

A P P E A R A N C E S

ADMINISTRATIVE LAW JUDGE:

Cassandra Noble
Energy Facility Site Evaluation Council
1300 South Evergreen Park Drive SW
P.O. Box 43172
Olympia, Washington 98504-3172

EFSEC STAFF:

Kara Denny
Max Smith
Tammy Mastro
Stephen Posner
Sonia Bumpus
Kali Wraspir
Joan Aitken
Energy Facility Site Evaluation Council
1300 South Evergreen Park Drive SW
P.O. Box 43172
Olympia, Washington 98504-3172
(360) 664-1345

Ann C. Essko
David Stearns
ASSISTANT ATTORNEY GENERAL
1125 Washington Street SE
P.O. Box 40100
Olympia, Washington 98504-0100

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

COUNCIL MEMBERS PRESENT:

William Lynch - Chair
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)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

FOR TESORO SAVAGE:

Dale N. Johnson
Jay P. Derr
Tadas A. Kisielius
VAN NESS FELDMAN LLP
719 Second Avenue, Suite 1150
Seattle, Washington 98104-1728

FOR PORT OF VANCOUVER:

David F. Bartz
SCHWABE WILLIAMSON & WYATT
1211 SW 5th Avenue, Suite 1900
Portland, Oregon 97204

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

2 FOR PORT OF VANCOUVER:

3 Connie Sue Martin
4 SCHWABE WILLIAMSON & WYATT
5 1420 5th Avenue, Suite 3400
6 Seattle, Washington 98101

7 FOR CLARK COUNTY BOARD OF COMMISSIONERS:

8 Taylor R. Hallvik
9 CLARK COUNTY
10 1300 Franklin Street, Suite 380
11 Vancouver, Washington 98666-5000

12 FOR THE CITY OF VANCOUVER:

13 E. Bronson Potter
14 Karen L. Reed
15 CITY ATTORNEY
16 415 W. 6th Street
17 Vancouver, Washington 98660

18 FOR COLUMBIA RIVERKEEPER, ET AL.:

19 Kristen L. Boyles
20 Janette K. Brimmer
21 EARTHJUSTICE
22 705 Second Avenue, Suite 203
23 Seattle, Washington 98104-1711

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

FOR THE ENVIRONMENT:

Matthew R. Kernutt
ASSISTANT ATTORNEY GENERAL
1125 Washington Street SE
Olympia, Washington 98504-0100

FOR COLUMBIA RIVER INTER-TRIBAL FISH COMMISSION:

Julie A. Carter
COLUMBIA RIVER INTER-TRIBAL FISH COMMISSION
700 NE Multnomah Street, Suite 1200
Portland, Oregon 97232

FOR COLUMBIA WATERFRONT LLC:

Linda R. Larson
MARTEN LAW
1191 Second Avenue, Suite 2200
Seattle, Washington 98101

Daniel L. Timmons
MARTEN LAW
1001 SW Fifth Avenue, Suite 2150
Portland, Oregon 97204

FOR WASHINGTON STATE DEPARTMENT OF NATURAL RESOURCES:

Terence A. Pruit
ASSISTANT ATTORNEY GENERAL
1125 Washington Street SE
Olympia, Washington 98504-0100

HEARING
Volume 22: INDEX

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CLOSING ARGUMENTS:

PAGE

Mr. Derr	5102
Mr. Bartz	5115
Mr. Kernutt	5126
Mr. Potter	5132
Mr. Hallvik	5143
Ms. Larson	5149
Mr. Pruit	5154
Ms. Carter	5158
Ms. Boyles	5165
Mr. Bartz	5184
Mr. Derr	5187

EXHIBITS

NUMBER

REF'D

Exhibit 2.....	5101
Exhibit 3.....	5101
Exhibit 0307-000004-TSS.....	5101
Exhibit 0363-000010-TSS.....	5102
Exhibit 0365-000046-TSS.....	5102

1 PROCEEDINGS

2 JUDGE NOBLE: Good morning, everyone. It is
3 July 29, 2016, 9:00, and we are ready with our last day
4 in this adjudication before the State of Washington
5 Energy Facility Siting Council in the matter of
6 Application No. 2013-01, Vancouver Energy Distribution
7 Terminal.

8 This morning we will be having closing
9 arguments and, after that, the record will be closed
10 except for the submittal of post-hearing briefs and the
11 additional submittals that are allowed by order previous
12 to our starting this adjudication hearing for -- related
13 to the filing of the final -- well, the next version of
14 the application.

15 And so we have one thing to do before we
16 hear closing arguments, and that is to deal with five
17 more exhibits. We thought we got them all last night,
18 but we have five more to deal with. The first one, as I
19 understand it, is Exhibit 2.

20 MR. JOHNSON: That's withdrawn.

21 JUDGE NOBLE: Exhibit 3?

22 MR. JOHNSON: Withdrawn.

23 JUDGE NOBLE: And Exhibit 307?

24 MR. JOHNSON: That should be admitted.

25 MS. BOYLES: No objection.

CLOSING ARGUMENT - APPLICANT VANCOUVER ENERGY

1 JUDGE NOBLE: Exhibit 307 will be admitted.
2 363?

3 MR. JOHNSON: Withdrawn.

4 JUDGE NOBLE: Exhibit 365?

5 MR. JOHNSON: Should with admitted.

6 MS. BOYLES: No objection.

7 JUDGE NOBLE: Thank you. 365 will be
8 admitted.

9 Just for parties' information, I have
10 instructed staff to comb through the exhibit list one
11 more time to make sure we haven't missed anything so
12 that we can get it admitted or get it dealt with before
13 we do close the record after closings.

14 Are the parties ready to begin their closing
15 arguments this morning? You may proceed.

16 CLOSING ARGUMENTS

17
18 MR. DERR: Thank you, Judge Noble,
19 Chair Lynch, members of the EFSEC council and EFSEC
20 staff.

21 I want to start my closing remarks the same
22 way I began the opening remarks which is with expression
23 of appreciation and thanks for your efforts. Five weeks
24 ago it was your efforts to get us to the commencement of
25 the adjudication. This morning I would now like to add

CLOSING ARGUMENT - APPLICANT VANCOUVER ENERGY

1 our appreciation for your diligent efforts to pay
2 attention through what I warned you was going to be a
3 lot of information, and I think you would agree. It's
4 been a lot of information; it is a lot of information.

5 I also would like to thank you in advance,
6 as Mr. Larrabee did, for what we know will be a lot of
7 diligent work as you review what we have presented to
8 you and as you consider this very important decision.

9 What I intend to do with my closing remarks,
10 actually two-fold. I'll offer some remarks now and then
11 we will reserve a little bit of our time to come back
12 after you've heard from the other Intervenors.

13 What I hope to do is to provide you with
14 what I believe is the appropriate framework for how the
15 EFSEC council now should view the evidence that has been
16 presented and to conduct your deliberations within the
17 framework of your governing statutes and regulations.
18 Our briefing will do more to match specific evidence
19 with those standards, so I won't spend a lot of energy
20 pointing you to particular documents and particular
21 statements this morning.

22 The first principle in your decision-making
23 framework is that your ultimate decision must be made in
24 the context of your overarching policy framework of the
25 statute. That is, the public interest, inadequate,

CLOSING ARGUMENT - APPLICANT VANCOUVER ENERGY

1 actually your statute says abundant energy, and public
2 health, safety and the quality of our environment. It's
3 not one or the other. It's your job to make sure your
4 decision addresses both.

5 You will hear talk about balancing. We
6 don't believe it's a matter of putting things on a scale
7 and seeing which side is heaviest. We believe your job
8 is to make sure your decision achieves both.

9 Your statute recognizes the State's
10 industry, the State's economy depends on a strong energy
11 future and, thus, depends on this decision. I do want
12 to reference Mr. Roach's testimony yesterday, and when
13 we started these proceedings, where he explained the
14 significant potential risk to existing sources of crude
15 oil for Washington refineries as well as for the PADD 5
16 refinery system in general.

17 It's real. It could have significant
18 impacts on our supplies of petroleum fuels in Washington
19 and, correspondingly, on all the industries that depend
20 on those transportation fuels.

21 It's not enough to look at today. You must
22 consider tomorrow and the years to come. You must
23 anticipate energy needs and make sure we are prepared.

24 Washington's manufacturing, consumer goods,
25 trade, agriculture, aerospace industries, just to name a

CLOSING ARGUMENT - APPLICANT VANCOUVER ENERGY

1 few, could not function without abundant petroleum fuels
2 at reasonable cost, abundant fuels that are supported by
3 the Vancouver Energy terminal project.

4 One cannot isolate Washington from the rest
5 of the petroleum refinery system. The needs and the
6 benefits are demonstrated for both. It's both a
7 pressing need for Washington and a pressing need for the
8 integrated system of refineries on the West Coast.

9 The statute also recognizes that you're to
10 give great care to ensure you are preserving and
11 protecting the quality of our environment. We believe
12 the evidence demonstrate that is how the terminal has
13 been designed and how it will be operated.

14 The statute recognizes the siting of energy
15 facilities will come with significant impacts. "Will"
16 and "significant" are the words in the statute. Thus,
17 asking for energy production at no impact or without
18 risk is not what the statute anticipates. I suspect
19 that is why this important task was removed from the
20 local political arena and entrusted to this council and
21 to the governor, to weigh these very important needs.

22 The statute charges this council with this
23 very important task: Ensuring our energy future as well
24 as ensuring our public safety and environmental future.

25 So your first review principle is your

CLOSING ARGUMENT - APPLICANT VANCOUVER ENERGY

1 decision must ensure abundant energy both now and into
2 the future as well as preserve and protect the quality
3 of our environment.

4 Second, your regulations specify that you
5 should review the evidence for compliance with adopted
6 state standards. Are the witnesses describing a
7 standard that is met or not met, or are they instead
8 insisting that meeting standards is not enough and they
9 want more?

10 This applies to many key issues that have
11 been the focus of much of this hearing. By your
12 regulations it applies to seismic, noise, fish and
13 wildlife, wetlands, water quality, and air. For these
14 areas, under the Washington Administrative
15 Code 463.62.010, subpart 3, it says compliance with the
16 standards within this chapter shall satisfy -- and
17 again, "shall satisfy" is a direct quote from the
18 regulation -- shall satisfy the requirements for
19 issuance of a site certificate for the energy facility.

20 In at least two of these areas, air and
21 water quality, the issues are further framed in the
22 context of separate air and NPDES permitting processes.
23 Those are underway, under EFSEC's oversight. You heard
24 Mr. Larrabee refer to those permit issues where he
25 expects to work through any remaining topics that

CLOSING ARGUMENT - APPLICANT VANCOUVER ENERGY

1 council believes must be addressed to comply with the
2 air and quality standards found in those regulations.

3 You heard a lot of testimony suggesting that
4 meeting the standards in the witnesses' view was simply
5 not enough. This was especially true in intervenor
6 testimony on air emissions and seismic design.

