you're all looking at is all  
2 the same. It's all the official Port Exhibit 1012.  
3 This one on the wall may be a little different because  
4 it's probably taken a little bit earlier.

5 JUDGE NOBLE: So Mr. Moss is correct, it's  
6 just a seasonal difference?

7 MR. BARTZ: Seasonal or it was taken in 2015  
8 and not as current as the one that's in front of you.

9 JUDGE NOBLE: I see. So, Mr. Moss, does  
10 that answer your question?

11 MR. MOSS: Well, no, because it looks to me  
12 like there are different buildings -- it looks to me  
13 like there are different buildings on this map than are  
14 on this map.

15 THE WITNESS: That is correct.

16 MR. MOSS: So they're materially different,  
17 I think, and we need to know which one is the exhibit.

18 MR. BARTZ: Well, I'm sorry for that very  
19 much. This is meant to be a demonstrative exhibit, just  
20 a picture so you've got some reference point. The  
21 exhibit that's already been admitted and been reviewed  
22 by all the parties for weeks, at least a few weeks, is  
23 the exhibit that's on the screen and the one that's in  
24 front of you. Those are the same.

25

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1 BY MR. BARTZ:

2 **Q. Alastair, do you want to point out what's**  
3 **different?**

4 A. Yeah, one of the main differences is when you  
5 see Terminal 4 and you go to the north part of the --  
6 north of the rail lines, the port actually sold an area  
7 of property to a company called Farwest Steel, who built  
8 a facility there. So that building is Farwest Steel.  
9 They are steel distribution, and they offer about 235  
10 jobs in that facility.

11 One of the other differences is up on the -- a  
12 little bit north of that is Centennial Industrial Park.  
13 You can actually see the utilities and roadways have  
14 been put into Centennial Industrial Park.

15 Most of the things to the eastern side, to the  
16 right side of the photograph, remain reasonably the  
17 same. One of the main differences you will see on this  
18 one, the one that you have in front of you, is that once  
19 we talk about the West Vancouver Freight Access project,  
20 over on the right side and underneath the railroad  
21 bridge, you will actually see a completed trench and  
22 that is where our new rail entrance to the port actually  
23 comes in. So it's on the north side of the riverbank  
24 just directly under the railroad bridge.

25 **Q. Anything else of difference that should be noted**

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1 for the council, Alastair?

2 A. On the east side at Terminal 1, you'll actually  
3 see the roadways have started to be put into the  
4 waterfront development through the port's part of the  
5 development on the very eastern end and then into the  
6 Graymor element. So you have Esther Street and Grant  
7 Street which are the north-south streets and they're  
8 actually started to be shown in this photograph.

9 **Q. Anything else of importance you can see,**  
10 **Alastair?**

11 A. Most of the other things are shown.

12 JUDGE NOBLE: Does that answer your  
13 question, Mr. Moss?

14 MR. MOSS: Well, I believe it does, and I'm  
15 assuming that this more recent photograph that shows the  
16 additional infrastructure development is the one that's  
17 part of the record?

18 JUDGE NOBLE: Yes.

19 MR. MOSS: Thank you.

20 MR. BARTZ: Thank you. And again, I  
21 apologize for the miscommunication.

22 BY MR. BARTZ:

23 **Q. Alastair, you mentioned liquid bulk at the port.**  
24 **What kind of liquid bulk products do you handle?**

25 A. We handle jet fuel, diesel, gasoline, sodium

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1 hydroxide are the main ones that come through the port  
2 today.

3 **Q. And approximately how long have you handled**  
4 **those cargoes?**

5 A. Those have been handled since before I came to  
6 the port. So the sodium hydroxide I know has been going  
7 through there for over 20 years. The Tesoro facility  
8 that is doing gasoline and diesel has been -- they  
9 started operation in 1985. So they've been going for  
10 30 years. NuStar operation has gone through about four  
11 iterations. Before NuStar it was ST Services. Before  
12 that was it was Valero. Before that was it GYTX. But  
13 basically same cargoes, just a different company  
14 managing that. And the jet fuel comes through  
15 terminal -- or dock number 4 at our Terminal 2 facility  
16 and gets piped to the north up to a tank farm that's off  
17 of port property.

18 **Q. And what's been your safety -- port safety**  
19 **record with those liquid cargoes?**

20 A. It has been excellent.

21 **Q. You mentioned Subaru. Have you signed any new**  
22 **contracts with them?**

23 A. We have signed an extension through 2030, that  
24 is correct.

25 **Q. And in that new contract extension, were there**

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1 any concerns or objections raised by Subaru with respect  
2 to the Vancouver Energy Distribution Terminal?

3 A. No, there was not.

4 **Q. The Columbia Gateway, you mentioned that you've**  
5 **given -- the port's given that in a transaction to the**  
6 **Columbia Land Trust. Was there port money spent on that**  
7 **proposal?**

8 A. Yes. We put in -- \$7 million is going to be  
9 invested over the next three to four years to be able to  
10 plant crop and build habitat, wetlands. And a lot of it  
11 is going to be to facilitate sandhill cranes coming  
12 through that area.

13 **Q. And then you mentioned the new warehouse you're**  
14 **building, you called it spec, and I believe that's short**  
15 **for speculation. That means you don't have a tenant for**  
16 **it, correct?**

17 A. That is correct. We just got the plans and  
18 we're just starting to market it as we speak.

19 **Q. So there's some other big buildings you**  
20 **mentioned to us in the Terminal 4 area. Do you need**  
21 **another warehouse?**

22 A. In Terminal 4?

23 **Q. Well, I'm sorry, Terminal 2 there. The**  
24 **warehouses you mentioned. Do you need another**  
25 **warehouse?**

**BARTZ / SMITH**

1           A.     Well, the warehouse on Terminal 3, we will be  
2 knocking that down. It's a very inefficient warehouse  
3 and we have plans to build a new warehouse that is  
4 120,000 square feet, and that will be -- the old  
5 warehouse will be demolished later this year and the new  
6 one hopefully will be erected next year.

7           **Q.     Is the -- kind of knocking down old buildings,**  
8 **replacing them with newer, more modern buildings, a part**  
9 **of the investments you make with the port's revenue?**

10          A.     That is correct.

11          **Q.     So I want to ask you about the West Vancouver**  
12 **Freight Access project briefly, Mr. Smith. What was the**  
13 **principal purpose of the West Vancouver Freight Access**  
14 **project?**

15          A.     There was a tremendous amount of congestion on  
16 the Vancouver Y, which is the area just to the north of  
17 the railroad bridge. You can see it looks like an  
18 inverted Y, but all of our cargo -- we only had one  
19 entrance and exit from the port, and every time that we  
20 were coming across that, we would experience tremendous  
21 congestion.

22          **Q.     Can you give us some example of that what**  
23 **congestion meant for the port?**

24          A.     So when we were trying to bring any rail car out  
25 of the Hill Track, that was -- we were restricted, and

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1 if there was any freight train moving on the mainline,  
2 we had to have a 30-minute before window and a 30-minute  
3 afterwards window that we could not move anything  
4 through the mainline.

5 Once it became a commuter train, both Amtrak  
6 moving, then that delay was one hour before and one hour  
7 after. And at that time there were six Amtrak trains  
8 moving through, so that was 12 hours of delay that we  
9 would experience with just the commuter rail, and  
10 certainly about another five or six hours on delays with  
11 freight trains moving through.

12 **Q. Did you have experience with those numbers of**  
13 **hours of delay in a day cost you some revenue?**

14 A. Yeah, back in 2004 going into early 2005, we  
15 were marketing to an automobile company that wanted to  
16 move their cargo operations from a competing port into  
17 the Port of Vancouver. Two out of the three  
18 decision-makers said that they were ready to move. The  
19 third one said, let me call the railroad. So as that  
20 person called the railroad, he was told that we could  
21 expect 24 hours delay for every rail car that went  
22 through the Port of Vancouver. After that, we were told  
23 we could not have that contract. So after we were mad  
24 at the railroad and we started to then look in a mirror  
25 and ask if he was correct, we basically agreed with them

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1 that probably within a two-year period that he would be  
2 correct, that we would have that kind of delay, and  
3 therefore we had to come up with a strategic plan as to  
4 how to create a new entrance into the port and be able  
5 to create the capacity and efficiencies that we needed  
6 to attract larger-scale tenants.

7 **Q. You mentioned the Y and the Hill Track. Could**  
8 **you just briefly point at that on the big poster behind**  
9 **you with the stick?**

10 A. So this is -- the Vancouver Y is this area here  
11 where you transition from the southbound mainline going  
12 east towards Chicago and then the area going directly  
13 south here. And then this is a crossover, say you're  
14 coming from Chicago and you can then come down south.  
15 This is the Vancouver Y that is here.

16 The Hill Track is the port's own Hill Track that  
17 is a single track coming in and out of the port. And  
18 when we were doing unit trains coming out of the grain  
19 elevator, when we were building the unit train, the rail  
20 would actually cross to here as we are then building the  
21 unit train to go back out to the Midwest. That would  
22 then block all traffic north-south and all of the  
23 traffic going east. That is why we truly understood  
24 then that this was not going to be acceptable going  
25 forward.

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1           **Q.     Thank you, Alastair. You can sit down. You**  
2 **mentioned the word unit train. I think a lot of people**  
3 **here know what that is, but what is a unit train?**

4           A.     A unit train is basically a single train that  
5 goes from a single origin to a single destination  
6 without breaking up and is generally in the 100- to  
7 120-rail-car configuration.

8           **Q.     And it's used for bulk cargoes, primarily?**

9           A.     Correct, liquid or dry.

10          **Q.     How did the West Vancouver Freight Access**  
11 **project change the port's entrance, rail entrance?**

12          A.     We -- this became a complicated project, because  
13 how do you create a complete new entrance into a port?  
14 When we looked at it going west and north, there wasn't  
15 really any way to do that. So we had to do it through a  
16 very confined corridor at the east end of our facility.  
17 So we had to take what we called -- Schedule 1 was,  
18 first of all, taking a spur from the BNSF mainline and  
19 bringing that down through the area that was owned by  
20 Boise Cascade, which is close to our Terminal 1  
21 facility, and I could point that out if you wish.

22          **Q.     Please.**

23          A.     So this area here, this is the Fallbridge  
24 subdivision which is the mainline for BNSF going to  
25 Chicago. We took a look at this, that this may be the

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1 way to do this is to take a lead off of the sub line,  
2 off of the Fallbridge subdivision, bring it down through  
3 this industrial area, and then in order to take all of  
4 our traffic off of this mainline, we suggested that we  
5 take it underneath the railroad bridge and then back up  
6 through our facility and join our main infrastructure  
7 over this way. That was very complicated because there  
8 was very -- there's a lot of different people had  
9 interests in this area. At this time this area was  
10 actually owned by Boise Cascade. They have a paper mill  
11 over here. They wished to sell that. Graymor  
12 Development were interested in buying it. But there's  
13 two different companies here on the west end of this  
14 property. There's the Lafarge cement and there is  
15 Albina Fuels. In order to serve both of those  
16 properties, there was actually a line that came -- a  
17 siding, a rail siding that came right through this  
18 property. And the railroad would actually feed them in  
19 here and then come back this way. This made this  
20 property less valuable with having a rail spur right  
21 down through the middle of the property. So the port,  
22 the City, Graymor, Boise Cascade --

23 JUDGE NOBLE: Mr. Smith, I think there's an  
24 objection.

25 MS. BRIMMER: Well, it's just that with

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1 Mr. Smith standing with his back to us, we can't see  
2 anything he's pointing to on this map at all. Could he  
3 swing around on the other side? That would be great.

4 JUDGE NOBLE: As long as the council can see  
5 him. Thank you for that. I didn't realize. Should  
6 have spoken up earlier. Do you need him to repeat  
7 anything?

8 MS. BRIMMER: No, that's all right.

9 A. So this area --

10 JUDGE NOBLE: Excuse me. You're also  
11 welcome to get out of your seats and come forward. That  
12 wouldn't be a problem.

13 MS. BRIMMER: Okay. Thank you.

14 A. So this is going to be a very important project  
15 for the City, for the port, in order to create access  
16 down to the waterfront.

17 There was also an opportunity to upgrade some of  
18 the rail system going through here. But in conjunction  
19 with that on the north side of the rail berm, BNSF had a  
20 rail line that had an aqueduct that had very, very low  
21 clearance. So you could not get emergency vehicles  
22 being able to go through from the north side into this  
23 area. So all of that needed to be rebuilt.

24 The idea, then, in conjunction with all of our  
25 partners was, if the port was to take their line first

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1 on the south side of the berm, the railroad berm, and  
2 bring it down here, then take some additional spur  
3 tracks from our track to feed into both Albina Fuels and  
4 into Lafarge, it would remove that rail spur from this  
5 area and help to clear that out.

6 We also have the property here that was owned by  
7 Red Lion and their parent company iStar. And that lease  
8 was good through the year 2033.

9 BY MR. BARTZ:

10 **Q. Which area are you pointing at, Alastair, on the**  
11 **map?**

12 A. This is at Terminal 1, at the Red Lion itself.

13 **Q. Thank you.**

14 A. So in order to make this work, we had --  
15 Columbia Way comes down here, and you had to have access  
16 coming into the west side. So the port eventually  
17 agreed to buy out iStar from that lease. We also worked  
18 with the City, because they were wanting to put roadways  
19 down through the center here.

20 This building here was Centennial meeting space  
21 for the hotel. We agreed with the City that we could  
22 purchase this, knock down the Centennial building and  
23 then help to put the roadways in. There was a time  
24 where the -- I think the City got a grant from the State  
25 of Washington to put the roadways in, but there was a

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1 timing issue and there was a budget issue. So the port  
2 actually helped to put the utilities in through here in  
3 order to get the project started, and the City repaid  
4 us. It was about \$800,000 the port invested to do that.

5 There was a lot of partnerships going on in  
6 order to make this whole thing work. So we had a  
7 memorandum of understanding with the City in order to  
8 create this Schedule 1, which in turn allowed the  
9 railroad to bring their line down, and they called it a  
10 shoofly, but it's really a detour from the mainline onto  
11 our line that we created and then move it down to this  
12 area and back onto the mainline. That allowed them to  
13 take this area of the viaduct out of service and to  
14 rebuild that with entrances on the north side that would  
15 line up with the entrances on our side in order to get  
16 through on Esther Street and Grant Street.

17 **Q. Thank you, Alastair.**

18 A. But a memorandum of understanding with the City,  
19 though, to leave the bridge section off of Grant Street  
20 because it allowed them to do other work and allowed  
21 BNSF to do work on the viaduct, and that was for about  
22 \$250,000, and later they came back -- and when we did  
23 that, the City paid us back for that.

24 **Q. Thank you, Alastair. We've got exhibit -- Port**  
25 **Exhibit 1014.**

**BARTZ / SMITH**

1 MR. BARTZ: Could we see that, please. I'm  
2 sorry, 1015. 1015.

3 JUDGE NOBLE: Could I ask in the interim  
4 here about Mr. Smith's testimony? It's five minutes to  
5 2, and I promised the court reporter a break at 2:00.  
6 So is Mr. Smith's testimony almost completed or --

7 MR. BARTZ: Almost completed. I probably  
8 won't make 2:00, but I'll make 2:05, and you do what you  
9 want.

10 JUDGE NOBLE: 2:05 is good.

11 MR. BARTZ: Sold. Thank you.

12 BY MR. BARTZ:

13 **Q. Mr. Smith, what's this a picture of?**

14 A. That is a picture of the BNSF viaduct from the  
15 south side looking north. You can see it is very low.

16 **Q. So this is an old condition. This doesn't exist  
17 anymore, correct?**

18 A. That is correct.

19 **Q. There's now water -- or underpasses for Grant  
20 and Esther Street that can allow full-size traffic and  
21 people to go from the north side of the rail to the  
22 waterfront?**

23 A. That is correct.

24 **Q. How is the new port entrance working?**

25 A. It's actually working extremely well. We have

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1 taken most of the congestion off of the Vancouver Y. It  
2 has allowed us to increase our capacity from where it  
3 was at 55,000 rail cars per year and it now gives us the  
4 ability to reach as much as 400,000 rail cars. It has  
5 given us much more efficiency by the BNSF bringing  
6 trains directly into the port. Rather than crossing the  
7 Y and rather than sitting idling with their rail cars,  
8 they just bring them straight into the port.

9 It also gives us efficiencies that -- it has  
10 been told to us that it could be as much as 40 percent  
11 not just for coming into the port but for the whole  
12 northwest rail system, because by doing the shoofly line  
13 and doing the port's structure, it allowed also the  
14 Department of Transportation to build their bypass on  
15 the east side of the Vancouver yard and make everything  
16 more efficient going through that Vancouver Y area.

17 **Q. Thank you, Mr. Smith. So let's direct ourselves**  
18 **to the Vancouver Energy Distribution Terminal, the**  
19 **Vancouver Energy project. Can you briefly describe for**  
20 **us the work the port went through before the Vancouver**  
21 **Energy project was even a subject of a proposal?**

22 A. So in -- as I mentioned, we actually ended up  
23 purchasing the Terminal 5 property back from ALCOA, from  
24 ALCOA. And that allowed us to build unit train  
25 capabilities at Terminal 5.

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1           Once we had that, we started to get a lot of  
2 interest from other parties. We then started to do some  
3 market research into what other opportunities could we  
4 attract into that area. And so we had -- one of our  
5 sales directors actually was quite often going to North  
6 Dakota. They had been dealing quite a bit with the  
7 Department of Commerce in North Dakota. We were also  
8 dealing with the marketing groups at BNSF rail, and we  
9 started to understand the boom that was going on in the  
10 energy market in the Midwest.

11           We started to do some research in North Dakota  
12 as well, and we found out that the opportunity was going  
13 to be a good opportunity and a long-term opportunity.  
14 So we sent out a statement of interest for our  
15 Terminal 5 property indicating that we had rail  
16 infrastructure in place, we had a berth that was  
17 available and we had land acreage to be able to place a  
18 storage facility, and we had four respondents who  
19 responded to that.

20           **Q. And Vancouver Energy was the one you selected?**

21           A. That is correct.

22           **Q. Is that a flip of the coin, or could you briefly**  
23 **tell us what that process was?**

24           A. Well, we have a very integrated decision-making  
25 process at the port. So every department has access to

BARTZ / SMITH

1 that project, and it was a unanimous decision across all  
2 departments from our public affairs group, our  
3 environmental group, our facilities group, marketing  
4 group, as well as our financial group.

5 **Q. And very briefly, could you point at the**  
6 **photograph behind you in a way that allows everybody to**  
7 **see, if they can -- just point to the three areas where**  
8 **the Vancouver Energy facility will find itself at the**  
9 **Port of Vancouver.**

10 A. Part of the challenge was how do you put  
11 40 acres' worth of space into an already-established  
12 port. The berth that we were offering in the statement  
13 of interest was Berth 13 and 14. That has been an  
14 underutilized facility for many years.

15 We also had areas within our industrial area,  
16 about 20 acres in parcel 1E. So the idea was that we  
17 could actually -- we had an unloading management  
18 facility in the north side of the rail corridor, take it  
19 by pipeline to a storage facility at parcel 1E, then  
20 back by pipeline down this area here and to the dock.  
21 So we actually managed to -- I call it shoehorning --  
22 shoehorning in 40 acres into our facilities without  
23 affecting any of the other operations or contracts that  
24 we had in place at the time.

25 **Q. Thank you. You can sit down. So you're saying**

**BARTZ / SMITH**

1 putting the Vancouver Energy project at the Port of  
2 Vancouver doesn't conflict with any of your other  
3 tenants?

4 A. That is correct. At the time that we made that  
5 offering, we had an ongoing negotiation with BHP  
6 Billiton to place 10 million ton per year export  
7 facility on the south end of our Terminal 5 operation.

8 In the north end of our Terminal 5 operation is  
9 our laydown area for all of our wind energy and that is  
10 where we load that to rail. So most of that property  
11 was already under negotiation or under contract.

12 **Q. In simple terms, how does the port make money on**  
13 **the Vancouver Energy Distribution Terminal?**

14 A. There's about 42 acres that they're operating  
15 in, and we will collect a land lease at market value for  
16 that. We also would collect dockage for every vessel  
17 that comes alongside the loading dock. So that is  
18 really just a parking fee for the vessel.

19 And then for every barrel of oil that goes  
20 across our dock, we are paid a wharfage and service  
21 facility fee. We are also collecting rail access fees  
22 at \$25 per rail car and we're collecting rail  
23 maintenance fees as well.

24 **Q. And what's your estimate at the port for the**  
25 **value or the -- what you would be paid for a year of**

**BARTZ / SMITH**

1 operation at the 360,000 barrels per day?

2 A. It would be approximately \$60 million.

3 **Q. And what would the port do with the revenues**  
4 **created from that?**

5 A. That gets reinvested right back into the port,  
6 the infrastructure and the community, hopefully to  
7 create other jobs and more economic benefit.

8 **Q. Are there projects briefly that you could**  
9 **describe that are already on the drawing board, so to**  
10 **speak, that that revenue would go towards?**

11 A. Yes, there's three. We have some in the short  
12 term, which is our waterfront development down at  
13 Terminal 1. We are in a negotiation stage with a  
14 hotelier to put an AC Marriott hotel in that area.  
15 We're also dealing with a local developer to put a  
16 mixed-use facility there with office space and  
17 residential. The port is also studying whether to put  
18 their headquarters down into the waterfront, and we have  
19 signed a lease with a restaurateur that actually hopes  
20 to start business next week.

21 **Q. And in these negotiations, have you gotten any**  
22 **pushback because of the Vancouver Energy Distribution**  
23 **Terminal?**

24 A. No, we have not.

25 **Q. I would like you briefly to look at**

**BARTZ / SMITH**

1 Exhibit 1021, please -- 1022. I'm sorry. Is this the  
2 port's master plan for the waterfront development you've  
3 just described?

4 A. That is the master plan that we have today. We  
5 are actually in the process -- now that we have people  
6 we are negotiating with, we are taking input from them  
7 and that may change a little bit. But it is going to be  
8 mixed use with hotels, with restaurants and with office  
9 space.

10 **Q. Lastly, Mr. Smith --**

11 MR. BARTZ: We're right there, Judge.

12 Exhibit 1017, please.

13 BY MR. BARTZ:

14 **Q. Would you look those over, please, Mr. Smith.**

15 **Please identify those for us.**

16 A. These are the navigation charts for the Columbia  
17 River.

18 **Q. From where to where?**

19 A. From Astoria all the way up to Vancouver,  
20 Washington.

21 **Q. On the various pages, there's a -- is that what**  
22 **I see as the Vancouver -- the Columbia River shipping**  
23 **channel?**

24 A. That's correct.

25 **Q. Does that channel go all the way from the mouth**

**BARTZ / SMITH**

1 up to the Port of Vancouver?

2 A. Yes, it does.

3 **Q. Which agency is responsible for the conduct of**  
4 **maritime cargo ships on that Columbia River channel?**

5 A. US Coast Guard.

6 **Q. Do they -- are they responsible for speed?**

7 A. Yes, they are.

8 **Q. Are they responsible for when and how ships**  
9 **travel on that channel?**

10 A. Yes, they are.

11 **Q. Based on your experience as a mariner and --**  
12 **you've called them the Columbia River, correct?**

13 A. Yes, I did.

14 **Q. Based on your experience as a mariner and**  
15 **someone who had been involved in the commercial marine**  
16 **cargo business for some 30-plus years, if the State of**  
17 **Washington was to prescribe time of use for the channel**  
18 **or for the speed, would that have an impact on**  
19 **international commerce?**

20 A. Yes, I think so.

21 **Q. What would be the impact?**

22 A. It would be confusion. In operating vessels,  
23 you really like to have one regulating authority. You  
24 don't want to be calling 20 different states with 20  
25 different regulations. You would like it to be uniform,

BRIMMER / SMITH

1 and hopefully that would come from the US Coast Guard.

2 **Q. Thank you.**

3 MR. BARTZ: No further questions, Your  
4 Honor.

5 JUDGE NOBLE: Thank you. All right. This  
6 is a good time to take a ten-minute break until 2:15.  
7 We'll be off the record until then. Once we come back,  
8 we'll be doing council questions. Thank you. We are  
9 off the record.

10 (Recess taken from 2:06 p.m. to 2:21 p.m.)

11 JUDGE NOBLE: All right. We are back on the  
12 record and this is the time for council questions. Are  
13 there any questions of Mr. Smith?

14 There are no council questions of Mr. Smith.  
15 All right.

16 It's time for cross-examination, then.

17 MS. BRIMMER: Janette Brimmer with  
18 Earthjustice and I represent CRK-related parties.

19 CROSS-EXAMINATION

20 BY MS. BRIMMER:

21 **Q. Mr. Smith, I'm going to ask you just a few**  
22 **questions, mostly about the map. So if you could step**  
23 **up to the map, I think this is 1012.**

24 **Mr. Smith, could you please point out where the**  
25 **Fruit Valley neighborhood is in that map.**

**BRIMMER / SMITH**

1 A. It's right there.

2 Q. And could you also trace for us with the pointer  
3 the areas where there are -- there's rail either  
4 adjacent to or near the development?

5 A. This is the -- this is the closest that it  
6 comes. We now come down through this way and go out on  
7 our rail entrance.

8 Q. Okay. And then there are also the rail tracks,  
9 it looks like, on the northeast side of the  
10 neighborhood?

11 A. This is BNSF lines, mainline, and the Vancouver  
12 yard.

13 Q. And then I think you also testified about the  
14 new access points that the port has been -- the port has  
15 been building, particularly the one that goes underneath  
16 the bridge over the river?

17 A. That's correct.

18 Q. And that's right next to the river when it goes  
19 underneath that bridge?

20 A. It goes -- it's actually in the river, suspended  
21 above the river on pines and it goes underneath the  
22 bridge and then back up into the infrastructure here.

23 Q. And so the unit trains are coming in on that,  
24 suspended in the river area and then traveling on to  
25 other parts of the port?

**LARSON / SMITH**

1 A. That's correct.

2 MS. BRIMMER: I have nothing further. Thank  
3 you.

4 JUDGE NOBLE: Thank you.

5 CROSS-EXAMINATION

6 BY MS. LARSON:

7 Q. I'm Linda Larson. I'm an attorney for Columbia  
8 Waterfront LLC, and I'm also going to ask you some  
9 questions about Exhibit 1012. It might be easier for  
10 you just to go back up there. Could you point out for  
11 me the former Louisiana -- or Boise Cascade property.

12 A. It's right here.

13 Q. When you referred to that property, you were  
14 actually referring to a property that is currently owned  
15 by my client, Columbia Waterfront LLC; is that correct?

16 A. Yes.

17 Q. And that is the property that is now being  
18 redeveloped by Columbia Waterfront LLC; is that correct?

19 A. That's correct.

20 Q. Okay. Could you also point out to me that east  
21 entrance to the port property where your rail line meets  
22 up with the Burlington Northern mainline.