7 Compliance with the State standards of
8 course must be scrutinized and must be ensured, but
9 asking for more or asking for denial because the witness
10 does not like the standard or does not think it is
11 enough is not within EFSEC's decision-making framework.
12 Your discretion is not without boundaries. In some
13 cases, the witnesses even acknowledge there may not even
14 be a standard that in their mind would be enough to
15 satisfy them.

16 So your second principle is to review the
17 evidence and testimony against compliance with the
18 adopted standards that EFSEC regulations state shall be
19 sufficient to satisfy the requirements for a site
20 certificate.

21 Third, of course, your decision must be
22 based upon the evidence, the facts and the opinions from
23 the experts, and you must evaluate the reliability and
24 the weight to give that evidence. As you review the
25 evidence against the standards, I ask you to carefully

CLOSING ARGUMENT - APPLICANT VANCOUVER ENERGY

1 evaluate the difference between unsupported assertions,
2 speculation, personal opinion compared to demonstrated
3 facts, expert analysis and expert opinion.

4 Does the party assert it or do they
5 demonstrate it? Does the document actually say what
6 they said it does?

7 The briefs, I suspect, I know our brief,
8 will spend a lot of time trying to put these pieces
9 together for you, so I'm not going to go into details
10 topic by topic here. But remember when reviewing
11 conflicting opinions, consider the specific knowledge
12 and experience of the witness testifying.

13 I'll give you two examples. Has the person
14 offering opinions about how to navigate ships in the
15 Columbia River ever done that? Is the person offering
16 opinions about the reliability of crude oil supplies to
17 Washington refineries commenting from external industry
18 observation as one who regularly challenges the
19 petroleum energy infrastructure across North America or
20 from someone with a daily responsibility of managing a
21 reliable crude oil supply for the industry?

22 So your third principle is to confirm the
23 reliability of the evidence as you weigh it in your
24 decision-making.

25 Next, it's important to remember that

CLOSING ARGUMENT - APPLICANT VANCOUVER ENERGY

1 EFSEC's decision must focus now on the terminal and not
2 the rail operations. It goes without saying we've heard
3 a lot about rail. In fact, I bet if we did an hour's
4 count, rail would be by far the most time-consuming
5 topic on this adjudication.

6 Many of the witnesses, most notably the City
7 manager and the land use expert for the Intervenors,
8 bluntly admitted as much. Their concerns are focused on
9 the rail. They try to pin it on the terminal, but
10 they're focused on the rail and they're focused on a
11 rail line that has existed in the Vancouver community
12 for years. They focused on a rail line that the Port
13 has already planned and constructed improvements for
14 expansion of rail traffic.

15 Interestingly, as I suggested in my opening
16 statement, you will find when you review the evidence
17 that the terminal-related issues are either resolved or
18 being resolved as part of the ongoing review by agency
19 experts to refine air permit requirements, seismic
20 design standards, and ground improvement modeling. The
21 terminal design and operational issues are not that
22 complicated and are being fully addressed to meet the
23 standards, ensure safety, and protect the environment.

24 The BakerRisk assessment confirmed that the
25 offsite risk of an accident, such as fire or explosion

CLOSING ARGUMENT - APPLICANT VANCOUVER ENERGY

1 from the terminal, was negligible. As Vancouver Energy
2 has been stating, the evidence now demonstrates that the
3 terminal can be designed and operated to protect the
4 safety of the community.

5 The testimony has explained that
6 Washington's marine vessel regulations and spill
7 response planning are some of the very best in the
8 nation, and the State is prepared to respond if ever
9 called to do so. Vancouver Energy is already
10 contributing additional response equipment to add to
11 that already robust response system.

12 We heard a lot about tank cars, rail speeds,
13 hazardous material transportation requirements, routing,
14 rail design, inspection frequencies, and more. Our
15 motion to dismiss those issues from the adjudication
16 list denied at the outset because it was deemed
17 premature to know whether EFSEC might try to reach
18 outside the boundaries of its jurisdiction to regulate
19 crude-by-rail.

20 However, EFSEC must now recognize that those
21 issues are not within EFSEC's jurisdiction to consider
22 or to condition. The federal government regulates those
23 issues. The federal government has and continues to
24 evaluate these rail transportation issues to develop new
25 safety regulations deemed necessary to ensure safe rail

CLOSING ARGUMENT - APPLICANT VANCOUVER ENERGY

1 transportation and to promote vital interstate rail
2 commerce.

3 Our nation, and more recently our state, has
4 awakened to the fact that hazardous materials are
5 transported by rail and have been for a long time.
6 Crude-by-rail is a relatively recent phenomena, at least
7 in the quantities that we have seen over the past few
8 years, but HAZMAT transportation is not.

9 The federal government has and is moving to
10 address necessary safety issues. In cases like the tank
11 car standard, Vancouver Energy has stepped up to adopt
12 the new standard in advance of the federal schedule.

13 Our response cannot and should not be to
14 stop all transportation of those materials. It doesn't
15 work that way. And there are too many other
16 implications for our economy and for our country.

17 EFSEC cannot change those requirements.
18 EFSEC does not have authority to condition or deny the
19 terminal project based on rail operational issues.

20 I next want to turn to the topic of risk.
21 You have heard a lot of information about risk during
22 these proceedings. Let me offer a few thoughts on how I
23 believe you should evaluate the risk issues in this
24 case.

25 First, separate the terminal from the rail.

CLOSING ARGUMENT - APPLICANT VANCOUVER ENERGY

1 BakerRisk report addresses risk at the terminal and that
2 assessment has not been rebutted during these
3 proceedings.

4 Second, acknowledge the jurisdiction of the
5 federal government and the significant changes that have
6 been made in general by the government and by the BNSF
7 specifically to improve safety of crude-by-rail
8 transportation.

9 Third, separate the facts from the hysteria.
10 As confusing as math and probability might be,
11 especially after eight hours of testimony at the end of
12 five weeks, here is what you should take away from that
13 testimony: Remember that probability doesn't really
14 answer the question of will it occur or will it not
15 occur. It is a tool to help you assess risk and to
16 factor that risk into your evaluation of the evidence
17 and your judgment about this project.

18 Remember that the potentially more frequent
19 events that have been described in the probability do
20 not match the fiery photos that you have been shown.
21 Your evaluation of the fiery photos must take into
22 account the differences in circumstances, the changes in
23 safety technology and safety procedures, and the
24 additional commitments of BNSF and Vancouver Energy to
25 reduce the potential for such an incident to occur.

CLOSING ARGUMENT - APPLICANT VANCOUVER ENERGY

1 Vancouver Energy absolutely shares the view
2 that any incident, including a rail incident, is bad.
3 Let me assure you that Vancouver Energy, including its
4 joint venture companies, Tesoro and Savage, approach
5 risk from a corporate culture of safety working safely
6 at all times and all places. Everyone has the
7 obligation, not simply the authority, to stop the
8 operation if there's a threat to safety.

9 These are just two of the guiding principles
10 of the Vancouver Energy companies. Everything that can
11 be done should be done to reduce risk and improve
12 safety. The community's response planning, training and
13 equipment preparedness must be the best it can be.

14 That's why the evidence demonstrates that
15 Vancouver Energy has been offering to ensure the City of
16 Vancouver has an adequate gap analysis of its fire and
17 emergency response capabilities. That's why Vancouver
18 Energy offered in Mr. Larrabee's final testimony
19 yesterday to sponsor additional emergency response
20 planning efforts with stakeholders across the State to
21 make sure the State is as prepared as it can be to
22 effectively respond to an incident if one should ever
23 occur.

24 However, it's not possible to do business
25 for business or for industry to function without some

CLOSING ARGUMENT - APPLICANT VANCOUVER ENERGY

1 risk. EFSEC must recognize that in your decision.

2 Let me close by reiterating Vancouver Energy
3 appreciates the time, the care, the attention being
4 given to this important energy project. As Mr. Larrabee
5 noted in his testimony yesterday, while the record for
6 the adjudication is coming to a close, Vancouver Energy
7 certainly hopes and expects that the ongoing dialogue
8 with EFSEC staff and its team of consultants can and
9 will continue through the air and water permit
10 processes, through completion of the environmental
11 review and response to comments.

12 As Mr. Larrabee said, if that ongoing review
13 identifies additional measures or design refinements
14 that are deemed necessary to meet the regulatory
15 requirements, then Vancouver Energy welcomes the
16 opportunity to discuss those needs and incorporate those
17 deemed necessary to comply with the EFSEC statutes and
18 regulations.

19 We believe the evidence has demonstrated
20 that this project is necessary to secure a strong,
21 stable, reliable supply of energy for the citizens of
22 Washington. We believe the evidence has demonstrated
23 that this project can be designed, constructed and
24 operated safely, and can protect the quality of our
25 environment.

CLOSING ARGUMENT - PROPONENT PORT OF VANCOUVER

1 And for those reasons, we urge you to
2 recommend approval. And with that I'll conclude my
3 opening remarks and offer some final thoughts after the
4 other parties have responded. Thank you.

5 JUDGE NOBLE: Thank you.

6 Is there other argument for the proponents?

7 MR. BARTZ: Yes, Your Honor.

8 Good morning. Judge Noble, Chair Lynch,
9 members of the council and the staff, thank you for your
10 time. I am David Bartz, and with my partner Connie Sue
11 Martin, we represent the Port of Vancouver USA.

12 I want to highlight for you for a few
13 minutes the key benefits that the Port of Vancouver
14 provides to its local community and to the State of
15 Washington. The Port urges the council in its
16 evaluations to keep these benefits in mind, keep them
17 vibrant, vital, and well functioning as you evaluate
18 these strongly-held attacks on this crude oil project.

19 The Port asks the council to help the Port
20 retain the structures and practices that enable the Port
21 of Vancouver to provide significant benefits to the
22 local community, the State and the region. The evidence
23 will show that there's no dispute the Port of Vancouver
24 provides significant benefits to the locals, to the
25 local community, the region and the State.

CLOSING ARGUMENT - PROPONENT PORT OF VANCOUVER

1 And there's really no dispute about that in
2 this proceeding, and candidly, after five weeks, to be
3 able to say there's no dispute about an issue, is a
4 significant statement. The Port of Vancouver's value is
5 not in dispute.

6 But let's talk about what it is. The Port
7 of Vancouver provides good, strong economic benefits.
8 Those are important. The Port of Vancouver is a good,
9 strong community partner. The Port of Vancouver is a
10 good steward, and the Port of Vancouver is part of a
11 well-functioning system.

12 We're looking for the council to help us
13 protect those goods while you continue to do the
14 important and difficult evaluation that is in front of
15 you.

16 The Port provides good results. There's no
17 dispute. On the first day you heard from Alastair Smith
18 in exhibits, and I want to give you a few because I want
19 to help you with your notetaking. 1018 and 1019 are two
20 pictures of the Port's continued production of increased
21 revenue and increased jobs for the community. No
22 dispute about that.

23 There's no dispute about the fact that in
24 2010 the sum of economic activity in a way that was not
25 challenged by any economic expert was about a

CLOSING ARGUMENT - PROPONENT PORT OF VANCOUVER

1 1 billion-6. Four years later, nearly doubled,
2 \$2.9 billion. That's a way to assess and evaluate
3 objectively the value the Port of Vancouver provides.

4 How does it do that? We've heard about it.
5 They've transformed the Port of Vancouver. Now people
6 recognize that the Port of Vancouver is not some very
7 pleasant place in a far off country, but is right here
8 in our backyard. They build it with a diverse cargo
9 base so that when the economy shifts, the Port of
10 Vancouver keeps on humming and those benefits to the
11 local community keep on moving.

12 They have long-term contracts which you
13 heard testimony, again, undisputed, that those are
14 unusual. They built those long-term contracts built on
15 repeated relationships with wind energy providers, an
16 alternative energy source, not just all about oil.

17 They build it about a break bulk focus. One
18 of the witnesses for the opponents who had never looked
19 at the break bulk market suggested the Port ought to get
20 in the break bulk business. Well, Mr. Smith told you
21 that the Port of Vancouver is a leader in the break bulk
22 business already and that that break bulk business is
23 good for the local community because it's good for the
24 Port and the Port reinvests that money.

25 The Port does reinvest the money. There's

CLOSING ARGUMENT - PROPONENT PORT OF VANCOUVER

1 proof of that, that again is not disputed. We talked
2 about those harbor cranes; \$5 million each, and the
3 first one paid off in just a little over a year, because
4 the Port evaluated a market, saw a need, and filled the
5 need.

6 And what comes of that need being filled?
7 Good jobs, good value. We now are the leading port.
8 The Port of Vancouver right here in this backyard is a
9 leading port for project cargo, those big bulky things
10 like wind turbines that are a significant part of the
11 energy future, and the Port is playing a role in that.

12 It provides jobs. It provides jobs for
13 crane operators and longshoremen. While the Port
14 respects the position the longshoremen that it works
15 with are taking in opposing the crude oil parts of this
16 project, the Port of Vancouver remains committed to
17 creating jobs and economic benefit for its workers and
18 for those that it works with like the ILWU.

19 We invest in new facilities. You heard
20 about the new industrial park; you heard about the plans
21 for a new warehouse because the current Port's
22 warehouses are all full. They're all fully occupied, so
23 they're going to invest in some more. And just like the
24 cargo cranes that brought new business, new warehouses
25 will bring new business.

CLOSING ARGUMENT - PROPONENT PORT OF VANCOUVER

1 The Port's reinvestment allows its tenants
2 to grow. And you heard testimony about the growth of
3 those tenants. And as those tenants grow right here in
4 Vancouver, the benefits grow right here in Vancouver.
5 The Port provides good benefits.

6 The Port provides -- is a good community
7 partner. We've heard a lot about rail. Well, one of
8 the positives about rail you've heard about is the West
9 Vancouver Freight access project.

10 Exhibit 1020 gives you the long list of
11 local, state and federal agencies that all got together
12 behind the Port of Vancouver, because we spoke up about
13 it first and said, Let's do this in '06 and '07. Let's
14 fix the congested rail system where the north-south and
15 east-west rails come together. Let's fix the at-grade
16 crossings in the City of Vancouver that make it
17 difficult on the west end of town to get around.

18 Let's fix those things. Let's improve the
19 use of fossil fuels and not have trains standing idle
20 for significant periods of the day.

21 That's what got accomplished with the West
22 Vancouver Freight Access project. And not by the Port
23 by itself, but the Port with its leaders and others in
24 the community; Clark County, the City of Vancouver, and
25 a myriad of state, some agencies represented around the

CLOSING ARGUMENT - PROPONENT PORT OF VANCOUVER

1 table here, and the federal government.

2 The waterfront access project. There are
3 significant steps no one challenges that the Port took
4 to help lead to create the vision -- or not create the
5 vision, but to help fulfill the vision of the waterfront
6 access project. The underpasses at Esther and Grant
7 Streets are there because the Port took some risks with
8 the West Vancouver Freight Access project.

9 The recent redevelopment of Columbia Way and
10 the deep utilities you heard testified about and the
11 city manager agreeing that those things helped
12 facilitate the waterfront and the use of that waterfront
13 by the local people, by the community. They get to
14 embrace it because of the West Vancouver Freight Access
15 project and the Port's commitment.

16 They just broke ground on a new park right
17 there on the waterfront. It takes place at what used to
18 be an industrial facility called Boise Cascade.

19 The Port of Vancouver helped to transform
20 that former used-up industrial place into the foundation
21 that some other private developers, intervenors here,
22 took some risk and have some vision and they're going to
23 turn it into a place that's something to be proud of.

24 But the Port also, as shown in Exhibit 1022,
25 the Port has its own vision for the waterfront and is

CLOSING ARGUMENT - PROPONENT PORT OF VANCOUVER

1 right there on the upriver end of that same space to try
2 to create a vibrant place to bring to absolute fruition
3 the vision that many in this community have of a
4 waterfront and a community that gets to embrace that
5 waterfront and touch that waterfront, and the Port of
6 Vancouver is part of that.

7 We are a good community partner. We're a
8 good steward. Long before the battle lines over this
9 project were drawn, the Port of Vancouver hired two
10 experts. Dave Sawicki, who testified in front of you,
11 40-plus years in the petroleum industry and safety and
12 spill response, emergency response, to come in and help
13 the Port evaluate: Does it have the right systems?
14 Does it have the right structures in place to be a safe
15 host?

16 And he told you they do. Sure, there's
17 details to be worked out because this process is kind of
18 like if you're ready too early, that's a bad thing and
19 if you're ready too late, that's a bad thing. But we
20 have the structures in place. That's what you heard and
21 that's what is important.

22 We hired TUV Rheinland. Larry Guthrie came
23 in to look at the Port's rail, the Port's rail, and tell
24 it whether it was good enough and what it could do to
25 make it better. That was his charge.

CLOSING ARGUMENT - PROPONENT PORT OF VANCOUVER

1 And the Port went one better. We took his
2 recommendations and implemented all of them, as you've
3 been told. And we went even further.

4 The guardrail we've heard about. The Port
5 put in the guardrail at the beginning of the BNSF main
6 line where we take off for the new Port entrance and we
7 take it right away down through the trench, through the
8 trench, much further than Mr. Guthrie thought was
9 necessary, and we did that.

10 Even the opponents' experts admit that that
11 guardrail makes the Port's rail safer. Combined with a
12 5 mile-an-hour speed limit in the Port rail, combined
13 with concrete railroad ties and welded -- unified welded
14 rail, the Port has built an excellent rail system.

15 You can have your doubts and there's debates
16 and Mr. Derr has covered a lot of that and many others
17 that come behind me will cover rail outside the Port,
18 but nobody disputes the strong safety that's provided by
19 the Port's rail because the Port's a good steward.

20 The Port is part of a good system. The Port
21 is a vital functioning part of the Columbia River marine
22 cargo system. It's been well functioning for years.

23 No witness with any navigation experience
24 and no witness with any marine cargo experience has
25 testified to you that there's some defect or problem

CLOSING ARGUMENT - PROPONENT PORT OF VANCOUVER

1 with the current marine cargo system that works with the
2 lower Columbia River. That's really important.

3 Capacity. There's testimony again that's
4 not challenged that capacity in the year 2000 or even
5 before that were in excess of 1500 to 1800, 2,000 ships
6 a year. Last year, roughly 850 ships. So the 350 ships
7 that the project proposes to bring are well within the
8 capacity of the Columbia River to function and function
9 well.

10 You may not want those ships for other
11 reasons and people may be concerned about those ships
12 because of the cargo they carry, but those ships
13 themselves do not provide any substantial risk or harm,
14 and there's testimony about that that's undisputed.

15 A critical part of this has gone unmentioned
16 or not talked about much, is about 80 percent of those
17 ships will be the handymax size. The handymax size is
18 about 46,000 deadweight tons. It's about the size --
19 it's the same size of ship that's been calling on the
20 Columbia River for a couple of decades. It's the same
21 size ships that bring grain, take break bulk cargos
22 away; it's not new ships.

23 One of the witnesses talked about the Exxon
24 Valdez. The Exxon Valdez is more than four times the
25 size of a handymax ship. These are not super tankers.

CLOSING ARGUMENT - PROPONENT PORT OF VANCOUVER

1 These are the standard size cargo ships that are
2 carrying a special cargo that requires some extra
3 evaluation by you, but the ships themselves are not the
4 culprit.

5 The Port provided you a biologist who was
6 not cross-examined who told you that the impacts are
7 minimal on the current system because of the built
8 channel and because of the banks that have been hardened
9 up over years and years of good service and remediation
10 projects. The channel deepening project completed in
11 2010 was the subject of very significant environmental
12 review and very significant environmental efforts.
13 That's there to be worked with.

14 Captain Bayer testified, the only expert
15 you've heard from who has been to a navigation school,
16 who has run ships, who has designed and operated ships
17 within the marine cargo system that is the Columbia
18 River. And he described for you in great detail the
19 safety elements that are a part of this safe system that
20 works today, well functioning.

21 And there are a good system, as you heard
22 testimony, and Mr. Derr mentioned it, a good system to
23 respond to that mistake or that incident that might
24 occur. Those systems are there. Maybe they need to be
25 reviewed, but they're there and the history of that

CLOSING ARGUMENT - PROPONENT PORT OF VANCOUVER

1 system is a really safe, well-functioning system. So
2 the Port is part of that well-functioning system.

3 So in closing, you've heard for five weeks
4 much about attacking the system that works. The system
5 works.

6 In the next 90 minutes or so, you're going
7 to hear even more about a system that's apparently
8 broken, but it's not. The evidence is not there.

9 The Port provides good benefits, substantial
10 benefits to its community that have already made a huge
11 positive difference. And the Port's ability to keeping
12 doing that is important.

13 We urge the council to consider those issues
14 and well-founded and do the work that's necessary, but
15 we ask the council to recognize and remember the
16 benefits that the Port of Vancouver provides, and work
17 hard to avoid disabling those or hurting those
18 structures and processes that allow the Port to provide
19 such good benefits for its community, both the
20 intangible, experiential benefits like being able to go
21 to the waterfront and the tangible and necessary
22 benefits like economic production that make our
23 communities part of a livable community.

24 Thank you for your time. I'll talk to you
25 again in a little while.

CLOSING ARGUMENT - OPPONENT ENVIRONMENT

1 JUDGE NOBLE: Thank you, Mr. Bartz.

2 Are there any other arguments from the
3 proponent side?

4 MR. DERR: No, Your Honor.

5 JUDGE NOBLE: Thank you. The opponents'
6 closing arguments.

7 Mr. Kernutt?

8 MR. KERNUTT: Chair Lynch, ALJ Noble,
9 council members, thank you for your service during these
10 past five weeks and your significant and clear
11 engagement throughout this adjudication. My name is
12 Matt Kernutt. I am the statutory counsel for the
13 environments.