23 A. This is the Burlington Northern mainline here.  
24 Our spur stops right about this point.

25 Q. Right. And that spur goes along the northwest

**REED / SMITH**

1 edge of the Columbia Waterfront property; is that  
2 correct?

3 A. That's correct.

4 MS. LARSON: I have no further questions.

5 JUDGE NOBLE: Is there any other  
6 cross-examination of Mr. Smith?

7 MS. REED: Your Honor, the City of Vancouver  
8 has some.

**CROSS-EXAMINATION**

9  
10 BY MS. REED:

11 Q. Karen Reed for the City of Vancouver. This is  
12 getting repetitive, but I'm going to ask you to go back  
13 up. I have some additional questions about the map.  
14 And specifically my questions are with respect to how a  
15 unit train would route through the facility and then  
16 leave from the facility. So if you could assume for me  
17 that a unit train is coming from the east headed west  
18 among the BNSF mainline and could you show where it  
19 would get off and go into the port, and then if you  
20 could assume for me that that train was going to unload  
21 and then head north, and show me how it would -- where  
22 it would go in order to switch to head north.

23 A. I can answer most of that. The last part I can  
24 give you two different options, but I think that's  
25 better answered by BNSF, but I will give it my best try.

REED / SMITH

1       **Q.    Okay.**

2       A.    So as the train goes down from along the  
3 Fallbridge subdivision, it transfers over onto our rail  
4 track right about here.

5       **Q.    And that would be just west of the railroad**  
6 **bridge?**

7       A.    Just west of I-5 and east of the railroad  
8 bridge.

9       **Q.    Okay.**

10      A.    So just north of the Terminal 1 property that  
11 the port owns.

12      **Q.    Okay.   Thank you.**

13      A.    And at that point there is a crossover to where  
14 it would switch over onto the port's rail. And at that  
15 point is where the trains would actually be slowed down  
16 to ten miles an hour. So anything -- any rail coming in  
17 and out of the port must only go a maximum speed of  
18 ten miles per hour.

19      **Q.    Okay.**

20      A.    At that point also, the port has done a study  
21 with TÜV Rheinland to figure out how is the best way to  
22 make safety more secure as it transitions from  
23 Burlington Northern into our railroad. They gave us a  
24 few options. One of the suggestions was that we put a  
25 high guardrail right at this point. A high guardrail is

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1 something that stops derailments and especially at that  
2 speed. So a high guardrail -- if you can imagine the  
3 two rail tracks side by side, inside those two rail  
4 tracks, there is another set of tracks that are spaced  
5 maybe about ten inches to 12 inches on the inside. If a  
6 rail car at that point would want to derail, it is then  
7 held up by the high guardrails and it would just sit  
8 upright. It would not overturn, especially at that  
9 speed.

10 Coming further along here -- and that high  
11 guardrail is all the way through the trench. This is  
12 what we call the trench is when it comes down and goes  
13 underneath the river and through the trench and up on  
14 the other side. So that high guardrail is in position  
15 all the way through this area. And ten miles an hour is  
16 the maximum speed anywhere inside the port facility.

17 JUDGE NOBLE: Ms. Reed, we need to interrupt  
18 you because Mr. Stohr has a question.

19 MS. REED: Certainly.

20 MR. STOHR: Mr. Smith, could you show me the  
21 location of the jail and the proximity to the pipelines  
22 and storage facilities.

23 THE WITNESS: The Jail Work Center is right  
24 here in the middle of the industrial area, and the  
25 offloading facility for Vancouver Energy is in the rail

SMITH

1 corridor to the north of Terminal 5. There would be a  
2 pipeline coming from that unloading facility, along the  
3 rail corridor and into this area which is being called  
4 parcel 1E where the storage tanks would be. Then there  
5 would also be a pipeline coming from that storage tank  
6 down this area and into the area of Berth 13 and 14.

7 MR. STOHR: Thank you.

8 MR. BARTZ: Excuse me. If I might, just for  
9 the record.

10 Alastair, what's the name of the road or the  
11 street that you just -- when you -- the pipeline comes  
12 down from the storage tanks to the dock, what's the name  
13 of that?

14 THE WITNESS: Well, I almost said it but  
15 we've taken it up. It used to be called Gateway Avenue,  
16 but it is no longer.

17 MR. BARTZ: Fine. We can find it. Thank  
18 you.

19 THE WITNESS: So once the rail comes through  
20 the trench, it comes back out into the south peak, as we  
21 call it, and it comes all the way through the rail yard  
22 here. And there will be a little bit of rail  
23 configuration going on next year in this area, but it  
24 will come in on the south end, it will go clockwise  
25 around here, and right at this point is when the BNSF

SMITH

1 will leave that train. You then will have Vancouver  
2 Energy personnel, Savage most probably, pick up the  
3 train here and progress it through the unloading  
4 facility.

5 So the unloading facility will have  
6 30 manifolds, meaning they can unload 30 rail cars at  
7 one time. And with 120 rail cars, they would progress  
8 it through there four times in order to unload all of  
9 the rail cars.

10 Then Vancouver Energy Savage would place it  
11 in an outgoing track that is in this area here. There  
12 would be an empty track that would be designated for  
13 Vancouver Energy traffic. They would then call BNSF and  
14 say, this train is clear to go, and then BNSF would be  
15 the one who would take that from the storage tracks back  
16 into the mainline system.

17 So your last point of the question is how it  
18 would get back to North Dakota. So there's ways of  
19 doing it, that it could go -- there's no way that you  
20 can just turn and go north. There's no rail access to  
21 do that. So the few choices would be that they could  
22 just go directly back east and go up into the Pasco area  
23 and from there it could join on to the lines going on  
24 the northern corridor into North Dakota, or they could  
25 take it along this line here, then they could back up

BARTZ / SMITH

1 the empty rail cars and then take them up north and go  
2 over Stampede Pass.

3 BY MS. REED:

4 Q. Thank you. That answers my question. And could  
5 you please point out where the Clark Public Utility  
6 Natural Gas Generation facility is located?

7 A. That is right here.

8 Q. And that's next to the proposed Tesoro facility  
9 and the Jail Work Center?

10 A. That is correct. The Jail Work Center is here  
11 and so unloading the manifolds will be here in the --

12 Q. So the natural gas facility is directly north?

13 A. That is correct.

14 MS. REED: Okay. Thank you. I don't have  
15 anything further.

16 JUDGE NOBLE: Thank you. Is there any other  
17 cross-examination of Mr. Smith?

18 There being none, it's time for redirect.

19 MR. BARTZ: Brief redirect.

20 REDIRECT EXAMINATION

21 BY MR. BARTZ:

22 Q. Mr. Smith, I'll join my colleagues and ask you  
23 to go back to the photograph.

24 Before the port got a new entrance, where again  
25 was that Hill Track entrance?

**BARTZ / SMITH**

1           A.     This is a single track that comes right down  
2 through this area here.

3           Q.     Okay. Thank you. And a few minutes ago when  
4 you were talking to the City's lawyers question and you  
5 were pointing the empty cars out that they were going to  
6 be leaving, what approximate terminal or area is that so  
7 if -- I can't see you on the record, point. So where  
8 would I go find that when I read this in a month?

9           A.     So this is Fort Vancouver over here.

10          Q.     I'm going to stop you, Alastair. You're way  
11 off. So over here the train is finished unloading at  
12 Vancouver Energy's facility and it's come out to that  
13 area. What is that area called that you're pointing out  
14 right now? Or how would I find that again on a map?

15          A.     That is in the port's rail infrastructure. So  
16 they're designated tracks within that, and we can get a  
17 rail map for you, if you'd like, because there's  
18 designated tracks with track numbers that are allocated  
19 to Vancouver Energy.

20          Q.     But it's up above Terminals 3 and 4. Is that a  
21 way to look at it?

22          A.     Yeah. So this train will be close to 7,000 feet  
23 long. So it will stretch quite a bit along the whole  
24 northern side.

25          Q.     And then -- thank you. You can sit down. Last

**SMITH**

1 question, just to help with the record. I think you  
2 said the rail -- the train goes underneath the river,  
3 and I think what you meant to say, it goes underneath  
4 the railroad bridge at the river?

5 A. Yes, I id. Thank you.

6 MR. BARTZ: No further questions.

7 JUDGE NOBLE: Thank you. Are there any  
8 council questions?

9 Mr. Siemann.

10 MR. SIEMANN: You mentioned that there are  
11 some other tanks that store federal material. How many  
12 are there?

13 THE WITNESS: I'm not 100 percent sure.  
14 It's off of port property, but I think it's in the three  
15 to four range.

16 MR. SIEMANN: Those are not on port  
17 property?

18 THE WITNESS: No, they're not.

19 MR. SIEMANN: I see. And you also  
20 mentioned -- I thought they were on port property  
21 because you mentioned that your safety record was  
22 excellent for the piping of that material. Did I  
23 misunderstand something there?

24 THE WITNESS: So I talked about two or three  
25 different companies at that same time. We talked about

SMITH

1 Tesoro, we talked about the jet fuel, which actually  
2 comes in under a NuStar contract, there's a pipeline  
3 that NuStar has that goes all the way up on to Fruit  
4 Valley Road. So it's about a mile north of the port  
5 itself, and they have a tank farm there that is not part  
6 of the port complex.

7 MR. SIEMANN: I see. So there are no other  
8 tanks on port property that are storing any flammable  
9 liquids?

10 THE WITNESS: There are ones with Tesoro  
11 that are on port property.

12 MR. SIEMANN: I see. But you don't know how  
13 much that -- what the capacity of those is currently?

14 THE WITNESS: So on that one I do. They  
15 have about 287,000 barrel capacity. They handle three  
16 different commodities: gasoline, diesel and biofuels.

17 MR. SIEMANN: And on those, is that what you  
18 referred to when you said that the safety record was  
19 excellent?

20 THE WITNESS: Yes.

21 MR. SIEMANN: Can you be more specific, over  
22 the past, say, 20 years, how many spills or accidents  
23 there have occurred with those tanks or pipelines?

24 THE WITNESS: With the Tesoro ones?

25 MR. SIEMANN: Yes.

SMITH

1 THE WITNESS: I don't know of any one -- any  
2 spills that were reported from that facility.

3 MR. SIEMANN: Thank you.

4 JUDGE NOBLE: Any other council questions?

5 MR. SIEMANN: Actually, I did have one  
6 other. Sorry, I forgot.

7 You also mentioned this high guardrail  
8 technology for the trains. How long has that been used  
9 in the United States?

10 THE WITNESS: I'm not sure. I'm not really  
11 involved in the rail side of it, but I did read the  
12 report from our TÜV Rheinland, which the port hired as a  
13 consultant, as to how we would make our thing more  
14 safe -- our facility more safe, and they gave quite a  
15 few recommendations and the high guardrail was one of  
16 them. And each one of the recommendations they gave we  
17 implemented.

18 MR. SIEMANN: Thank you.

19 JUDGE NOBLE: Now, are there any questions  
20 from other council members?

21 MR. SHAFER: I have a quick question, just  
22 to follow up on Mr. Siemann.

23 With the guardrail, have there been any  
24 other incidents anywhere in the country where that  
25 guardrail has been tested?

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1 THE WITNESS: That's -- I'm afraid I don't  
2 know anything about that.

3 MR. BARTZ: If I may, for the council  
4 members, David Bartz for the port, the TÜV Rheinland  
5 person is a prefiled testimony expert for the port and  
6 you'll hear from that person in approximately a week.

7 JUDGE NOBLE: Are there any questions based  
8 upon the council's questions?

9 MR. BARTZ: Just one redirect, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. BARTZ:

12 Q. Alastair, could you just point on the map at the  
13 Tesoro facility you've talked about that has been  
14 getting liquid products for some time.

15 A. That is this facility here.

16 Q. Thank you, Alastair. And lastly, just to some  
17 of the questions. The safety record applies to the jet  
18 fuel also?

19 A. No, that is a different account. That is  
20 handled by NuStar.

21 Q. I understand. I didn't ask a very good  
22 question. Have you had any reportable incidents with  
23 the jet fuel cargo that you've also handled at the port?

24 A. Not to my knowledge.

25 MR. BARTZ: Thank you. That's all I have.

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1 JUDGE NOBLE: Are there any other questions  
2 based upon council questions?

3 All right. Mr. Smith, you are excused as a  
4 witness. Thank you very much for your testimony today.

5 THE WITNESS: Thank you.

6 JUDGE NOBLE: Call your next witness.

7 MR. JOHNSON: Your Honor, the applicant  
8 calls Jared Larrabee.

9 Mr. Larrabee, if you could approach the  
10 witness stand and remain standing to be sworn, please.

11 JUDGE NOBLE: Mr. Larrabee, would you raise  
12 your right hand.

13 (Witness sworn.)

14 JUDGE NOBLE: Thank you. Please be seated.

15 You may proceed.

16 JARED LARRABEE,

17 having been first duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. JOHNSON:

20 Q. Mr. Larrabee, for the record, could you please  
21 state your full name and go ahead and spell your first  
22 and last name.

23 A. Yes. My name is Jared Larrabee. It's J-a-r-e-d  
24 L-a-r-r-a-b-e-e.

25 Q. Thank you.

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1 MR. JOHNSON: And, Your Honor, before we  
2 proceed, a couple of administrative things. First of  
3 all, we have provided Mr. Larrabee with a laser pointer  
4 so that he can use it when referencing exhibits.  
5 However, I note that that will be directed above your  
6 head and maybe some of the council members, so if you  
7 don't want it used, I don't want him to use it.