14 The legislature has charged you as EFSEC
15 with the responsibility to preserve and guard the
16 quality of Washington's environment during these energy
17 facility siting proceedings. The legislature further
18 highlighted the importance of guarding natural resources
19 by requiring the elected attorney general to appoint an
20 independent representative of the public, the counsel
21 for the environment, to advocate before EFSEC in these
22 proceedings for the public's interest and the protection
23 of its ecosystems. The counsel for the environment has
24 an independent statutorily created role to represent
25 that broad interest in the quality of Washington state's

CLOSING ARGUMENT - OPPONENT ENVIRONMENT

1 environments.

2 Further, EFSEC's statutory and regulatory
3 mandate is to balance the public interest, including
4 potential risk and harm to the environments and public
5 safety that may occur as a result of a proposed project,
6 with Washington's need for the proposed project.

7 In that balancing, you serve as trustees,
8 not just for the current generation, but for future
9 generations in the quality of our environment. And you
10 must assure in your decision-making that the people of
11 the State of Washington continue to have a productive
12 and beneficial environment without risk to health or
13 safety or other undesirable and unintended consequences.

14 Now, like you, I have sat through five weeks
15 of evidence, testimony, numerous exhibits regarding this
16 particular project; listening to hours and hours of
17 testimony addressing numerous issues, including risk
18 analysis, rail issues, vessel issues, seismic issues,
19 the capability of our first responders and financial
20 assurances, among many other topics.

21 Now, out of all of the evidence submitted in
22 this proceeding, I submit to you a few key points rang
23 loudly through all of this important information. The
24 first is the plain nature of this terminal project.

25 This is a transfer terminal designed to

CLOSING ARGUMENT - OPPONENT ENVIRONMENT

1 bring oil on an average of four unit trains per day
2 through the City of Spokane, along the Columbia River
3 Gorge, through the host City of Vancouver to the Port of
4 Vancouver, and then store that oil at the Port of
5 Vancouver, load it onto a vessel that will then
6 transport that oil apparently largely to the State of
7 California.

8 Another key point you have heard is the
9 substantial evidence in opposition has come from a very
10 diverse group of intervening parties. You have the
11 State Department of Natural Resources, cities along the
12 rail route, the host City of Vancouver, Clark County,
13 tribal governments, environmental groups, and various
14 other concerned parties that in other occasions may not
15 agree on a lot, but they have agreed and raise
16 substantial and significant concerns and risks related
17 to this project.

18 Now, attorneys for those parties will speak
19 to each of their own evidence and concerns here shortly,
20 and I will not steal their thunder. But by and large,
21 that testimony and the evidence that was submitted
22 throughout these five weeks did raise very significant
23 issues of potential harm to the citizens and environment
24 of this state that could occur as the result of the
25 operation of this terminal.

CLOSING ARGUMENT - OPPONENT ENVIRONMENT

1 The risks and potential impacts raised
2 ranged from an increased risk of oil spills on the
3 iconic Columbia River to air quality issues to public
4 safety risks related to the increased transportation of
5 crude oil by rail through our communities, to impacts to
6 tribal communities that cherish and depend on the
7 resources that Columbia River provides, among many other
8 concerns.

9 In addition, as the counsel for the
10 environment's expert witnesses showed, there is
11 potentially significant harm that could occur to the
12 Columbia River environment as a result of an oil spill
13 connected with this terminal.

14 Now, regardless of the financial ability of
15 a responsible party to pay for the costs of restoration
16 of the Columbia River habitat, Mr. Holmes and
17 Dr. English provided compelling testimony that the
18 potential consequences from a major oil spill could
19 negatively affect our cherished river for years to come.

20 Now, while the counsel for the environment's
21 expert witnesses talked about natural resource injuries
22 and how they are compensated through those injuries or
23 compensate the State and other trustees through the
24 natural resource damages assessment process, other
25 compelling testimony was presented regarding the failure

CLOSING ARGUMENT - OPPONENT ENVIRONMENT

1 of monetary compensation to make communities, both
2 tribal and non-tribal, whole. The testimony showed that
3 monetary payments cannot replace the injuries that can
4 occur to the public and the environment as a result of
5 the operation of this terminal.

6 Now, the applicant has consistently argued
7 that the risks and potential harm associated with this
8 terminal are reasonable and acceptable and fall within,
9 as one of their experts testified, typical industry risk
10 tolerance criteria. Now, while these risks may be
11 reasonable and acceptable to the applicant, that does
12 not mean that the risks are or even should be considered
13 to be reasonable and acceptable to the people of the
14 State of Washington and clearly are not reasonable or
15 acceptable to the numerous opponents to this project.

16 Risk acceptance and tolerance is what we as
17 a society are willing to accept, we as a state, not what
18 the applicant or the industry is willing to tolerate.
19 As numerous witnesses have testified, the potential
20 consequences related to this terminal are massive.

21 The bottom line is that the evidence in this
22 proceeding has revealed that this terminal will not
23 serve Washington's energy needs and provides very
24 limited benefit to Washington citizens. At the same
25 time, the terminal would increase the risk to public

CLOSING ARGUMENT - OPPONENT ENVIRONMENT

1 safety and to the environments with potential
2 consequences that are massive. Protecting the public
3 interest can and should outweigh the permitting of a
4 proposed facility like this.

5 I submit that the evidence has shown that
6 the demand for this particular facility is not great
7 enough to outweigh the negative effects on the broad
8 interest of the public in protecting the environment and
9 safety of the people of our state. Because of the
10 potential catastrophic loss, the applicant cannot ensure
11 that the location and operation of this project will
12 produce minimal adverse effects on the environment as
13 required by law. The State of Washington should not
14 bear the risks of the operation of a terminal like this
15 to provide crude oil primarily to California refineries.

16 Given the weight of the evidence, the
17 project does not protect the interests of the people of
18 the State of Washington and the quality of the
19 environment and is not in the public interest.

20 As counsel for the environments, I urge this
21 council to recommend denial of the Vancouver Energy
22 Distribution Terminal. Thank you.

23 JUDGE NOBLE: Thank you, Mr. Kernutt.

24 Is there further argument from the
25 opponents? Mr. Potter?

CLOSING ARGUMENT - OPPONENT CITY OF VANCOUVER

1 MR. POTTER: What is wrong with the City of
2 Vancouver? Why would it be steadfastly opposed to a
3 project that is going to create over \$100 million of
4 improvements to the Port of Vancouver and provide over a
5 hundred jobs? Why is it working against the efforts of
6 the Port, an agency that we traditionally partner with?

7 The answer to these questions lie in
8 comparing the evidence produced during this proceeding
9 to your policies for reviewing proposals that are set
10 forth in WAC 463.47.110. That comparison compels you to
11 recommend the rejection of this application.

12 That regulation provides that the council
13 shall fulfill its responsibilities as a trustee of the
14 environment for future generations, assure that all
15 people of Washington have a safe, healthful and
16 productive environment and attain the widest range of
17 beneficial uses of the environment without degrading it,
18 risking health or safety, or causing other undesirable
19 or unintended consequences.

20 The evidence produced in this hearing shows
21 that siting the largest crude-by-rail oil terminal in
22 the country within the fourth largest city of the state
23 does not fulfill these policies. This project will not
24 provide a public benefit that will come anywhere close
25 to offsetting the costs and risks that it poses to our

CLOSING ARGUMENT - OPPONENT CITY OF VANCOUVER

1 community and our environment.

2 This project does not produce a drop of
3 energy. It simply moves crude oil from one location to
4 another. This project will not benefit Washington. As
5 Dr. Goodman testified, Washington refineries are already
6 operating at capacity and meeting our state energy needs
7 without this terminal.

8 What this terminal will benefit is Tesoro,
9 Savage and refineries in California and overseas. This
10 project is being proposed at a time when Washington is
11 working to reduce its oil dependency, reduce greenhouse
12 gas emissions and ward off climate change.

13 This project is also being proposed at a
14 time when, as Mr. Barkan acknowledged, there is growing
15 pipeline capacity and the transportation of oil by
16 pipeline is both cheaper and safer than transporting it
17 by oil trains.

18 While providing little or no benefit to
19 Washington, the terminal exposes Washington communities
20 to an unacceptable level of risk. The oil terminal will
21 more than double the current number of oil trains
22 traveling through our communities. As Mr. Johnson
23 testified, the current level of oil trains going through
24 Vancouver is 10 to 18 per week, and with the oil
25 terminal operating at capacity, that number will expand

CLOSING ARGUMENT - OPPONENT CITY OF VANCOUVER

1 to 38 to 46 oil trains per week. That's a 200 percent
2 increase in the exposure to the risk of oil train
3 derailments and fires.

4 In an attempt to gloss over this undeniable
5 fact, Ms. Kaitala from BNSF testified that four more
6 trains is just part of the normal fluctuation of rail
7 traffic. Four more trains isn't really four more
8 trains.

9 These are not just any trains. These are
10 oil trains that have a record of derailments and fires
11 that have destroyed properties and taken lives.

12 Let's review the evidence on the frequency
13 and severity of train derailments. There's reality and
14 then there's statistical analysis.

15 The reality is that there have been
16 25 derailments of unit trains with releases in the last
17 9 years. In the last 18 months, there have been
18 7 derailments, each with a spill, each with a fire.
19 That's an average of one every two and a half months.

20 The reality is that in 20 of the
21 25 derailments, that's 80 percent of the time, a fire
22 has erupted and an average of 15 cars have failed in
23 each of those accidents.

24 Let's examine Mr. Barkan's statistical
25 approach. First of all, he uses derailments of all

CLOSING ARGUMENT - OPPONENT CITY OF VANCOUVER

1 types of freight trains to calculate his derailment rate
2 rather than focusing on crude oil trains. He uses data
3 from 2005 to 2009, which is before we saw an explosion
4 in the growth of the transportation of oil by unit
5 trains. PHMSA, in its draft and final regulatory impact
6 analyses at Exhibits 3058 and 3067, states that all
7 types of freight trains cannot be used as proxies to
8 calculate derailment rates. That's exactly what
9 Mr. Barkan does.

10 In the draft regulatory impact analysis it
11 states, and I'm going to quote here, "There's reason to
12 believe that derailments of highly hazardous flammable
13 trains will continue to involve more cars than
14 derailments of other types of trains. There are many
15 unique features to the operation of unit trains to
16 differentiate their risk."

17 And yet the applicant uses all types of
18 trains and data before oil trains were so prominent.

19 PHMSA also forecasts that there will be
20 12 to 15 derailments per year for the next 20 years,
21 each having an average loss of over 83,000 gallons of
22 oil per incident. That's more than twice the amount
23 lost in Mosier.

24 PHMSA also forecasts that there will be two
25 what they call Higher Consequence Events that will occur

CLOSING ARGUMENT - OPPONENT CITY OF VANCOUVER

1 in the next 20 years, each having large-scale property
2 loss and multiple deaths. The highly touted
3 99.997 percent success rate for rail shipments is based
4 on the number of cars reaching their destination intact.