8 JUDGE NOBLE: I don't want him to point it  
9 at me.

10 MR. JOHNSON: Okay. And the other thing is,  
11 Your Honor, it relates to exhibits that we'll be using  
12 during the course of Mr. Larrabee's testimony. First of  
13 all, the applicant would move to admit joint common  
14 exhibit -- or parties common exhibit 01-08233. That's  
15 the entire revised application for a site certificate.

16 JUDGE NOBLE: That is the latest application  
17 that has been filed that was the subject of some recent  
18 motion practice?

19 MR. JOHNSON: That's correct, Your Honor.

20 JUDGE NOBLE: It's my understanding that  
21 that is an agreed exhibit and therefore PCE01-08233 will  
22 be admitted.

23 MR. JOHNSON: Thank you, Your Honor. And  
24 with regard to other exhibits, Mr. Larrabee will be  
25 testifying to a number of photographs. Those

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1 photographs are primarily at the TSS Exhibit 291 and TSS  
2 Exhibit 289. Now, those exhibits contain more  
3 photographs than we intend to have Mr. Larrabee testify  
4 to and that we intend to offer into evidence. I can  
5 offer them as we move through or I can -- we can list  
6 them now and I can offer them. I have coordinated with  
7 counsel for the other parties and we resolved any  
8 objections to those, so they're stipulated to admission.  
9 I want -- for efficiency's sake, would like to know how  
10 you want to proceed.

11 JUDGE NOBLE: So TSS 291 and 289 have  
12 multiple photographs. This witness won't be testifying  
13 about all of them today, but they are agreed to both of  
14 them?

15 MR. JOHNSON: Yes, Your Honor.

16 JUDGE NOBLE: I will admit TSS 291 and 289  
17 on the basis of that agreement.

18 MR. JOHNSON: Thank you, Your Honor.

19 JUDGE NOBLE: I will admit all of the  
20 photographs.

21 BY MR. JOHNSON:

22 **Q. All right. Mr. Larrabee, can you just tell us**  
23 **your current employment status, please.**

24 A. Yeah. I'm the general manager for Vancouver  
25 Energy for Tesoro Savage Petroleum Terminal LLC, which

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1 is doing business as Vancouver Energy.

2 Q. Mr. Larrabee, I'm going to ask -- I know this is  
3 hard to do and, you know, we've all been hearing it all  
4 day, but let's try to slow it down because the court  
5 reporter here is trying to tap away. And so just take  
6 your time and that will be helpful to him.

7 Could you just provide a brief -- well, first of  
8 all, I should say you didn't provide prefiled testimony  
9 in this case, did you?

10 A. No.

11 Q. All right. And you're here as a fact witness to  
12 testify; is that right?

13 A. Yes.

14 Q. Okay. Can you give just a brief description of  
15 your education to the council, please.

16 A. Yes. I have a bachelor of interdisciplinary  
17 studies in finance and economics and a master's in  
18 public administration with...

19 Q. Okay. And can you please just provide a brief  
20 description of your work experience as it relates to  
21 your current position involving the terminal project?

22 A. Yes. With Savage, I've been a business unit  
23 leader. As a business unit leader, I was responsible  
24 for our operations in the Pacific Northwest that focused  
25 on crude-by-rail and crude-by-rail unloading.

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1           Prior to that I was also a business director and  
2 the business developer with Savage. Before working with  
3 Savage, I worked for Deloitte Consulting, working on  
4 strategy and supply chain projects in the energy  
5 industry. I've also worked in the nonprofit sector,  
6 finance sector and construction sector.

7           **Q. Okay. And, again, can you just describe your**  
8 **current position because we want -- I want the council**  
9 **to understand that you're here today to testify**  
10 **regarding the operations of the terminal.**

11           A. Yes. My current position as general manager for  
12 Vancouver Energy is primarily related to ultimately  
13 getting the project up and running which would include  
14 hiring and operation practices, but also includes  
15 responsibility as we go through the permitting process  
16 as well.

17           **Q. Okay. And what are some of your**  
18 **responsibilities in that position?**

19           A. Broadly overseeing all of the work extremes and  
20 work that we are doing related to this project.

21           **Q. All right. I would like to turn your attention**  
22 **to some questions regarding the corporate structure of**  
23 **the applicant. First of all, what is Vancouver Energy?**

24           A. Vancouver Energy is a joint venture between  
25 Tesoro Refining and Marketing Company LLC and Savage

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1 companies that was established specifically to seek the  
2 permits and ultimately build, own and operate the  
3 terminal.

4 Q. Okay. And is it not the case that the actual  
5 entity that has applied for the permit for the terminal  
6 is Tesoro Savage Petroleum Terminal LLC?

7 A. That is correct.

8 Q. But for short you call that Vancouver Energy; is  
9 that right?

10 A. Yes. We have a doing business as Vancouver  
11 Energy.

12 Q. And can you describe what Tesoro is, the Tesoro  
13 company?

14 A. Tesoro is a publicly traded refining and  
15 marketing company.

16 Q. Okay. And how about Savage?

17 A. Savage is a privately held supply chain and  
18 logistics company.

19 Q. And, again, what's the purpose of the joint  
20 venture that is Vancouver Energy?

21 A. The purpose of the joint venture is to develop a  
22 terminal that can deliver crude oil from the  
23 mid-continent of the United States to West Coast and for  
24 West Coast use in refining and transportation fuels.

25 Q. And back to Tesoro. Tesoro is a refiner, is it

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1 not?

2 A. Yes. Tesoro's a refining and marketing company.  
3 However, the terminal itself is not proposed to be a  
4 refiner at all -- or a refinery at all, but it's  
5 proposed just to be a transfer terminal.

6 **Q. And what entity will actually operate the**  
7 **terminal?**

8 A. We would anticipate that Savage would be the  
9 primary operator of the rail unloading structure and the  
10 tanks, and Tesoro would be the operator of the dock  
11 infrastructure and the dock operations.

12 **Q. Okay.**

13 A. To be clear, that is an integrated system. So  
14 not only the assets are integrated but also the  
15 operations are integrated. So there would be a joint  
16 working relationship across the entire facility.

17 **Q. I understand. And we'll be getting to a**  
18 **description of the facility in a few minutes. Who will**  
19 **have responsibility for the crude that's delivered to**  
20 **the terminal?**

21 A. The customers will have ultimate responsibility  
22 for delivery to the terminal and delivery away from the  
23 terminal. When the crude oil is received at the  
24 terminal, then the entity, Vancouver Energy and those of  
25 us operating the terminal, will have care and custody

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1 responsibility the entire time that it's at the  
2 terminal.

3 **Q. Will Vancouver Energy, or Savage for that**  
4 **matter, own the crude?**

5 A. No. Neither Vancouver Energy nor Savage will  
6 own the crude. It is anticipated Tesoro will also be a  
7 customer of the terminal, and as a customer of the  
8 Tesoro terminal, Tesoro would have some ownership of the  
9 crude that they transport from the facility.

10 **Q. And there were some questions from a council**  
11 **member I believe earlier today -- by the way, have you**  
12 **been here for the testimony today?**

13 A. Yes.

14 **Q. Okay. And there's a reference to the use that**  
15 **Tesoro might put to Terminal 2 and what the initial**  
16 **commitment in terms of volume might be. Do you know**  
17 **what that is?**

18 A. 60,000 barrels per day.

19 **Q. I want to introduce -- or have you introduce to**  
20 **the council the facility itself, and maybe one way we**  
21 **could do that would be to essentially follow the oil, if**  
22 **you will. So if you could describe for the council what**  
23 **will happen once the oil arrives from mid-continent into**  
24 **the greater Vancouver vicinity and then moves into the**  
25 **facility, please.**

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1           A.     Yeah.  This is a little bit what Mr. Smith also  
2 referred to, but the crude oil would -- once it arrives  
3 on port track, the trains would be traveling at  
4 ten miles per hour.  BNSF would be operating those  
5 trains.  When they come into the loop track area, that  
6 would transition to our operators operating the trains.  
7 Our operating requirements are no more than five miles  
8 an hour while they're going through the facility.  And  
9 the trains would then move through the unloading area  
10 and be connected 30 cars at a time, as was described,  
11 and unloaded, and then once the train is fully unloaded,  
12 it would depart the facility.  The crude oil itself  
13 would be loaded -- transitioned over to the pipes -- or  
14 the tanks, excuse me, and from the tanks would then be  
15 transitioned through pipes over to the dock for vessel  
16 loading.

17           **Q.     Okay.  Maybe we can take a closer look at that.**

18                     MR. JOHNSON:  If you could, please, display  
19 Exhibit 1, page 214, please.

20 BY MR. JOHNSON:

21           **Q.     And while we're waiting for that to come up,**  
22 **Mr. Larrabee, I've heard you describe what's happening**  
23 **there as almost a warehouse operation.  Can you describe**  
24 **what you mean when you describe it that way?**

25           A.     Yes.  So a terminal like this is the oil

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1 industry's equivalent to a warehouse with a cross dock,  
2 meaning a facility that moves from one form of  
3 transportation to another form of transportation.  
4 Throughout, when you look at why warehouses are put in  
5 place, it's typically because of the ratability or  
6 short-term storage needs when a product is moving from  
7 one form of transportation to another or when it's in  
8 transit from one place to another. So that's roughly  
9 the equivalent of what it is.

10 **Q. And I need to do a better job identifying**  
11 **exhibits. It's PCE. It's a PCE exhibit. So PCE**  
12 **Exhibit 1.**

13 MS. MASTRO: Page --

14 MR. JOHNSON: Page 214.

15 JUDGE NOBLE: Are we talking about the  
16 application?

17 MR. JOHNSON: Yes, it's a page from the  
18 application, Your Honor.

19 JUDGE NOBLE: I think that -- I just worked  
20 that out. I think that it was identified slightly  
21 differently than it should be. It's Exhibit 0001, and  
22 its subsequent number after that for the pages is  
23 008233-PCE, the 2016 application.

24 MR. JOHNSON: Yes, Your Honor. That's the  
25 entire page count for the --

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1 JUDGE NOBLE: Yes.

2 MR. JOHNSON: -- for the document. However,  
3 it is now being displayed.

4 BY MR. JOHNSON:

5 Q. So can you go ahead and walk through the primary  
6 areas -- well, first of all, I ask you to describe what  
7 this is.

8 A. This is a rendering or drawing of what the  
9 facility would look like over by the -- it's an  
10 engineering drawing over by the loop traffic area,  
11 Terminal 5.

12 Q. Okay. And there's some shaded areas there. If  
13 you could, using the laser pointer and, again, ensuring  
14 that you direct it solely at the exhibit and not at a  
15 council member or the judge, could you point out the  
16 areas that are highlighted there and describe what they  
17 are, please.

18 A. Yes. Right here is area 200 in the top of the  
19 rail track.

20 Q. I'm going to stop you for a minute because I may  
21 need to do a little describing for the benefit of the  
22 record as we do this. And what would make that easier  
23 would be if you could -- as you're describing it, note  
24 that, you know, the exhibit is marked with that area  
25 which is hard to see, but, in fact, it is marked. So

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1 you're pointing to area 200, for instance. Okay?

2 A. Yeah. I'm pointing to area 200 here, which is  
3 the rail car unloading area. It is also where our  
4 office facilities would be. It is over the loop track  
5 and it's where the trains will initially arrive and be  
6 connected.

7 Over here is area 300, which is where the crude  
8 oil will be delivered from the pipes to the tanks. This  
9 is also what Alastair referred to as parcel 1A.

10 Down here is the dock area. The dock area is  
11 area 400. And that is the existing docks that Alastair  
12 referred to as well.

13 Area 500 is the piping that connects all of the  
14 facility together.

15 And area 600 is over to the left of the -- of  
16 area 200, and that's where the boiler buildings would be  
17 located.

18 **Q. And just to put this in context, the loop track**  
19 **is shown there; is that correct?**

20 A. Yes. The loop track here is Terminal 5 and is  
21 the existing loop track that the port has put in.

22 **Q. And just for context, can you tell us the**  
23 **approximate distance of the loop track from the I-5**  
24 **bridge where the Port of Vancouver rail track begins?**

25 A. So the dock right here from -- distancewise to

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1 the rail bridge is approximately two miles, and to the  
2 I-5 bridge is approximately 2.75 miles.

3 **Q. And approximately how far are the tanks that you**  
4 **referred to earlier from the river?**

5 A. From the closest berm on the tanks to the river  
6 bank, the highest river bank, is approximately a third  
7 of a mile. That is actually similar -- it's just a  
8 little bit closer for the rail unloading facility at  
9 area 200. The closest track in that unloading area to  
10 the river is approximately a third of a mile.

11 **Q. Okay.**

12 MR. JOHNSON: And could we have the same  
13 exhibit that's PCE 1, page 685, please, 0685.

14 BY MR. JOHNSON:

15 **Q. And while she's bringing that up, I just wanted**  
16 **to ask you a few questions about the type of crude oil**  
17 **that will be handled at the facility. What specific**  
18 **type of crude is the terminal designed to handle?**

19 A. The terminal is designed to handle  
20 pipeline-quality crude oil with an API gravity range of  
21 15 to 45.

22 **Q. Okay. First of all, what's API?**

23 A. So API is the American Petroleum Institute.  
24 It's an industry body that sets standards for how the  
25 industry operates.

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1           **Q.     Okay.   And what's a range of 15 to 45?   What do**  
2 **those numbers mean?**

3           A.     So API gravity is a way to designate various  
4 crudes.   It's a measure of the density of the crude oil  
5 as compared to water.   A higher API gravity is a lighter  
6 crude oil and the lower API gravity is a heavier crude  
7 oil.