5 Based on that formula, the train that
6 derailed in Mosier would be considered 96 percent
7 successful because only 4 of the 100 tank cars failed.
8 I don't think most of us would consider that train to be
9 96 percent successful, but I guess we just don't use the
10 correct statistical model.

11 The oil terminal itself presents risk. The
12 reliance on single pumps to operate the fire suppression
13 system and seeking approval of this project without
14 showing that the City water supply system can provide
15 adequate water to operate those suppression systems are
16 examples of what your own consultant found to be, quote,
17 highly risky design. That's at Exhibit 3124.

18 The applicant brings this proposal to you
19 without even having prepared a fire response plan for
20 the terminal. Dr. Wartman has testified that the
21 storage tanks would not withstand a moderate to severe
22 earthquake.

23 I'd like to talk about what the risks are.
24 Mr. Blackburn, the insurance expert that the City
25 called, estimated a maximum foreseeable loss of 5 to

CLOSING ARGUMENT - OPPONENT CITY OF VANCOUVER

1 \$6 billion. That's a huge number. But consider that
2 PHMSA has estimated that the loss in Lac-Megantic,
3 Canada, to be \$2.7 billion, and that's in an area that
4 is sparsely populated.

5 Consider Mosier and the what-ifs. What if
6 it had been windy that day in the Columbia River Gorge
7 and a school only 700 feet away? What if the mutual aid
8 forces had not been available that day as they weren't a
9 month later? What if the derailment had occurred
10 further to the east where there is the fruit processing
11 plant or further to the west where the train would have
12 gone into a water body?

13 They had a fire that lasted 12 to 14 hours.
14 Their municipal water and sewer systems were disrupted.
15 They have groundwater now that has ten times the APA
16 allowed level of benzene, and this is what lucky looks
17 like in an oil train fire.

18 Vancouver, the railroad crossings are the
19 only means of access to many properties lying to the
20 south of the railroad tracks. If there's a derailment
21 in that area, many residents will be trapped. And there
22 are limited evacuation routes for the 5,000 residents of
23 the City living south of Highway 14. In Washougal there
24 are four schools within the half mile evacuation zone
25 along the railroad tracks and the City's drinking supply

CLOSING ARGUMENT - OPPONENT CITY OF VANCOUVER

1 is exposed to a spill.

2 You've heard the testimony about the
3 Vancouver Fire Department and the Vancouver Police
4 Department not being sufficiently trained or staffed to
5 respond to a large oil fire. CRESA, our 911 agency and
6 emergency management agency, does not have adequate
7 notification, evacuation or sheltering capacity.

8 There's one thing that Mr. Rhoads and
9 Mr. Hildebrand agreed on, and that is that it's nearly
10 impossible to offensively attack an oil train fire.
11 It's never been done. Instead, you take a
12 non-intervention or defensive strategy of isolating the
13 scene, evacuating people, cooling adjoining cars, and
14 waiting 6, 8, in the case of Mosier, 12 to 14 hours and
15 let the fire burn until it burns down enough to the
16 point that you can attack it. Imagine that occurring in
17 downtown Vancouver or Spokane.

18 I'd like to talk about the mitigation that's
19 being proposed for this project. The applicant says
20 that it is committed to only accepting DOT-117 tank
21 cars. Let's examine that commitment.

22 It's a hollow statement. They argue that
23 federal preemption precludes you from specifying that
24 they can only accept DOT-117s. And I have to agree with
25 them, you can't.

CLOSING ARGUMENT - OPPONENT CITY OF VANCOUVER

1 Mr. Derr says you can't even consider rail
2 impacts, so this commitment, while nice, is completely
3 unenforceable. Mr. Larrabee, in his testimony,
4 acknowledged that in January of this year in his
5 comments on the DEIS, Tesoro Savage said that they could
6 not operate in an economically competitive manner if
7 they were limited to only accepting DOT-117s.

8 Now, six months later, they say they can.
9 What will they say six months from now? A year from
10 now? Five years from now if they change their mind
11 again? If they do, there's nothing you can do about it.

12 In the draft regulatory impact analysis,
13 PHMSA estimates that 117s only improve the
14 crashworthiness of those tank cars by 10 percent over
15 the jacketed 1232 and by 21 percent over the unjacketed
16 1232. You'll recall, 1232s have failed on multiple
17 occasions and in Mosier.

18 The 117s are designed to withstand a pool
19 fire for 100 minutes, but remember, no one has been able
20 to offensively attack an oil train fire. Instead, you
21 rely on the defensive strategy of let it burn for hours
22 before you can put it out. Meanwhile, the fire can
23 cause adjoining cars to fail. Mr. Rhoads testified that
24 heat-induced tears and fireballs have occurred anywhere
25 from 20 minutes up to 8 hours after a derailment.

CLOSING ARGUMENT - OPPONENT CITY OF VANCOUVER

1 Another form of mitigation is financial
2 assurances. The first step to considering the adequacy
3 of financial assurances is to ask to whom is this permit
4 being issued? What entity will fulfill the requirements
5 of the permit?

6 Here, the applicant is an empty Delaware
7 LLC. It has no employees; no one speaks directly for
8 this entity. I asked Mr. Larrabee, what is the net
9 worst of the LLC? And he refused to answer the question
10 saying it was proprietary information.

11 During discovery, the City asked for details
12 on the proposed insurance, bonding or other assets that
13 would cover damages, and the applicant refused to
14 answer. There are refusals in the record. Look at
15 Exhibits 3046 to 3049.

16 The applicant says that the \$10 million
17 liability insurance and the \$25 million pollution
18 liability insurance called for in the lease are the
19 minimum that will be provided, but they refuse to commit
20 to a maximum or any other amount of insurance. They
21 have said that Ecology and UTC will sort out the
22 insurance requirements in the future, but just saying
23 that appropriate levels will be determined in the future
24 doesn't satisfy their burden of proof for this hearing.

25 Ecology may prescribe minimum levels of

CLOSING ARGUMENT - OPPONENT CITY OF VANCOUVER

1 insurance for spills into navigable waters, but spills
2 into waters are only one facet of the risks posed by
3 this project. The UTC does not set mandatory levels of
4 insurance. They only impose reporting requirements for
5 insurance held.

6 Even if you assume that Ecology will
7 determine insurance requirements for spills into water
8 that leaves many financial assurance gaps for damages
9 caused by terminal fires, oil train fires, terrorism,
10 seismic events, on-land spills causing property damage,
11 personal injury, cleanup and restoration costs.

12 WAC 463.60.075 requires proof of insurance
13 and bonding that will mitigate damages caused by the
14 operation of the project. This application and the
15 proof in this case are inadequate and this project
16 doesn't merit approval. You can't just keep kicking the
17 can down the road on what the financial assurance will
18 be.

19 The applicant hasn't prepared a maximum
20 foreseeable loss calculation, and in the absence of that
21 calculation or what level of insurance they intend to
22 provide, you must reject this proposal.

23 Vancouver is the largest city on the
24 Columbia River. It has a vision of being an
25 exceptionally vibrant, safe, welcoming, and prosperous

CLOSING ARGUMENT - OPPONENT CITY OF VANCOUVER

1 City. The City has invested tens of millions of dollars
2 reconnecting the community with the river. Public
3 safety is our paramount concern, and the applicant has
4 not met its burden to demonstrate that the City and the
5 State are fully protected.

6 You must determine whether this facility is
7 necessary to meet our state's energy needs, whether it
8 ensures that the public safety is protected, impacts are
9 fully mitigated, and the potential costs to the public
10 is reasonable.

11 Let's harken back to Captain Smith on the
12 sailing of the Titanic when he said, I cannot imagine
13 any condition which would cause this ship to founder. I
14 cannot conceive any disaster happening to this vessel.
15 Modern shipbuilding has gone beyond that.

16 Well, there's one thing worse than being
17 unable to imagine a disaster occurring, and what's worse
18 is having a glimpse of what can happen and failing to
19 provide sufficient safeguards. We've got that glimpse
20 in this case. We've seen 25 serious derailments, one
21 close to home in Mosier, one in Canada where an entire
22 downtown was eviscerated and 47 people lost their lives.

23 Here we have a facility that simply does not
24 belong where it's being proposed. The applicant is
25 cognizant of the risk. Otherwise, they wouldn't come

1 before you as a shell Delaware LLC that protects them,
2 but not us. And maybe that human error, an act of
3 terror, an earthquake is a long ways off, perhaps we'll
4 be lucky for an extended period of time. But why would
5 you place this type of facility where should that occur,
6 the consequences would be so far reaching? This
7 proposal simply does not make sense.

8 Bottom line, it's not enough to understand
9 what can happen. That's only Step 1. Having seen the
10 risk, one must take a stand. What that means here is
11 that we won't tolerate this nonsense, where the
12 applicant gets to fully protect itself while the public
13 is laid bare to risk. Not in our state, not in our
14 city, not on your watch.

15 JUDGE NOBLE: Thank you, Mr. Potter.

16 Further argument from the opponents?

17 Mr. Hallvik?

18 MR. HALLVIK: Taylor Hallvik on behalf of
19 Clark County.

20 On behalf of Clark County and myself, I
21 would like to thank the council, Judge Noble, and the
22 EFSEC staff for your work and dedication over the many,
23 many months that you have been involved in this process.

24 Over the past five weeks this council has
25 heard a great deal of testimony regarding the many risks

1 associated with this project, some of which counsel has
2 already alluded to this morning and will allude to
3 further.

4 Among the risks is the very real potential
5 that an oil terminal-related emergency will threaten the
6 residential population of the Clark County Jail Work
7 Center, which is surrounded on three sides by this
8 facility and on the remaining side by the Columbia
9 River. As I have over the past five weeks, I will focus
10 on these risks this morning.

11 This council has received testimony
12 regarding the important role of the Jail Work Center in
13 the Clark County community. You've received written
14 testimony from Richard Bishop that the Jail Work Center
15 has a capacity of 200 inmates and that there are plans
16 to expand this facility to 400 inmates in the future.
17 You've also received written testimony from him that the
18 Jail Work Center is a vulnerable special needs
19 population. They are incarcerated. They rely upon
20 Clark County and the State Washington for their health
21 and safety.

22 The Jail Work Center is a residential
23 facility, and Clark County owes the inmates of this
24 facility a custodial standard of care that is on the
25 level of a nursing home or an elementary school. You've

1 also received testimony that in the event of an oil
2 terminal-related emergency that impacts the Jail Work
3 Center, there are insufficient emergency response and
4 evacuation resources available to quickly move that
5 population to safety and rehouse them in a way that
6 protects both them and the community.

7 The risks to the Jail Work Center population
8 are not theoretical; they are real and they can be
9 quantified. You've received written testimony from
10 Dr. Eric Peterson who performed a detailed quantitative
11 risk analysis that addresses specifically the risks to
12 the Jail Work Center population posed by the project.
13 Dr. Peterson has concluded that as currently designed
14 and without required mitigation, the proposed terminal
15 presents unreasonable risks to the Jail Work Center. He
16 proposes specific mitigations to address those risks and
17 I'll talk about those in a minute.