8           **Q.     Okay.   So an API of 45 would be a lighter crude?**

9           A.     Yes.

10          **Q.     And 15 conversely would be a heavier crude?**

11          A.     A heavier.

12          **Q.     All right.   Let's look back at this exhibit, if**  
13 **you could just describe what that exhibit shows.**

14          A.     Okay.   So this is also a rendering more to what  
15 the facility would look like.   The long building here is  
16 the -- it's actually a covering there is what -- where  
17 the rail car unloading would occur.

18          **Q.     Okay.   And, again, this shows, looks like, some**  
19 **type of a building there, aluminum support building.   It**  
20 **shows some tanks over in an area marked storage 300.**  
21 **Now, those structures aren't presently there; is that**  
22 **correct?**

23          A.     That is correct.   These structures are not here.  
24 This is a rendering of what the facility would look like  
25 assuming it was built.

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1           **Q.    Okay.    Please continue.**

2           A.    So area 200 that we referred to in the  
3 engineering drawing is represented here. Our operating  
4 facilities would be out here in this area, meaning the  
5 office -- where all the office area would be located.

6           Area 300 over here is where the tanks are.

7           Area 400 is the marine facilities over here to  
8 the right over by the river.

9           And then as referenced, the boiler building is  
10 area 600 down here to the site. And as mentioned, the  
11 dock area from this dock area to the I-5 bridge is about  
12 2.75 miles.

13          **Q.    Okay.    So back to some questions about the types**  
14 **of crude you were describing. You discussed an API**  
15 **gravity range of crude of 15 to 45. Do you expect more**  
16 **or less of any particular type of crude within that**  
17 **range to be processed through the terminal?**

18          A.    The facility is designed to handle more of the  
19 lighter crude oils, which is equivalent to the Bakken  
20 crude oils.

21          **Q.    All right. And why is there a limitation on the**  
22 **range of 15 to 45? Presumably there are numbers that**  
23 **are outside that range?**

24          A.    Yes. So there's a number of reasons that we  
25 would have a limiting factor on the range. We would

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1 design the facility to a certain standard, and those  
2 facility designs and everything that's built around that  
3 is related to the design -- excuse me, to that range  
4 that we have proposed. Once we have done that, we would  
5 also have contractual obligations that we would require  
6 our customers to meet that range. There's a number of  
7 reasons why you would do that. One of those primary  
8 reasons is commercially, the protection of the product  
9 that the customers own and making sure that what they  
10 purchased and what they receive remains the same, and so  
11 you try to stick within that range.

12 **Q. Okay.**

13 A. And you require your customers to meet that  
14 range in order to stick within that range.

15 **Q. And that will help you protect the facility**  
16 **assets that have been designed to handle that?**

17 A. That's right. That's right. So it protects  
18 kind of commercially the customers. It also protects  
19 the assets that we have designed and built as well.

20 **Q. Okay. Let's move to capacity. So we've**  
21 **discussed the general layout, we've discussed the type**  
22 **of crude. Now, how about the capacity of crude? What**  
23 **is the terminal's capacity?**

24 A. The facility is designed -- well, so, first of  
25 all, we discussed the capacity as far as a maximum daily

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1 average. The reason that we've done that is, as a  
2 supply chain and logistics, we understand that there's  
3 variability and not pure ratability of both inbound or  
4 outbound shipments. So the facility's capacity is a  
5 maximum daily average of four unit trains per day, which  
6 equates also to 360,000 barrels a day. That is four  
7 unit trains multiplied by 120 cars multiplied by 750  
8 barrels per car. Now, each train may vary slightly or  
9 each rail car may vary slightly. So that was a very  
10 conservative way to look at that.

11 The 360,000 barrels a day also refers to  
12 throughput, not just inbound or not just outbound  
13 capacity, which means we're also looking at the vessels  
14 when we look at the facility capacity. So we're looking  
15 at both inbound, outbound, as well as what we can have  
16 at the facility itself.

17 **Q. So you describe -- you described a maximum daily**  
18 **average as expressed in terms of number of trains in a**  
19 **day. Does this mean that you will never have more than**  
20 **four trains a day at the terminal in any 24-hour period?**

21 A. It does not mean that. Again, one of the things  
22 that we learned as a supply chain company is that there  
23 is variability in the supply chains moving to or from a  
24 facility. So to account for that, we used -- and in  
25 full transparency, we used the maximum daily average

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1 term to account for that. So the example I would use is  
2 the example where you have four trains planned to arrive  
3 at the facility, and one of those trains, instead of  
4 arriving at 11:00, arrives at 12:30 a.m. in the morning.  
5 Technically you now have three trains on one day and  
6 five trains on another day. So we would anticipate, in  
7 working with the railroads, that there are instances  
8 where that would happen and we need to account for that.

9 **Q. Is there any way you can actually predict how**  
10 **much crude will arrive or be shipped on any given day?**

11 A. Yeah. Again, as a supply chain and logistics  
12 company, that is something that is always a challenge;  
13 it is always something that we're looking at.

14 To the specifics of hours or within a couple of  
15 hours, it is always very challenging to predict that.  
16 So we look at that as a broad system, which means we  
17 have to look at both the inbound capacity and what's  
18 happening with the railroads on the inbound side, the  
19 outbound capacity, what's happening with the vessels on  
20 the vessel side, and then how we're managing the  
21 facility itself.

22 **Q. And do you control the rail delivery rate?**

23 A. No, we do not control the rail delivery rate or  
24 the railroads and the timings of those trains from the  
25 railroads. We schedule with them. We work with our

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1 customers to schedule them.

2 Q. And in terms of the maximum daily average,  
3 particularly the 360,000-barrel-a-day average and over a  
4 longer period of term, the four day -- the  
5 four-train-per-day average, is there data that you would  
6 provide over time to verify that, in fact, you were  
7 meeting that or not exceeding that maximum daily  
8 average?

9 A. Yes, absolutely. So as a facility operator, and  
10 as Mr. Smith pointed out, we have an obligation to pay  
11 our fees to the port, both based on the barrels that are  
12 transloaded through the facility as well as based on the  
13 rail cars that pass through the facility. So we would  
14 be reporting that both from a volume perspective,  
15 whether it's rail cars or barrels, to the port, and  
16 would also be, accompanying that, our fees that go along  
17 with that.

18 We would anticipate, just like any other  
19 facility that is managed through the EFSEC process, but  
20 we would also have a monthly reporting to the EFSEC  
21 council as well related to our regular operations of the  
22 facility.

23 Q. Okay. Thank you. And you just referenced  
24 Mr. Smith's testimony. I don't want you to repeat what  
25 he said. However, from the applicant's perspective, why

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1 did Vancouver Energy select the Port of Vancouver site?

2 A. Yeah. So the first thing I would like to point  
3 out that Mr. Smith did mention was that the port went  
4 out seeking proposals related to the project. Now, we  
5 had separately been looking for an area that would  
6 accommodate a facility like this as we were going  
7 through that. And when the port went out for -- with  
8 their proposals, this facility -- or this area actually  
9 met very well what we were looking for.

10 There were two primary investments that made  
11 that possible and made it such a good area for us to  
12 look at. The first one was the one that Mr. Smith  
13 referred to, the West Vancouver Freight Access, which  
14 really made -- gave new relevant structure to the area.

15 The second is one that has been going on for a  
16 number of years and that was the deepening of the  
17 Columbia River channel. The deepening of the Columbia  
18 River channel to 43 feet goes up to the I-5 bridge and  
19 was designed, to my knowledge, primarily to bring in  
20 deeper draft vessels and more vessels to the area to  
21 increase vessel commerce in the river area.

22 When you combine those two major investments  
23 together, what you have, and particularly when you look  
24 at the Bakken region, is the closest deepwater port with  
25 rail access, with mainline rail access to deliver the

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1 crude oil to the facility, get it on the water and  
2 deliver it to the refineries the way that they already  
3 are designed to handle cruel oil deliveries, which is by  
4 vessel.

5 **Q. And do you know whether the channel-deepening**  
6 **project and/or the West Vancouver Freight Access project**  
7 **underwent environmental review?**

8 A. Yes, they did.

9 **Q. And can you again just -- to focus on the**  
10 **benefit to Vancouver Energy, what's the benefit of the**  
11 **deepwater port here in Vancouver?**

12 A. So there's a number of benefits. One being  
13 that, as Mr. Alastair pointed out, the BNSF mainline  
14 coming in. What that really does is it keeps --  
15 particularly when looking at the Bakken, it keeps the  
16 rail transportation to the facility on a single  
17 railroad, primarily. The BNSF has access directly to  
18 terminals in the Bakken. So you're not transitioning  
19 from a short line rail or a different railroad, but you  
20 have direct access from the BNSF all the way through to  
21 the general site, and at the terminal site, you're not  
22 transitioning to a short line rail there either.

23 We believe that one of the benefits that  
24 provides actually is a safety benefit because it's --  
25 there are no handoff points or transition points along

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1 the way.

2 Q. And, again, do you know if there are any other  
3 deepwater ports in closer proximity to the mid-continent  
4 production, say, for instance, in the Bakken?

5 A. To my knowledge, there are no other deepwater  
6 ports closer to the mid-continent region where that  
7 production is occurring.

8 Q. And I realize there's been a lot of reference to  
9 BNSF Railway. Do you anticipate BNSF being a carrier of  
10 the crude delivered to this facility?

11 A. Yes, we would anticipate BNSF being the primary  
12 carrier to the facility.

13 Q. And there was some testimony this morning about  
14 limited pipeline access to the mid-continent. Does that  
15 bear on Vancouver Energy's decision to place the  
16 terminal project here at the Port of Vancouver?

17 A. Yes, it does. Not having pipeline access to the  
18 mid -- excuse me to the West Coast or from the  
19 mid-continent to the West Coast has -- does play -- and  
20 makes it a very good location to put a facility like  
21 this and to try to connect those two existing supply  
22 chains together.

23 Q. And, again, are the refineries that you  
24 anticipate shipping crude from the project positioned to  
25 receive crude by water?

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1           A.     Yes. All of the refineries on the West Coast  
2 that are on the coastal area receive crude by water  
3 today, to my knowledge.

4           **Q.     Okay. And earlier today there was testimony**  
5 **about a lease with the port for the site on which the**  
6 **terminal will be located. Have you been involved in the**  
7 **negotiations surrounding that lease?**

8           A.     I was not involved in the initial negotiations,  
9 but I was tangentially aware of them happening and have  
10 viewed many part -- aspects and parts of the lease in my  
11 role.

12          **Q.     And are you familiar with the terms of the**  
13 **lease?**

14          A.     Yes, I am.

15          **Q.     What's the duration of that lease?**

16          A.     The initial term is ten years, plus two  
17 five-year extensions for a total of 20 years.

18          **Q.     Okay. And what happens at the end of the term**  
19 **of the lease?**

20          A.     At the end of the term of the lease there is a  
21 structure and pathway that would allow for  
22 decommissioning the facility -- of the facility or  
23 handing over the assets -- ownership of those assets to  
24 the port.

25          **Q.     Okay. And would that mean transferring title of**

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1 the assets to the port?

2 A. Yes. That would be a full transfer of title of  
3 the assets to the port.

4 **Q. And would that happen automatically at the end**  
5 **of the 20-year term?**

6 A. We would anticipate that the transfer of the  
7 title would require the port to go through a process  
8 with EFSEC if they wanted to continue to operate those  
9 facilities.

10 **Q. Does the lease address financial assurances**  
11 **requirements?**

12 A. Yes, it does. There's a number of financial  
13 assurance requirements throughout the lease. However, I  
14 would point out that we do not view those as ultimately  
15 the financial assurances we would have for the facility,  
16 but those would be the minimums that were required by  
17 the port at the time we sign the lease.

18 MR. JOHNSON: And, Your Honor, before I  
19 continue, I would note for the council's benefit that  
20 the -- a copy of the lease and an amendment to the lease  
21 are included at -- I believe it's the City of  
22 Vancouver's exhibits, number 3068075 and 3070007. If  
23 there's no objection to admitting those exhibits at this  
24 time, I would offer them into the record.

25 JUDGE NOBLE: Well, first, let me ask if

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1 there is an objection to those two documents. The lease  
2 is contained in two different exhibits?

3 MR. JOHNSON: Your Honor, there's a --  
4 there's a -- the original lease and an amendment to the  
5 lease.

6 JUDGE NOBLE: Okay. Is there an objection?  
7 I'm going to confirm that number. 3068 -- 3068075?

8 MR. JOHNSON: 3068075, correct, Your Honor.

9 JUDGE NOBLE: 3068 is the exhibit number,  
10 and then you are referring to 075 as a --

11 MR. JOHNSON: Well, Your Honor, the way we  
12 understood the marking of these exhibits was that we  
13 were supposed to -- when we initially designated the  
14 exhibits, we would put the exhibit number and then the  
15 total number of pages. So when we refer to the entire  
16 exhibit, we're referring to -- and I think we're all on  
17 the same page. We're referring to exhibit number 3068,  
18 I guess I need to stop there, and 75 is the total number  
19 of pages.

20 JUDGE NOBLE: Right. I just wanted that to  
21 be clear for the record, because the actual number of  
22 the exhibit is the 3068. Since there's been no  
23 objection --

24 MR. POTTER: But the amendment, the exhibit  
25 number is?

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1 MR. JOHNSON: 3070.

2 JUDGE NOBLE: 3070. Sorry for talking over  
3 counsel.

4 So 3068 will be admitted. There's been no  
5 objection and 3070 will be admitted. There's no  
6 objection.

7 BY MR. JOHNSON:

8 **Q. All right. Thank you, Mr. Larrabee, for your**  
9 **patience. Back to the lease.**

10 **Does it specify specific uses for the leased**  
11 **property?**

12 A. It does. And it does not specify a refinery, or  
13 said differently, we cannot use the facility for a  
14 refinery, the lease area for a refinery.

15 **Q. And you made note during this colloquy about the**  
16 **exhibit number, I referenced an amendment. Has the**  
17 **lease been amended?**

18 A. Yes, it has been amended.

19 **Q. And when did that occur; do you recall?**

20 A. It was the end of April of this year, end of  
21 April of 2016.

22 **Q. And can you describe some of the key features of**  
23 **that amendment?**

24 A. There were a number of changes that took place.  
25 One of those was an increase in the fee that we pay to

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1 the port currently to use the facility. There was an  
2 amendment that extended the time allowed for permitting.  
3 There was an amendment that restricted delivery of crude  
4 oil to West Coast ports. And there were a number of  
5 other items as well.

6 Q. Okay. I'm sorry, I don't want you to have to  
7 repeat yourself, but I just want to make sure we nail  
8 down the financial assurances piece, and you may have  
9 already answered my question. What were some of the  
10 elements again? Did you mention workers' compensation?

11 A. No, I did not. So there are -- there are  
12 financial assurances in there related to workers'  
13 compensation, and related to environmental, related to  
14 automobile and other liabilities.

15 Q. Do you view those as the maximum financial  
16 assurances from --

17 A. No. We view those as the minimum that were put  
18 in place by the port at the time we were leasing.

19 Q. And can you just --

20 JUDGE NOBLE: Just a moment. I have a  
21 question, a clarification question, Mr. Larrabee, if I  
22 may interrupt.

23 When you say "financial assurance  
24 required" -- "requirements in the lease," you're  
25 including workers' compensation requirements?

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1 THE WITNESS: There are insurance sections  
2 in the lease and the insurance sections stipulate  
3 various aspects of what we have to have insurance for  
4 related to the facility.

5 JUDGE NOBLE: And you said some kind of  
6 environmental liability. Did you say that?

7 THE WITNESS: Yes, yes.

8 JUDGE NOBLE: Could you give me a little bit  
9 more detail about what that is and what sorts of  
10 instruments would provide that financial assurance?

11 THE WITNESS: So it's in the insurance  
12 section of our lease. There's actually, I believe, a  
13 witness that we have later on that would be able to talk  
14 more specifically to those items that are in there and  
15 what specifically it is. I don't remember the specific  
16 elements of that or the specific aspects of how or what  
17 those requirements are in that insurance section. I do  
18 remember that there were those categories in the lease.

19 JUDGE NOBLE: Good. Thank you. Could you  
20 tell me what witness that would be?

21 MR. JOHNSON: Yes, Your Honor. It will  
22 be --

23 THE WITNESS: Michelle Hollingsed.

24 MR. JOHNSON: Michelle Hollingsed, Your  
25 Honor.

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1 JUDGE NOBLE: Thank you. Sorry for the  
2 interruption.

3 BY MR. JOHNSON:

4 Q. Could you just briefly describe the fee  
5 arrangements under the lease?

6 A. Yes. So Alastair actually mentioned that  
7 already. The fee arrangements could include a wharfage  
8 fee, rail car fee, a per-barrel fee and a track  
9 maintenance fee, as well as a fee for the lease. And I  
10 believe Alastair also referenced the -- in aggregate on  
11 an annual basis, full -- billed out at full capacity,  
12 those leases would be \$60 million a year annually.

13 Q. And does the lease address decommissioning?

14 A. Yes, the lease does address decommissioning.

15 MR. JOHNSON: Could you put up Exhibit  
16 No. PCE 1, page 658 again, please.

17 BY MR. JOHNSON:

18 Q. And I'm going to ask you a question about a  
19 series of photographs. Can you just describe for the  
20 council, first of all, who took these photos?

21 A. These photographs are pictures that I took from  
22 the areas near or coming into the terminal area.

23 Q. Okay. And can you now, looking at this map,  
24 generally identify the areas from which those photos  
25 were taken, and then I'll show you a series of photos

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1 that you can describe those locations.

2 A. Yeah. So there are five or six pictures that  
3 will be shown. The first one starts over here, which is  
4 in the area just to the west of the Terminal 1 area that  
5 the court referenced.

6 **Q. For the record, let me just say you're pointing**  
7 **just generally to the south of what looks like No. 20;**  
8 **is that right?**

9 A. I believe so.

10 **Q. Okay. Go ahead.**

11 A. My eyes also aren't that good anymore.

12 There's another picture that is just to the  
13 north of the rail terminal area between -- between  
14 No. 12 and No. 8, right here. And then the photographs  
15 then move over closer to the terminal area. There's one  
16 down here that is looking back towards downtown and  
17 towards the grain elevators, right next to the far-west  
18 building and looking back towards where the tanks would  
19 be located. There's a picture that is up on the  
20 overpass structure right here, looking down into the  
21 rail yard -- or rail area where the unloading would  
22 occur. And then there's a picture on the left-hand side  
23 here, just inside the loop looking, again, back towards  
24 downtown and towards the grain elevator. And then  
25 finally, I believe, there's a picture that's over on

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1 this side of the rail area down by the water, again,  
2 looking back towards the rail bridge and the I-5 bridge.

3 **Q. Okay. And unfortunately we can't -- it's**  
4 **difficult to switch back and forth, so I just wanted you**  
5 **to orient the council. Now we'll actually look at the**  
6 **photos and if you could describe what they depict.**

7 MR. JOHNSON: Could you please call up --  
8 this is Exhibit 291, page 1.

9 BY MR. JOHNSON:

10 **Q. And if you could, for the benefit of the**  
11 **council, just describe what this photograph depicts.**

12 A. Yes. So this is the road that Mr. Smith  
13 actually referred to that was built right through the  
14 middle of that property. So this would be the property  
15 that is currently to the right and to the left that is  
16 currently the waterfront development property, a Graymor  
17 property. And this is the end of that street, Grant  
18 Street right there, Grant Street and Columbia Street  
19 intersection, looking backwards, you can see the grain  
20 elevators that are port property back in the background  
21 there.

22 **Q. And I -- sorry, I would invite you to use the**  
23 **laser pointer when you're referencing things like the**  
24 **grain elevators.**

25 A. Trying to be conscientious and not wanting to

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1 use it.

2 **Q. No, I understand.**

3 A. To the left is the river and the rail bridge  
4 actually back in the back right here. And to the right  
5 is the rail track that the port did the work to -- that  
6 BNSF did the work to --

7 MR. JOHNSON: Page 2, please.

8 BY MR. JOHNSON:

9 **Q. Can you describe what this shows?**

10 A. Yes. So the grain elevators, again, in the  
11 background. This is at the intersection of Thompson  
12 Street and 20th Street here. There's a rail spur here  
13 that goes back to the properties that are operated back  
14 here in this area, and behind where the photograph was  
15 taken is the -- to my knowledge, the closest edge of the  
16 Fruit Valley neighborhood where that's at. To the right  
17 by the rail crossing intersection sign there is the  
18 water treatment facility.

19 **Q. It looks like there's some railroad tracks there**  
20 **that cross the street. Do those railroad tracks go into**  
21 **the terminal site?**

22 A. No, they do not.

23 **Q. Is that a spur into some of the facility?**

24 A. That is a spur off of the port. I believe it  
25 serves the facility behind the trees that's right there,

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1 but I'm not 100 percent sure.

2 MR. JOHNSON: Page 4, please.

3 BY MR. JOHNSON:

4 **Q. If you could just describe what this depicts.**

5 A. Yes. So this is now before you go up over the  
6 flyway and down into where the loop track area is, and  
7 it's looking back now towards downtown. So you're on  
8 the other side of the grain elevators, north of the  
9 grain elevators looking south. You can see the grain  
10 elevators back here in the background, the far-west  
11 building over here on the right. The tanks would be  
12 located over here back in this area, and the pipeline  
13 would come through this area. And then to the right, it  
14 would go down towards the dock off -- on the side of the  
15 page -- page to the right, and back behind the  
16 photographer is where the loop track is located and the  
17 rail -- excuse me, and the road flyover.

18 MR. JOHNSON: Page 6, please.

19 A. So this is up on top of the road before you go  
20 down into the loop track. The Clark Public Utilities  
21 plant is to the right on this photo, and to the left on  
22 the photo is the rest of the loop track, as well as the  
23 river further to the left. The facility, the rail  
24 unloading facility, would be constructed right in this  
25 area, and our operations building would be over in this

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1 area down in here.

2 BY MR. JOHNSON:

3 **Q. And let the record reflect that you're**  
4 **indicating the facility would be constructed on**  
5 **approximately the -- one, two -- three left rail --**

6 A. Yes.

7 **Q. -- rail -- okay.**

8 A. The three inside rails approximately is where  
9 the unloading facility would be located. And that --  
10 our lease does not include -- with the exception of a  
11 small portion of time during construction, does not  
12 include the interior of the loop track for all intents  
13 and purposes.

14 **Q. Thank you.**

15 MR. JOHNSON: Page 11, please.

16 BY MR. JOHNSON:

17 **Q. And this one --**

18 MR. JOHNSON: Can you flip that around,  
19 rotate it.

20 A. I can begin to describe what that is.

21 BY MR. JOHNSON:

22 **Q. Sure, that would be great.**

23 A. That's down by the river's edge. If you were to  
24 go directly over the road and then come straight from  
25 there up to the river's edge and then walk to where you

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1 can get out on the edge and look back up river, that is  
2 what is depicted here. So the dock area that we would  
3 be operating is not this closest dock but the one right  
4 behind it there. You can see in the far distance the  
5 rail bridge and further behind that the towers for the  
6 I-5 bridge. Again, from the dock area to the rail  
7 bridge is approximately two miles and another  
8 three-quarters of a mile roughly between the rail bridge  
9 and the I-5 bridge.

10 **Q. Thank you. Before we start discussing specific**  
11 **operations in various parts of the terminal, I was**  
12 **wondering if you could discuss whether you've developed**  
13 **any kind of safety plans for the facility.**

14 A. Yes. We have a safety plan that has been  
15 developed and was submitted as part of the application.  
16 I will point out that as we go throughout the processes  
17 like this, we will have an initial plan, but it will  
18 always be updated to reflect the ultimate design and the  
19 ultimate operations of the facility. So it will go  
20 through the rail bridge as well.

21 MR. JOHNSON: And for the benefit of the  
22 council, that's at PCE Exhibit 1, page 4901. However,  
23 there's really no reason to call -- that's a multipage  
24 document so you don't need to call it up.

25

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1 BY MR. JOHNSON:

2 Q. Earlier when we were talking generally about how  
3 the terminal will function in terms of trains arriving,  
4 you described a bit about trains entering the port being  
5 manned by the BNSF and you referenced a speed limit.  
6 Can you remind me what the speed limit will be?

7 A. Yeah. The port speed limit is ten miles an hour  
8 on port track or port property. Our operating  
9 procedures that are in the operating manuals always  
10 dictate with unit trains doing rail unloading crude, no  
11 more than five miles an hour when we operate those  
12 trains.

13 Q. And where will the train be positioned once it  
14 arrives in the terminal?

15 A. Once it arrives into the terminal, it would be  
16 moved to the unloading area, and at that point in time  
17 it would be stopped and secured for the unloading  
18 process to begin.

19 Q. Okay. And I've heard you in the past reference  
20 something called "the red zone." What's the red zone?

21 A. So that's one of the procedures that we  
22 established. There's a number of rail operating  
23 procedures, and along with our safety procedures, we  
24 have a very extensive operating procedures manual that  
25 would be in the facility and documented.

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1           A red zone is when you have complete  
2 verification that the train cannot move and no one is  
3 allowed to get -- to work in the area where the train  
4 would be located until that red zone is established. So  
5 that includes securement of the rail cars and making  
6 sure that a sufficient number of brakes are set. You  
7 would also take the -- trying to think of the -- an easy  
8 way to explain this. But it's essentially equivalent to  
9 turning the key off in your car, taking the key out so  
10 that it cannot be moved, the locomotives cannot be  
11 moved, and setting the emergency brake so the emergency  
12 brakes are set in that process.

13           **Q. Will the locomotive remain attached to the other**  
14 **rail cars during the unloading process?**

15           A. Yes. We would anticipate that most of the time  
16 the locomotive would be attached to the rail cars.  
17 That -- when you're operating in the loop track area,  
18 that actually has some safety benefits. Anytime you're  
19 operating rail, the number of movements that you have  
20 and the number of connects and disconnects actually are  
21 all opportunities for safety incidents to occur. And so  
22 it's one of the benefits of operating a loop track  
23 facility is to minimize those number of connections and  
24 disconnection points.

25           **Q. Okay.**

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1 MR. JOHNSON: And, Ms. Mastro, I'm going to  
2 ask you to pull up Exhibit No. 289, starting with  
3 page 3. And this will be a series of photos.

4 BY MR. JOHNSON:

5 **Q. Can you just describe where these photos were**  
6 **taken?**

7 A. These photos were taken at the Anacortes crude  
8 offloading facility. It is a facility that is owned by  
9 Tesoro and operated by Savage. The facility is built  
10 slightly different than the facility will be when we're  
11 operating here. But it does demonstrate the unloading  
12 process and how the unloading process would occur.

13 **Q. Can you just describe for the council the**  
14 **primary differences between the Anacortes facility and**  
15 **the Vancouver Energy terminal?**

16 A. From an asset perspective of what's actually  
17 constructed, there are three primary differences that I  
18 would point out. One of them being this is a ladder  
19 track instead of a loop track. But what you would have  
20 here with two sets of cars next to each other is equal  
21 to what you would see at our facility.