18 But the primary drivers of this risk,
19 according to Dr. Peterson, are the 24- to 30-inch
20 pipelines of Bakken crude oil that are planned to be
21 above ground on the north and eastern boundaries of the
22 Clark County Jail Work Center property. Additionally,
23 Dr. Peterson has concluded and has analyzed the Port's
24 planned construction of an electrical substation that
25 will be between these pipelines and the Jail Work Center

1 population, just 10 or 20 feet from the pipelines.

2 Tesoro Savage's risk analysis, specifically
3 the testimony of Dr. Thomas Kelly, minimizes the risk to
4 offsite populations as, quote, negligible, without
5 providing specific information about what those risks
6 are for various buildings. And it does not properly
7 account for the Clark County Jail Work Center.
8 Specifically, as you'll recall, Dr. Thomas Kelly's
9 testimony did not account for the current population
10 anywhere in his testimony of the Jail Work Center or the
11 possibility that it would be expanded to double that
12 population in the future.

13 Additionally, his testimony does not account
14 for the outdoor activity at the Clark County Jail Work
15 Center, which would further impact the risk analysis.
16 But most significantly, Dr. Kelly conceded that when he
17 calculated the, quote, non-escape probability for the
18 Clark County Jail Work Center and other populations, he
19 did not account for the presence of an incarcerated
20 population that can not easily or lawfully escape at the
21 rate of 3 meters per second as he assumed.

22 Required mitigation is necessary to reduce
23 the risk to the Clark County Jail Work Center
24 population. To be clear, the risks to this population
25 can only be completely eliminated by the relocation of

1 the Clark County Jail Work Center. However, alternative
2 mitigation options identified by Dr. Peterson and
3 Mr. Bishop would reduce, but not completely eliminate,
4 the risk to this population. They would include burying
5 the pipelines on the north and the eastern boundary of
6 the Clark County Jail Work Center property, and
7 providing at least 250 feet of separation between these
8 pipelines and the planned electrical substation that
9 will be in the Northeast corner of the property.

10 Tesoro Savage's expert, Mr. Kelly,
11 Dr. Kelly, has acknowledged in his testimony that
12 burying pipelines was one factor that he assumed in his
13 analysis that drove down the risks to the Jail Work
14 Center at offsite populations. Indeed, as you'll
15 recall, Dr. Kelly criticized Dr. Peterson's analysis
16 because he assumed that the pipelines would be buried.
17 And that indicates that the burying of pipelines is both
18 something that can be done safely, contrary to
19 Mr. Corpron's testimony, and something that does drive
20 down risk.

21 Mr. Corpron acknowledged in his testimony
22 that allowing for greater separation between ignition
23 sources and oil pipelines also drives down the risks to
24 nearby populations. Unfortunately, despite having years
25 and the past several weeks to evaluate the information

1 presented to this EFSEC council, these mitigations were
2 not among those engineering solutions that Vancouver
3 Energy was willing to commit to yesterday.

4 In conclusion, as currently proposed, Clark
5 County believes that this project presents unacceptable
6 risks of injury and death to the Jail Work Center
7 population. The council in its role here should heavily
8 weigh these risks to a very vulnerable population as it
9 considers whether this project should be permitted at
10 all, and if so, what mitigation should be required.

11 If this council does recommend the
12 permitting of this project, it should require as a
13 condition of permitting that Tesoro Savage either fund
14 the relocation of the Jail Work Center or adopt the
15 relocation -- or excuse me, the risk reduction and
16 emergency response mitigation measures recommended by
17 Dr. Peterson and Richard Bishop's testimony, measures
18 which Tesoro Savage has acknowledged would drive down
19 the risk.

20 Thank you again for your time and attention
21 over the last several weeks and for your commitment to
22 this process. Thank you.

23 JUDGE NOBLE: Thank you, Mr. Hallvik.

24 Is there additional argument from the
25 opponents?

CLOSING ARGUMENT - OPPONENT COLUMBIA WATERFRONT LLC

1 MS. LARSON: Good morning. I'm Linda Larson
2 and I represent Columbia River Waterfront LLC. I'm
3 going to talk about socioeconomic impacts, but before I
4 do, I'd like to add my thanks on behalf of Columbia
5 Waterfront for all of your continued hard work and
6 careful attention throughout these proceedings. We
7 greatly appreciate it.

8 As part of the council's analysis of this
9 application, you must consider the economic impacts of
10 the proposed project. WAC 463.60.535 requires an
11 application for site certification to include a detailed
12 socioeconomic analysis which, quote, identifies primary,
13 secondary, positive as well as negative impacts on the
14 socioeconomic environment in the area potentially
15 affected by the project, end quote.

16 But the analysis presented by the applicant
17 here through the testimony of Mr. Schatzki in
18 Exhibits 156 and 157 fails at the most basic level to
19 meet this requirement because it only presents potential
20 positive impacts from the proposed project. It fell to
21 the Intervenors to present you with the potential
22 negative economic impacts from the project, and that was
23 presented through the testimony of Mr. Jerry Johnson,
24 Mr. Neime, Dr. English, Mr. Goodman, and Mr. James
25 Holmes. And even the positive impacts presented by

CLOSING ARGUMENT - OPPONENT COLUMBIA WATERFRONT LLC

1 Mr. Schatzki are overstated and unreliable.

2 Mr. Schatzki relied on the IMPLAN model.
3 That's a well-known model that's commonly used, but like
4 every model, its outputs are only as good as its inputs.
5 Mr. Schatzki's modeling relied on a number of key
6 assumptions which are highly questionable, if not
7 outright incorrect.

8 First, Mr. Schatzki assumed that there was
9 no other use of the proposed Vancouver Energy site. In
10 Mr. Schatzki's model, the choices are zero incomes and
11 jobs or 100 percent of the value of the claimed revenue
12 and jobs from the Vancouver Energy proposal. This is a
13 gross overstatement of the positive benefits.

14 And some of his assumptions about jobs are
15 also highly questionable. He assumed that all of the
16 construction jobs for the facility would come from Clark
17 County. In contrast, Mr. Johnson and Mr. Goodman
18 pointed out that construction of this facility will
19 require highly skilled workers who will not come
20 100 percent from Clark County and may not come from
21 Clark County at all because there are mobile forces
22 which build these types of facilities that work
23 throughout the nation.

24 Mr. Schatzki also assumed, based on a
25 personal communication with Burlington Northern, that

CLOSING ARGUMENT - OPPONENT COLUMBIA WATERFRONT LLC

1 there would be no change in railroad traffic as a result
2 of Vancouver Energy's proposal. Mr. Potter has just
3 pointed out why that cannot be true.

4 Mr. Schatzki also assumed that recreational,
5 tribal and commercial fishermen would simply move in
6 time and place in the event of an oil spill. This
7 assumption fails to recognize the most fundamental
8 regulatory and treaty right constraints on the Columbia
9 River and must be completely disregarded.

10 In contrast, Dr. English testified as to the
11 millions of dollars of losses to commercial and
12 recreational fisherman that are inevitable as a result
13 of an oil spill on the Columbia River.

14 Incredibly, Mr. Schatzki also testified that
15 new economic activity results from oil spills and that
16 such activity can, quote, be potentially large, end
17 quote.

18 In contrast, Mr. James Holmes testified as
19 to the hundreds of millions of dollars in natural
20 resource damages that result from oil spills. And
21 Mr. Neime testified as to both the quantifiable and
22 unquantifiable losses from oil spills to local
23 economies, communities, and cultural and spiritual
24 values.

25 Mr. Schatzki also attempted to explain away

CLOSING ARGUMENT - OPPONENT COLUMBIA WATERFRONT LLC

1 the negative impacts that this project would have on
2 properties along the rail line. He did so using an
3 inappropriate statistical methodology based on the
4 faulty proposition that the mere announcement of a
5 highly uncertain proposal would have discernible impacts
6 on one of the hottest property markets in the country.
7 There were also flaws in the methodology by which he
8 examined this proposition. He used too large a scale
9 ZIP codes instead of neighborhoods and failed to account
10 for the fact that there are other confounding factors
11 which might mask the impact of the announcement of the
12 proposed facility.

13 At the high end of the market, people may
14 choose not to move because they don't want to lose their
15 beloved views of the Columbia River. At the low end of
16 the market, people may not be able to move because they
17 don't have the resources to do so.

18 The evidence presented by Mr. Johnson showed
19 that there will, in fact, be significant impacts on
20 property values along the rail line in the event of the
21 construction and operation of the Vancouver Energy
22 terminal in both Clark and Spokane Counties. Both
23 Mr. Johnson and Mr. Schatzki tried to find a study that
24 would allow you to have some comfort on what your
25 analysis should show as to the potential property

CLOSING ARGUMENT - OPPONENT COLUMBIA WATERFRONT LLC

1 impacts from this transport of a hazardous cargo, and
2 they both failed to find one because it doesn't exist.
3 This phenomena of crude-by-rail is just too recent.

4 But unlike Mr. Schatzki, Mr. Johnson
5 testified that hazardous cargo can have an impact on
6 property values above and beyond the well-documented
7 negative impact that occurs just from the increase in
8 the transport of non-hazardous cargo by rail.

9 Mr. Schatzki, unlike Mr. Johnson, rejected
10 the findings of Exhibit 4011, which was the study of the
11 impacts of the transport of spent nuclear waste to South
12 Carolina. That well-regarded study shows that the
13 negative impact to property values from the transport of
14 hazardous cargo are real and that they are long lasting.

15 In assessing the property value impacts from
16 this proposal, the council should accept Mr. Johnson's
17 assessment that the potential range of negative impacts
18 on properties along a one-mile corridor throughout the
19 rail line in both Spokane and Clark County will be in
20 the order of 1.5 to 7 percent.

21 The other intervenors will talk and have
22 talked about the lack of need for this project to supply
23 energy at a reasonable cost, and I adopt those
24 arguments. What I would also like the council to
25 consider is that the evidence from the past five weeks

CLOSING ARGUMENT - OPPONENT DNR

1 shows that there is no economic justification for this
2 project, and furthermore, that it would present
3 unacceptable economic impacts to Clark County, tribal
4 nations, and the State.

5 Finally, Columbia Waterfront wholeheartedly
6 concurs with the City of Vancouver that this project is
7 completely inconsistent with the many years of effort
8 and the millions of dollars that have been spent through
9 public and private partnerships in the transformation of
10 downtown Vancouver. The Vancouver Energy facility is
11 not the future we want for the City of Vancouver, and
12 the council should recommend the denial of this
13 application. Thank you.

14 JUDGE NOBLE: Thank you, Ms. Larson.

15 I'd like it take a quick break before we
16 have further argument and we will reconvene at 10:30.
17 Thank you.

18 (Recess taken from 10:18 a.m. to 10:32 a.m.)