22 Another difference is that there is an elevated  
23 platform at the Vancouver Energy terminal facility where  
24 this one does not have an elevated platform. The  
25 elevated platform would allow the workers to stay up on

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1 top of the rail cars versus going up and down stairs.  
2 Here we use a mobile platform, but that would not be the  
3 case at the Vancouver Energy facility.

4 And the third major difference is that there is  
5 a covering at the Vancouver Energy facility, or proposed  
6 to be covered over the top of that and this facility  
7 does not have that type of covering.

8 Q. Okay. And this series --

9 JUDGE NOBLE: Mr. Johnson, sorry. I tried  
10 to get you before your next question. I -- it is now  
11 3:30 and we are going to be ending today's session at  
12 4:00. And I just wanted to check with the court  
13 reporter to make sure that he is all right to go until  
14 4, or if he needs a brief five-minute rest.

15 You okay? We'll have to stop with the  
16 questioning about 3:55 so that we can adjust for the  
17 public, and for all the parties here, talk about the  
18 witnesses for tomorrow and briefly subject matter. And  
19 after -- at 4:00 we'll be stopping early for the site  
20 visit. Thank you. I'm sorry for the interruption.

21 MR. JOHNSON: That's not a problem, Your  
22 Honor.

23 BY MR. JOHNSON:

24 Q. So back to the Anacortes facility and this  
25 series of photos. Did you take these photos?

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1           A.     I did not take these photos.  They were photos  
2 taken by a photographer that I hired.  I was at the  
3 facility and present when the photos were taken, and  
4 this was a train that was being unloaded at that time.

5           **Q.     Okay.  So this reflects actual operations?**

6           A.     Yes, it does.

7           **Q.     And when were these taken?**

8           A.     They were taken at the end of May 2016.

9           **Q.     And what does this particular photo show?**

10          A.     This photo shows a train that has arrived and  
11 staged in the unloading area and ready for the operators  
12 or the team to now come in and begin to connect the rail  
13 cars for the unloading process to begin.

14          **Q.     And, again, it looks like down in the distance,**  
15 **is that a locomotive down there?**

16          A.     Yes, that is a locomotive.

17          **Q.     And in this case is it connected to the train,**  
18 **the cars?**

19          A.     In this case it is not connected to the train.

20          **Q.     And is that a function of the fact that the --**  
21 **this isn't a loop track?**

22          A.     Yes.  That is a function of the fact this is not  
23 a loop track.  This is a ladder track facility.

24          **Q.     Okay.**

25                   MR. JOHNSON:  Page 21, please.

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1 BY MR. JOHNSON:

2 **Q. Can you describe what this photo depicts?**

3 A. Yes. So this photo is showing the mobile rack  
4 and the connection process starting to begin. So in the  
5 Vancouver Energy facility, you would have a walkway that  
6 gets you up onto a rack area or an elevated platform  
7 that would go the length of the facility rather than  
8 having this mobile rack. The facility with the elevated  
9 rack would also have these arms that drop down to allow  
10 the operator to safely go out into the area and begin  
11 the connection process on the top of the cars. There  
12 would also be team members, like these gentlemen down  
13 here, that would be starting the connection process on  
14 the bottom of the rail car.

15 As you can see, there is a safety railing all  
16 around the top of the rail car that is part of the  
17 platform that drops down to begin the process up here.

18 **Q. And you referenced a crew -- a crew or a team.**  
19 **What constitutes a team?**

20 A. So typically you would have a team up to three  
21 people working on each side that would be going through  
22 the unloading process. There's a number of reasons for  
23 that. One is just, obviously, getting the work done,  
24 but another reason is so that the team members can check  
25 and verify each other's work as they go through the

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1 process.

2 Q. Okay.

3 MR. JOHNSON: At page 25, please.

4 BY MR. JOHNSON:

5 Q. What are the primary objectives of the crew --  
6 we'll get to these. What are the primary objectives of  
7 the crew when they're first beginning to -- the train  
8 gets into position and they're beginning their work like  
9 this?

10 A. So there's two things that they're going to be  
11 working on. One is the top of the rail cars and  
12 connecting the top of the rail cars, and another is the  
13 bottom of the rail cars. The bottom of the rail cars is  
14 where the crude oil is drained into the piping or the  
15 header system here. The top of the rail cars is the  
16 vapor recovery system. So they'll be doing that  
17 process. The other primary responsibility that they  
18 have is to inspect the rail cars while they're doing  
19 that.

20 MR. JOHNSON: Page 16, please.

21 A. So this photo is depicting one of the gentlemen  
22 when he has first gone on top of the rail car, and he's  
23 actually checking the manway there. That's where the  
24 loading process occurs. We actually do not open the  
25 manway at all during the unloading process. He's doing

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1 an inspection to make sure all of those bolts are  
2 secure. And you see in the -- close to where his wrench  
3 is, there's a red tag or seal, that seal is put on at  
4 the loading site or loading facility. And they're  
5 verifying that still is in place at that time as well,  
6 which helps to verify the manway has not been opened at  
7 all in route.

8 BY MR. JOHNSON:

9 **Q. All right.**

10 MR. JOHNSON: Page 17, please.

11 BY MR. JOHNSON:

12 **Q. If you could just describe what's happening**  
13 **here.**

14 A. Yes. So this is where the vapor connection  
15 point occurs. So this is protective housing around  
16 the -- this is protective housing around the valves and  
17 inlet valves that are all in here. Again, there is  
18 another seal that he breaks before he can open this. So  
19 that seal is in place as well. The seal is removed and  
20 then once removed he can open that up to access the  
21 valves on the top of the rail car.

22 MR. JOHNSON: Page 23, please.

23 BY MR. JOHNSON:

24 **Q. Again, if you could just describe, once we get**  
25 **there.**

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1           A.     So there are two types of -- he's now opened up  
2 the protective housing and there are two types of  
3 fittings that he would be putting on this facility.  
4 This is demonstrating or showing one of those types of  
5 fittings he would be putting on. You can see there is  
6 actually a valve handle here. So he'd remove the cap,  
7 and it's connected by a chain. That cap was then -- has  
8 now been removed, but the valve is closed. He will  
9 connect this vapor valve here before that would be  
10 opened up. And really this valve -- this -- there's a  
11 ball valve in here that stops any air from going out but  
12 will allow air into the rail car. Again, we're doing a  
13 gravity unloading process. So in order for the gravity  
14 to work, you need to allow rail [sic] to come into  
15 the -- the rail car to allow to drain. So it's one way  
16 in but not out.

17           **Q.     So just in -- so I can understand it, so air is**  
18 **coming in but it's not going out?**

19           A.     That's right.

20           **Q.     Okay.**

21           A.     That's right.

22           **Q.     And the crude's going to come out somewhere**  
23 **else; is that right?**

24           A.     The crude comes out at the bottom of the rail  
25 car.

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1           **Q.     Okay.**

2                       MR. JOHNSON:   Page 18, please.

3   BY MR. JOHNSON:

4           **Q.     If you could just describe what this depicts.**

5           A.    Yes.  So this is the second type of connection  
6   that he would be applying.  So some of the rail cars  
7   just received the first connection, which is that ball  
8   valve.  Others will receive this vapor recovery hose.  
9   So this one, as the crude oil is drained into the rail  
10  car, the vapors are collected from the header and the  
11  hose comes out and then passes back into the facility.  
12  So this is a closed loop system that captures all the  
13  vapors and leaves them within the rail car or within the  
14  system itself.

15          **Q.     All right.**

16                       MR. JOHNSON:   Page 11, please.

17  BY MR. JOHNSON:

18          **Q.     All right.  So now we're -- looks like we're at**  
19 **the bottom of the car.  Can you describe what's**  
20 **happening here?**

21          A.    Yes.  There's a different operator that's at the  
22  bottom of the rail car.  He's going under the rail car.  
23  You can see the bell cap -- or what's covering where the  
24  valve is and where the product would ultimately come  
25  out.  That is on, and there's a seal over here that the

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1 operator needs to remove before he can begin the  
2 downloading process. He also -- every operator will  
3 have a spill pan underneath here. That spill pan is  
4 there to collect any minor drips that may occur in that  
5 unloading process. The entire facility has spill  
6 containment throughout the facility as well.

7 **Q. Okay. And by the way, when was -- how long has**  
8 **this facility been in operation?**

9 A. This facility has been in operation for between  
10 four and five years, I believe.

11 **Q. And do you have any idea how many trains have**  
12 **unloaded there in that time? And I'm not asking you to**  
13 **guess if you don't know.**

14 A. Yeah, I don't recall the specific number. I  
15 believe that Mr. Hack can probably provide that  
16 information.

17 MS. MASTRO: I jumped ahead.

18 MR. JOHNSON: That's fine. Thank you.

19 A. The seal has now been broken and the operator is  
20 beginning to -- you need a wrench. This is actually a  
21 quite large wrench, sometimes it takes quite a bit of  
22 force to loosen that cap. So he's now loosening the  
23 cap. Again, the valve is still shut. So just because  
24 he has the cap off, doesn't mean the product will come  
25 out. It's still closed with the pin in place that would

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1 stop the product from coming out.

2 MR. JOHNSON: And 14, please.

3 A. So at this point in time, the operator has  
4 installed this 90-degree angle to the bottom outlet  
5 valve and he's beginning to connect this API header.  
6 This header is an important piece because both of these  
7 remain closed until that is fully connected and there's  
8 an ability to begin the unloading process.

9 BY MR. JOHNSON:

10 **Q. And I might add, are the workers here -- are**  
11 **they equipped with any kind of protective gear or**  
12 **sensors?**

13 A. Yes. So part of our safety plan is that every  
14 worker will have -- so these are fire-retardant clothing  
15 that they're wearing. He's wearing a hard hat, safety  
16 glasses and steel-toed boots, as well as gloves. They  
17 will also be wearing an H2S monitor at all times when  
18 they're at the facility.

19 **Q. Okay. And what's the purpose of the H2S**  
20 **monitor?**

21 A. The H2S monitor, it will alarm and sound if  
22 there's any detection of vapors and would cause all the  
23 employees to evacuate the facility.

24 **Q. All right. Thank you.**

25 MR. JOHNSON: Page 19, please.

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1           A.     So this is actually showing the inside of that  
2 header.  Each one of these prongs in here needs to be  
3 fully depressed before it will open this central part  
4 and this central part over here, which would then allow  
5 the product to occur.  So that connection point needs to  
6 be fully established and affirmatively confirmed and  
7 then the lever of the ball valve here pulled in order  
8 for the -- or the ball lever there, in order for the  
9 ability for the crude oil to flow through the hose  
10 there, from the rail car into the hose.

11                   MR. JOHNSON:  And 15, please.

12           A.     So at this point in time, the hose is fully  
13 connected and the operator will now start to remove the  
14 pin there.  The pin is a pin that goes through and has a  
15 drop angle piece that drops down so that it won't rattle  
16 out.  He'll remove that pin.  Once that pin is removed,  
17 then he has -- this is the first ability -- first  
18 opportunity for him to open that lever and introduce oil  
19 into the system.

20 BY MR. JOHNSON:

21           **Q.     And when you say "introduce oil into the**  
22 **system," you're referring to taking it out of the car**  
23 **and putting it somewhere else?**

24           A.     Yes, remove it from the rail car into the hose.

25                   MR. JOHNSON:  Exhibit 22, please -- that's

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1 page 22, I'm sorry.

2 BY MR. JOHNSON:

3 **Q. If you could just describe this.**

4 A. Yes. So this is just demonstrating or showing  
5 the entire connection process in place. You can see  
6 there is a grounding wire. Another one of the safety  
7 features. But the rail car is now completely connected.  
8 The spill pan remains underneath the rail car the entire  
9 time the unloading is occurring, but that is just  
10 showing the whole rail car being connected.

11 **Q. So at this stage you've connected the vapor**  
12 **hoses to the top of the car and the crude hoses to the**  
13 **bottom of the car; is that correct?**

14 A. That is correct.

15 **Q. Okay.**

16 MR. JOHNSON: Page 26, please.

17 BY MR. JOHNSON:

18 **Q. And then what happens?**

19 A. At that point in time, the operator will go over  
20 to the valve here and will move this valve handle which  
21 allows the product to then flow into the entire header  
22 system. So, again, multiple valves, multiple check  
23 points along the way and multiple opportunities for an  
24 individual to double-check that another team member is  
25 doing their work appropriately and properly.

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1 MR. JOHNSON: Page 27, please.

2 A. So we already actually talked a little bit about  
3 this, but this demonstrates or shows the teams working  
4 together. In this case the vapor recovery hoses are  
5 connected to the rail cars, the bottom of the rail cars  
6 are all completely connected and the teams are now  
7 working down and opening the valves to allow the crude  
8 to go into the system. Again, it's a gravity drain  
9 system. So the whole time that this is draining from  
10 the rail cars, we're not introducing anything to speed  
11 up the process or change the process. You're just  
12 letting gravity do its work. There are operators the  
13 entire time it's unloading that are out on the pad or  
14 out in the facility going around and verifying that  
15 everything is safe and secure.

16 BY MR. JOHNSON:

17 Q. And you noticed some differences between, of  
18 course, that facility and the Vancouver Energy Terminal.  
19 However, with regard to these specific unloading,  
20 connecting, inspection operations, is it fair to say  
21 that these will be identical procedures to those that  
22 will be used at the Vancouver Energy Terminal?

23 A. They would be near identical. So this is what  
24 we would anticipate doing. If there are any differences  
25 in the design, those would be built into the operation

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1 procedures manual. We always have site-specific  
2 procedures manuals, not general procedures. So, yes, we  
3 would anticipate this is generally what it would be  
4 like, with caveats for site-specific needs or different  
5 points.

6 **Q. But the rail unloading procedure is the same?**

7 A. Yes.

8 JUDGE NOBLE: Mr. Johnson?

9 MR. JOHNSON: Yes.

10 JUDGE NOBLE: I have a quick question of  
11 Mr. Larrabee. Since this is a gravity system and when  
12 the valves are opened, is there any way to stop the  
13 flow?

14 THE WITNESS: Yes. You can always go back  
15 and shut any one of those valves at any point in time.  
16 They are not -- they don't -- they don't stay open just  
17 because you've opened them. So at any point in time,  
18 you can go through and stop those valves.

19 There is also a computerized system as well  
20 throughout the facility where there's pumps that are --  
21 once the header fills up -- and I think we actually talk  
22 about that a little bit later, but once the header fills  
23 up, there are pumps that will remove the crude oil from  
24 the header and pump it into the tanks and you can shut  
25 those down either manually or by -- through the system

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1 or automatically, if there is any issues identified at  
2 that point in time.

3 JUDGE NOBLE: Thank you.

4 MR. JOHNSON: I might also note, Your Honor,  
5 a witness who we hope to have testify tomorrow, Dave  
6 Corpron, will also be addressing some of the safety  
7 features related to these operations as well.

8 JUDGE NOBLE: Thank you.

9 MR. JOHNSON: Page 34, please.

10 BY MR. JOHNSON:

11 **Q. And while we're waiting, you noted an obligation**  
12 **to inspect the rail cars. What -- why is it Savage or**  
13 **Tesoro employees are inspecting rail cars rather than**  
14 **the railroad?**

15 A. So there are actually two requirements there.  
16 The railroad actually will be inspecting the rail cars  
17 as well. All of the facilities and the railroads have a  
18 federal requirement through the FRA, the code to inspect  
19 at various points in time. They have various inspection  
20 processes that they need to do. So the previous picture  
21 showed at the top of the rail car and some of the  
22 inspection is occurring there. This one is actually one  
23 of the operators inspecting the bottom of the rail car.  
24 They're inspecting all of the safety appliances on the  
25 rail car and confirming that that is operating safely as

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1 it should be operating.

2 If there is anything that is identified that  
3 they feel is unsafe, then they will remove the rail car  
4 from the train or fix the car while it is in the train,  
5 but in either case, the car cannot leave the facility  
6 before those fixes have been addressed. You can see in  
7 the operator's hand, he is actually holding a gauge  
8 there that he uses. If he has a question, he can  
9 actually check various aspects of the car or the rail to  
10 make sure that there would be a gauge.

11 BY MR. JOHNSON:

12 **Q. Do the employees at the facility inspect brakes,**  
13 **for instance?**

14 A. Yes. They would be looking at brake pads and  
15 inspecting the brake pads, as well as the wheels, as  
16 well as ladders. To give you an idea, if the -- there  
17 was a picture of the bottom outlet valve and a chain  
18 that held the bottom outlet valve in place; if that  
19 chain is broken, then the rail car cannot leave the  
20 facility until that chain gets fixed. That's the type  
21 of inspection that we're doing, is making sure we're  
22 looking at all of those items.

23 In fact, there is a worksheet or a checklist,  
24 for lack of a better term, that the operators are going  
25 through to make sure that they've covered all the areas

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1 of the rail car. And at the end of that inspection for  
2 each rail car, they're signing their initials that they  
3 have inspected that rail car, and that inspection report  
4 stays on record for a number of -- a period of time. I  
5 can't remember the exact amount of time, but it's a  
6 couple of years.

7 JUDGE NOBLE: Mr. Stephenson has a question.

8 MR. STEPHENSON: Yes, thank you. So I think  
9 you said two crews of three working out here; is that  
10 right?

11 THE WITNESS: Yes. So on each line you  
12 would have -- or each row of rail cars, you would have  
13 three people that are operating in unison or a team  
14 operating in unison. So in the picture that's depicted  
15 there, you would have a crew of three on one side and  
16 then another crew of three on the other side.

17 Now, they would -- depending on the facility  
18 structure, you would have more than just that crew of  
19 three. So if I remember correctly, what we are looking  
20 at for this terminal, you would actually have two crews  
21 of three on either side working together at the same  
22 time. So there would be six on each -- 30 a set of  
23 cars.

24 MR. STEPHENSON: Okay. So six people may be  
25 in -- looking at four unit trains, so 480 cars? Okay.

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1 Just -- that's a lot of repetitive stuff, but that's not  
2 what I'm here about.

3 When I think about this inspection, that  
4 they have to do that for every car, that's just what I'm  
5 wondering.

6 THE WITNESS: So I'm not sure I guess  
7 exactly what the question was, but I -- that is correct.  
8 It is a lot of repetitive stuff. That is actually part  
9 of the reason that we have a very thorough safety  
10 program. There's a number of things that we do. We  
11 make sure that each individual, before they go out and  
12 check this -- what they're doing, that they have  
13 reviewed the procedure, that they have signed off on the  
14 procedure, they're tested in the procedure to make sure  
15 they pass that test, the written procedure, and that's  
16 before they even go out.

17 When they go out, they're observing an  
18 operator that is out there operating physically while  
19 he's out there, and then they have to pass a proficiency  
20 test where they demonstrate that they can do that on  
21 their own. At that point in time they would be allowed  
22 to begin at the operating facility.

23 Now, on the annual basis -- I believe it's  
24 an annual basis, they'll be going back through and they  
25 will be retested on all those things to make sure

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1 they're still following procedure.

2 We also have a requirement of all our  
3 employees to do observations of other employees while  
4 that's -- that is primarily because it is a repetitive  
5 process and you want someone outside to be looking and  
6 making sure that you're following the procedure.

7 On a quarterly basis, each of our operations  
8 is required to go through what we call a -- we call it  
9 the S7, where they're looking at seven main areas of the  
10 operation. One of those areas is safety, where you have  
11 a third party come in from the outside, meaning someone  
12 from a different operation that comes in and verifies  
13 they're following procedures and doing what they're  
14 supposed to be doing, and then we do that on a regular  
15 basis as well.

16 We are also regularly -- in fact, every  
17 week, all of our operations managers across our entire  
18 network that do crude-by-rail are on a call where  
19 they're sharing best practices and learnings and our  
20 operations procedures are regularly modified when  
21 someone finds something in a different area that should  
22 be applied to that, whether it's a best practice or a  
23 leading practice. Or even if it's something that we're  
24 identifying that needs to be addressed with a third  
25 party, like the railroad in between where we say, okay,

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1 we've noticed something, we need to be extra vigilant  
2 about this and making sure we're addressing it either at  
3 origin or destination.

4 BY MR. JOHNSON:

5 **Q. Mr. Larrabee, thank you.**

6 MR. JOHNSON: I want to -- I have four more  
7 photos. It would be an excellent place to stop. We can  
8 quickly move through those and then it's a good breaking  
9 point. We'll obviously have to call Mr. Larrabee  
10 tomorrow to finish up some of his testimony.

11 JUDGE NOBLE: No, that's a good plan.

12 MR. JOHNSON: But we can get through this.

13 BY MR. JOHNSON:

14 **Q. So can you just describe what's depicted in this**  
15 **photo.**

16 A. Yes. So the Anacortes facility is a  
17 TWIC-restricted facility, which is Transportation  
18 Workers Identification Certification, meaning that  
19 everyone who works at the facility is required to have a  
20 TWIC card. That is a federal government identification.  
21 We would anticipate that the Vancouver Energy Terminal  
22 would also be that type of a facility.

23 Not only does every worker have to have that  
24 card, there're only designated individuals that are  
25 allowed to take other people. They have to pass other

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1 requirements, and then they're allowed to take other  
2 people through the facility that don't have a TWIC card.

3 **Q. All right. Thank you.**

4 MR. JOHNSON: And page 37, please.

5 BY MR. JOHNSON:

6 **Q. If you could just --**

7 A. Yes. So I referenced earlier to a -- the system  
8 that is managed, a computerized system. This is a  
9 representation. Our system at Vancouver Energy Terminal  
10 would look different or operate slightly different than  
11 this, but it's a good representation of what the  
12 facility will be looking like.

13 So the rail cars are represented here, the pumps  
14 are represented here through this and then it moves over  
15 to here, to the tanks. There's -- these buttons down  
16 here, before the operator can begin turning on the pumps  
17 at all and looking at the pumps operating here at all,  
18 they have to have affirmative confirmation from the tank  
19 farm area that they are ready to receive the crude oil.

20 When they have that affirmative confirmation  
21 from the tank farm area, then the buttons down here will  
22 change to green and allow them to begin the pumping  
23 process and allow the pumps to start.

24 The number of -- there's a number of items  
25 represented here, which includes the flow rate through

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1 each of the pumps and what's happening, as well as the  
2 pressure at each of those pumps going through the  
3 facility. So this is one of the ways that the facility  
4 is managed remotely as well or from the office location.

5 **Q. Thank you.**

6 MR. JOHNSON: Page 39, please.

7 BY MR. JOHNSON:

8 **Q. If you could just briefly describe this photo.**

9 A. Yes. So this again is looking at the tank side  
10 of things where you have tank levels and you're looking  
11 at flow rate into the tanks and you're managing the  
12 tanks and able to see what the different volumes are of  
13 the tanks and then how the different alarms are set at  
14 different areas to stop the flow.

15 **Q. Okay.**

16 MR. JOHNSON: And page 40, please.

17 BY MR. JOHNSON:

18 **Q. And this is difficult to see, but maybe if you**  
19 **could just describe --**

20 A. Yeah, I'll just describe it. This is the area  
21 where you would set up all those alarms. So what you  
22 would have on here is different variables or mechanisms  
23 where you would say, you would tell this is -- when it  
24 hits this level, I want an alarm. And when it hits a  
25 higher level, I want a high-level alarm. And when it

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1 hits a different level other than that, shut the system  
2 off automatically. So that's all designated in there.

3 You can also designate basically in a facility  
4 like this or in areas like this if you see certain  
5 pressures change or differentiate to a certain level,  
6 then you can automatically shut down the facility.

7 So this is another way where, one, they have  
8 their eyes on the facility, the people out there walking  
9 the facility. You also have in the system here the  
10 ability to manually shut down the entire system if  
11 needed. And then you also have the protections that are  
12 built in where it will automatically shut down if a  
13 threshold is triggered or a threshold is hit.

14 MR. JOHNSON: Thank you, Mr. Larrabee.

15 Your Honor, at this point I would suggest  
16 that we stop with Mr. Larrabee today and pick up where  
17 he left off tomorrow. There's not a lot of testimony  
18 left for him, but we certainly can't get through it  
19 today. And we're also prepared to discuss with you what  
20 we want to get through tomorrow. So whenever you're  
21 ready.

22 JUDGE NOBLE: Good. That's fine.

23 Thank you, Mr. Larrabee, for today. You'll  
24 be back tomorrow.

25 We have to go over what witnesses are

1 anticipated for tomorrow so that everyone watching will  
2 know and also so the council can be prepared and also to  
3 discuss the general subject matter that will be covered  
4 tomorrow.

5 MR. JOHNSON: All right. Your Honor, first  
6 we would begin with Mr. Larrabee completing his  
7 testimony and I anticipate that to take perhaps another  
8 20 minutes or so, and then, of course, with  
9 cross-examination, council questions, et cetera, not  
10 included.

11 We then will be presenting the testimony of  
12 Brian Carrico. Mr. Carrico submitted prefiled written  
13 testimony. His focus is primarily on land use  
14 consistency. He primarily is focusing on rebuttal  
15 testimony related to the prefiled testimony of Mr. David  
16 Wechner and Mr. Eric Holmes. He may also briefly refer  
17 to some prefiled testimony or some photographs submitted  
18 by Mr. Hicks and Broncheau and Mr. Dan Monaghan,  
19 although those aren't his primary focus.

20 We would then like to call Mr. David  
21 Corpron. Mr. Corpron is a fact witness related to the  
22 design of the facility. As Mr. Larrabee has been  
23 testifying to operations, Mr. Corpron will be testifying  
24 to design. He did not file prefiled written testimony,  
25 so there's not a rebuttal component there.

1           Then we want to move through the testimony  
2 of Mr. Dan Shafar. He did file prefiled written  
3 testimony. He basically focuses on civil engineering  
4 issues, and will be primarily rebutting Mr. Tyler Clary.  
5 And if we have time, and I'm not suggesting we will, on  
6 deck, we would have Mr. Marc Bayer who also filed  
7 prefiled testimony. He primarily will be focusing on  
8 marine navigation issues, and primarily rebutting the  
9 testimony of Ms. Susan Harvey and also Blaine Parker.

10           And if we got all the way through that, we  
11 would be doing really well.

12           JUDGE NOBLE: I don't hold out a lot of hope  
13 for that.

14           All right. We are going to now adjourn so  
15 that the council can do the site visit, and I want to  
16 make sure that all of the parties who wish to go with  
17 the council, contact Ms. Wraspir over there and make  
18 sure you have all the requirements for doing that.

19           Is there anything we need to do on the  
20 record before we adjourn for the day from anyone?  
21 Nothing?

22           In that case, we are adjourned until 9:00  
23 tomorrow morning.

24           I'll be here earlier so if there's something  
25 we need to do off the record, we can do it.

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(Proceedings adjourned at 4:00 p.m.)