19 JUDGE NOBLE: Is there further argument from
20 the opponents?

21 MR. PRUIT: Good morning. I'm Terry Pruit
22 for the Department of Natural Resources.

23 The proposal before you presents a
24 significant risk of wildfire from the transportation of
25 crude oil by rail that state wildfire response resources

CLOSING ARGUMENT - OPPONENT DNR

1 are not prepared to meet. As DNR's wildfire division
2 manager Robert Johnson testified, the proposal would
3 create an increased risk of wildfire both from daily
4 rail traffic and from derailments. DNR's wildfire
5 division protects 13 million acres of land from
6 wildfires and assists local fire districts all across
7 the State.

8 You heard from Mr. Johnson how wildfires in
9 2014 and 2015 greatly exceeded the State's response
10 capabilities. Fires in 2015 burned over 1 million acres
11 of land, destroyed over 300 homes, and took the lives of
12 3 firefighters. Overall response costs in 2015 exceeded
13 \$300 million.

14 Rail operations have caused a significant
15 number of wildfires in recent years. Mr. Johnson
16 testified that rail operations started over 20 wildfires
17 since 2011. When the State's wildfire response
18 resources are overmatched, as they were in 2014 and
19 2015, even incremental increases in wildfire ignitions
20 from rail operations creates significant risk.

21 More importantly, as the recent events in
22 Mosier have demonstrated, unit trains carrying crude oil
23 are going to derail. When they do, there's a
24 significant risk of a tank car fire.

25 In fact, as the City of Vancouver's witness

CLOSING ARGUMENT - OPPONENT DNR

1 former NTSB investigator, Robert Chipkevich,
2 testified -- or identified, he identified 20 separate
3 incidents in which an ethanol or crude oil unit train
4 derailment ignited a fire just between 2006 and 2015.

5 A tank car fire exposes the State to
6 significant wildfire risk. Trains carrying crude oil to
7 this facility would travel through eastern Washington
8 and the Columbia River Gorge to areas that Mr. Johnson
9 testified carry -- two of the areas in Washington that
10 Mr. Johnson testified carry the greatest wildfire risk.

11 Crude oil fires associated with derailments
12 increase that risk in two ways. First, a burning tank
13 car presents an obvious ignition source in areas where
14 even a spark from a passing locomotive can start a
15 wildfire.

16 Second, the standard response to a tank car
17 fire increases wildfire risk. Robert Johnson testified
18 that wildland fires are typically fought with one foot
19 in the black as wildland firefighters attempt to
20 aggressively stop the spread of the fire by getting a
21 line around it.

22 Tank car fires, in contrast, are fought
23 defensively. Typically, the fire is allowed to burn
24 until it gets cool enough so that foam can be applied.
25 We heard that from Chief Appleton of Mosier and others.

CLOSING ARGUMENT - OPPONENT DNR

1 Chief Appleton also told us that the fire in Mosier
2 burned for 14 hours before foam was applied. A tank car
3 fire burning for hours that cannot be extinguished
4 presents an unacceptable wildfire risk, particularly in
5 areas where steep topography and high winds are
6 commonplace, such as the Columbia River Gorge.

7 As Robert Johnson testified, fires move
8 faster uphill, wind can accelerate the speed at which
9 fire spreads on the ground, and lift embers through the
10 air to create new fires, sometimes at great distances.
11 We heard from multiple witnesses that things would have
12 been disastrously different if the wind had been blowing
13 in Mosier on June 3rd as it typically does in the Gorge.

14 We don't have to look too far from Mosier to
15 see how fast a fire can spread in the Gorge when it is
16 sparked by a derailment and blown by the wind. Robert
17 Johnson told us about an incident in 2003 where there
18 was a derailment near the town of Wishram on the
19 Washington side of the Gorge. That derailment sparked a
20 wildfire and, blown by the wind, that wildfire grew to
21 over -- to 800 acres within a matter of just a few
22 hours.

23 And we know that the Mosier derailment was
24 no fluke. Crude oil trains frequently derail. As
25 Bronson Potter from the City of Vancouver so eloquently

CLOSING ARGUMENT - OPPONENT CRITFC

1 described just moments ago, I'm not going to repeat his
2 testimony. But to sum it up simply, we know that trains
3 for this project will derail with some frequency. When
4 they do, we know that tank car fires are a significant
5 possibility and we know that we are not ready for the
6 most devastating consequences, particularly when
7 response resources are already spread thin.

8 The legislature has given to you the
9 assignment of evaluating this proposal. One big part of
10 your job is explained in RCW 80.50.010. There the
11 legislature has directed you in balancing the need for
12 the project and the broad interests of the public to
13 assure Washington state citizens that the operational
14 safeguards associated with the project are technically
15 sufficient for their welfare and protection and to
16 protect and preserve the quality of the environment.

17 DNR respectfully submits that you cannot
18 fulfill these duties and recommend that this project be
19 sited. Accordingly, DNR urges you to recommend that the
20 application be denied.

21 JUDGE NOBLE: Thank you, Mr. Pruit.

22 Ms. Carter?

23 MS. CARTER: Good morning, council. I'm
24 Julie Carter, attorney for Columbia River Inter-Tribal
25 Fish Commission, and today I have the honor to speak on

CLOSING ARGUMENT - OPPONENT CRITFC

1 behalf of the other tribal parties, the Yakama Nation
2 and the Confederated Tribes of the Umatilla Indian
3 Reservation.

4 I know that everyone has voiced their
5 appreciation for the long five weeks. I, for one want,
6 to thank you, Judge Noble, for not taking off my head.

7 JUDGE NOBLE: The day's not over.

8 MS. CARTER: Is that on the record?

9 As I give you the things that you deserve, I
10 harken back to one of the witnesses, Ms. Garcia, who is
11 a resident of the Fruit Valley community. And one thing
12 that she said that struck me was all we want is to be
13 heard, and so I thank you for allowing us to be heard.
14 There are many voices that have come before me and will
15 finish up, but we appreciate that.

16 In these past weeks, you have heard a lot
17 about risk, probability and consequences. Interlaced
18 with these concepts is the idea of value. Value helps
19 us define what is risky and whether consequences are
20 worth it.

21 The Vancouver Energy project is a project
22 that will transport volatile and hazardous crude via
23 rail through the Columbia River Gorge to an offloading
24 facility at the Port of Vancouver, transferring that
25 hazardous material to large ships to be sent through the

CLOSING ARGUMENT - OPPONENT CRITFC

1 Columbia River estuary to refineries elsewhere.

2 The Vancouver Energy project does not
3 comport with the values of this region, and it certainly
4 does not comport with the values of the tribal people.
5 Tribes have lived here since time immemorial, and as you
6 heard through their own voices, they're not going
7 anywhere, not now and not for generations.

8 The tribes have been down this road before
9 multiple times with various industrial developments and
10 river developments. These developments have
11 manipulated, extracted and used the river, leaving
12 behind pollution and other legacies that they, the
13 tribes, have had to clean up or deal with.

14 As Paul Lumley testified, the tribes,
15 together with the federal and state partners, have spent
16 billions to restore habitat and revive culturally
17 important fish species: Chinook, sockeye, Coho, chum,
18 steelhead, sturgeon, lamprey, and smelt, otherwise known
19 as Eulachon. Bonneville Power Administration alone
20 spends \$300 million per year in rate pair funds to
21 mitigate the effects of dams. This investment is
22 attributable to Senators Magnuson, Jackson, Hatfield,
23 Evans, Murray, Crapo and many others. We should not
24 sacrifice this legacy for oil profits for out-of-region
25 companies for oil that will benefit California more than

CLOSING ARGUMENT - OPPONENT CRITFC

1 us.

2 The Vancouver Energy project does not
3 comport with tribal environmental values or values for
4 protecting endangered species. We heard from Blaine
5 Parker who spoke about the vulnerability of sturgeon,
6 lamprey and smelt.

7 Sturgeon and lamprey are ancient species,
8 and their numbers are declining severely. Smelt are
9 listed under the Endangered Species Act. All three are
10 valuable tribal fish, and all are extremely vulnerable
11 to an oil spill.

12 Dr. Zack Penney, a Nez Perce tribal member,
13 whose own educational experience took him on the
14 migration path of the Snake River sockeye, spoke to how
15 adult salmon heading to spawning grounds would be
16 vulnerable to an oil spoil. He also noted that oil
17 spill could impact some of the lower number populations,
18 permanently affecting the population of fish. He
19 reminded us that many fish stocks rear in the estuary,
20 near and downriver from the Vancouver Energy project.
21 And as we have noted in several times, many of these
22 fish migrate past the Vancouver Energy terminal not just
23 once, but twice, and sometimes more.

24 Dr. Stanley Rice explained to us how fish
25 embryos exposed to oil are harmed. We learned that

CLOSING ARGUMENT - OPPONENT CRITFC

1 indirect effects from oil spills can last decades, and
2 even when there is not a direct kill affects a species
3 populations could be long-term.

4 The Vancouver Energy project does not
5 comport with tribal economic values either. From
6 numerous tribal witnesses, we heard that there's no
7 price, no compensation high enough for any loss to the
8 fisheries and tribal treaty fishing rights.

9 Stuart Ellis testified to how the tribal
10 fishery plays a key role in the tribal economy and how
11 valuable it is as a source of income to the fishers.
12 The fishery's also a priceless source of subsistence,
13 food, as well as religious practice for the tribal
14 people.

15 Roger Dick spoke to the concept of assigning
16 a value to the treaty fishing right, and he said it
17 would be like asking an American what value an American
18 puts on the right to vote or the right to free speech.
19 An oil spill would cause the tribal people to lose
20 access to their fishing sites, it could cause kill to
21 their fish or it would put a stigmatism on the quality
22 of the fish so there would be an indirect impact to
23 their economic activity.

24 Randy Settler explained that he doesn't
25 merely fish for money, it's his way of life and that

CLOSING ARGUMENT - OPPONENT CRITFC

1 fishing sites are priceless and limited. It is nearly
2 impossible for him to simply move from another fishing
3 site if an oil spill impeded his site.

4 The Vancouver Energy project does not
5 comport with tribal values for safe and healthy access
6 to the treaty fisheries. Kathryn Brigham, a member of
7 the Umatilla tribe, somberly told us of tribal fisheries
8 who suffered from developments on and along the Columbia
9 River. She told a personal story of relatives who were
10 killed by trains while accessing the tribal treaty
11 fishing sites.

12 Randy Settler told of his experience during
13 the Mosier derailment and how he and his crew and others
14 at the Stanley Lock treaty fishing site left because
15 they were feeling the physical effects of the burning
16 oil. He explained it felt like, and it smelled like, a
17 burning tire.

18 Elizabeth Sanchey, a member of the Yakama
19 Nation, described being a first responder to the Mosier
20 derailment. Her reaction to the first response was that
21 it was absolutely apocalyptic, absolutely chaos.

22 Enforcement Chief Mitch Hicks explained that
23 the river is a rough and windy place and that an oil
24 spill would be impossible to contain and difficult to
25 manage. He saw how the Mosier derailment has

CLOSING ARGUMENT - OPPONENT CRITFC

1 traumatized the community of Mosier, and he knows that
2 other communities on the river are fearful of the same
3 thing happening to them.

4 Michael Broncheau spoke about the treaty
5 fishing access sites and showed you pictures of how
6 those sites are so close to the railroad tracks with
7 very few places of egress. We learned that during peak
8 fishing times up to 900 tribal members will inhabit
9 those treaty fishing sites.

10 We also learned that oil spill plans, what
11 they call the GRPs, are not up to snuff. They haven't
12 conferred with the tribes. They do not protect treaty
13 fishing sites at all.

14 The Vancouver Energy project does not
15 comport with tribal cultural values. You heard a lot of
16 testimony about how this project will harm and affect
17 tribal culture values. Audie Huber talked about
18 cultural resources noting that there are hundreds --
19 hundreds of archaeological sites unmarked along the rail
20 corridor. These, and iconic resources like She Who
21 Watches are priceless and irreplaceable.

22 Elizabeth Sanchey explained that we are
23 river people. If we don't take care of our foods, they
24 won't take care of us. She also noted that there is no
25 word in the Yakama language for mitigation and that the

CLOSING ARGUMENT - INTERVENOR COLUMBIA RIVERKEEPERS

1 loss of fishing and culture would be an irreparable
2 harm.

3 And then we heard Wilbur Slockish, a member
4 of the Klickitat Tribe say, and I quote, you can't pay
5 me enough to replace what is lost. Economic gains are
6 not worth our cultural values. I'm here, he said, I'm
7 not going anywhere. And we've lost so much already;
8 Salilo, lamprey fishing in the Klickitat, lamprey
9 fishing in 15 Mile Creek and so much more.

10 The tribes are tied to this river and its
11 tributaries in ways that are priceless and impossible to
12 quantify. The tribe treaty rights are not for sale. No
13 amount of money in the world and compensation is
14 adequate for the tribal fishers losing their way of
15 life, their rights, and seeing their culture and means
16 of providing for the families and communities degraded
17 and diminished.

18 When considering all of these values, the
19 conclusion is that none of the risks posed by the
20 Vancouver Energy project are worth it. Thank you.

21 JUDGE NOBLE: Thank you, Ms. Carter.
22 Further argument from the opponents? Ms. Boyles.

23 MS. BOYLES: Good morning. Here we are. I
24 am the last one. My name is Kristen Boyles, and with
25 Janette Brimmer, I represent the environmental and

CLOSING ARGUMENT - INTERVENOR COLUMBIA RIVERKEEPERS

1 community groups that have intervened in this
2 proceeding.

3 You've heard from my colleagues in
4 opposition and I adopt their messages, but it is vital
5 to take some measured amount of time to review what
6 we've seen and heard here in Vancouver and also in
7 Olympia. So let me begin with the testimony about harms
8 and risks to the people, wildlife and environment of
9 Washington.

10 Susan Harvey, an oil spill planning and
11 response expert with 30 years of experience, including
12 managing oil wells in Prudhoe Bay and heading the oil
13 spill response contingency planning office for the State
14 of Alaska, spoke of her concerns about the oil spill
15 risk on the Columbia River and stressed the need for
16 escort tug tankers, a measure that Tesoro Savage has now
17 committed to.

18 As an oil spill planner, she does not need
19 to navigate the river to understand the risks and the
20 parameters one has to think about with planning.

21 Ms. Harvey also critiqued the estimates of
22 spill response times and readiness, and she explained
23 that increasing the oil spill umbrella plan on the
24 Columbia River from 300,000 to 600,000 barrels will be
25 no small matter. And Ms. Harvey testified about the

CLOSING ARGUMENT - INTERVENOR COLUMBIA RIVERKEEPERS

1 disconnect between the decision to continue loading even
2 when conditions on the river don't allow prebooming.

3 And prebooming has been spoken to by a
4 number of witnesses as vital because it controls the
5 speed of spill response. The boom is already in the
6 water. And that disconnect continues as Mr. Larrabee
7 yesterday would not commit to not loading when he cannot
8 boom.

9 More importantly, Ms. Harvey testified about
10 the amount of oil that could be left in the river
11 uncollected even accounting for evaporation, which
12 itself is a problem for first responders. Oil may wash
13 up on shore, it may submerge, it may sink, and it may
14 wash down the river, but using Tesoro Savage's own
15 numbers, 40 to 68 percent of the spilled oil could
16 remain unrecovered, and unrecovered means in the river.

17 Dr. Joseph Wartman explained the seismic
18 hazards and the dangers of soil liquefaction during an
19 earthquake, an earthquake this region may well see in
20 the next 50 years. As he explained, the failure of the
21 proposed stone columns to extend all the way through the
22 liquefiable layer, the lack of any ground improvements
23 under the rail tracks in Area 200, and the untested
24 nature of some of the other methods are real problems
25 with the seismic engineering design.

CLOSING ARGUMENT - INTERVENOR COLUMBIA RIVERKEEPERS

1 His closing remarks were particularly
2 pointed, where he testified that, in his opinion, we as
3 a society should not be siting potentially dangerous
4 facilities on geologically hazardous areas. We know
5 better than that now.

6 Dr. Wartman also identified the fact that
7 the oil storage tanks were proposed to be built to Risk
8 Category 2 as opposed to Risk Category 3, as would be
9 proper under the ASCE standards that require Risk
10 Category 3 when a project involves hazardous fuels that
11 would pose a risk to the public if released.

12 Dr. Ranajit Sahu gave you a clinic on air
13 permitting issues. He spoke to fugitive emissions from
14 trains, unloading, storage, loading, and unloading
15 again. He also spoke about the estimated greenhouse gas
16 emissions, emissions so large that counting
17 transportation only would account for 1 to 2 percent of
18 the entire greenhouse gas emissions for the State.
19 Adding the refining emissions for that oil and the
20 burning emissions for that oil raises the greenhouse gas
21 emissions even further, again from only this one
22 project.

23 In contrast, Tesoro Savage presented the
24 most minimal approach to analyzing and disclosing air
25 pollution emissions. Dr. Sahu made clear that Tesoro

CLOSING ARGUMENT - INTERVENOR COLUMBIA RIVERKEEPERS

1 Savage's approach to estimating VOC emissions uses
2 outdated methods and fails to recognize the wealth of
3 data regarding VOC emissions from tanks.

4 Further, Dr. Sahu raised serious questions
5 regarding the full capture of VOC emissions from
6 operations such as loading, and their plan for limiting
7 vapor pressure of the crude is plainly unworkable and a
8 pipe dream at best. And it has changed during this
9 hearing from testing of individual tank cars and pulling
10 those off the tracks if they fail, to now testing at the
11 tank once the oil is in and reporting violations if
12 those occur.

13 There is no return to sender for tank cars
14 that are above the true vapor pressure of 11. It is
15 likely that they are a major source of emissions and
16 should file a major source application under the Clear
17 Air Act. At a minimum, all the assumptions that Tesoro
18 Savage relies on regarding vapor pressure and emissions
19 capture must be included in significant detail in a
20 permit that can be monitored, reported, and fully
21 enforced.

22 As to hazardous air pollutants, Dr. Elinor
23 Fanning's testimony is wholly unaddressed and un rebutted
24 by Tesoro Savage due to their constrained, narrow review
25 and disclosures about the facility. This facility will

CLOSING ARGUMENT - INTERVENOR COLUMBIA RIVERKEEPERS

1 emit or cause to be emitted a number of air pollutants
2 that are plainly hazardous to the workers at the
3 facility, the workers at the rest of the Port, the
4 people who at the jail center and the people of Fruit
5 Valley.

6 Tesoro Savage wants you to disregard
7 anything that isn't regulated in your consideration, but
8 I submit that turns a blind eye to your obligations for
9 your review under your statute.

10 Diesel particulates is one example out of
11 many are highly dangerous, especially to kids, but
12 because they aren't regulated by a permit for the
13 facility, Tesoro Savage invites you to ignore them. The
14 reality is that even a cursory look at some of these
15 pollutants shows health risks to Fruit Valley in excess
16 of acceptable levels.

17 Fruit Valley and the work center employees
18 won't be able to choose to ignore those pollutants and
19 their health effects and nor should this council accept
20 Tesoro Savage's invitation to do so.

21 Linda Garcia, a long-time Fruit Valley
22 resident, put a face on those impacts as she spoke
23 passionately about her community's fears and opposition
24 to the terminal underscoring the industrial development
25 that that community already faces.

CLOSING ARGUMENT - INTERVENOR COLUMBIA RIVERKEEPERS

1 Gerard Smith, president of the ILWU Local
2 Number 4, explained how the union's concerns for worker
3 safety and the safety of the community led them to vote
4 to oppose the terminal and intervene in these
5 proceedings despite the fact that they had no money to
6 hire a lawyer to represent them. And remember, the
7 union members will continue to work alongside the train
8 tracks and in the middle of the rail loop if this
9 project is built.

10 Brett VandenHeuvel, executive director of
11 Columbia Riverkeepers, spoke about how his organization
12 works to protect the Columbia River every day. He was
13 also able to describe his firsthand experience at the
14 Mosier derailment and fire, as well as community
15 response and concerns in the following days. It was
16 through Mr. VandenHeuvel that the council learned of the
17 high benzene levels in the recently drilled monitoring
18 well in Mosier.

19 Mr. Ernie Neime, a natural resource
20 economist, explained what are called secondary economic
21 impacts that can stem from an oil spill, impacts that
22 are often overlooked, such as disruption of local
23 activities, degradation of local assets and increase in
24 uncertainty and risk for local communities. In
25 discussion with you, Mr. Neime talked about the failure

CLOSING ARGUMENT - INTERVENOR COLUMBIA RIVERKEEPERS

1 of monetary damages to make local communities,
2 particularly tribal communities, whole when the resource
3 is at risk, here the Columbia River and its fish and its
4 wildlife and its people, are central to economic,
5 cultural and spiritual identity.

6 The testimony you heard from tribal elders,
7 from fishermen and scientists brought Mr. Neime's
8 testimony home illustrating precisely the point that
9 monetary damages and insurance payments after a spill
10 will entirely fail to compensate for the accident.

11 There were also a few witnesses, amazingly,
12 that you didn't hear from as we relied solely upon their
13 written testimony. One was Dr. Frank James who, in
14 unrebutted testimony, testified to the public health
15 concerns stemming from this project. A practicing
16 doctor and professor at the University of Washington, he
17 spoke to risks from increased particulate pollution,
18 from noise, from traffic delays on emergency response
19 vehicles.

20 There is no other public health information
21 in the record before you. Tesoro Savage has done no
22 studies or surveys to understand the public health
23 issues that will be caused by this terminal.

24 In contrast, Tesoro Savage's experts
25 generally fell into one of two camps. The first set I

CLOSING ARGUMENT - INTERVENOR COLUMBIA RIVERKEEPERS

1 think of as those having fun with math. Mr. O'Mara's
2 testimony about oil spill probabilities falls into this
3 category.

4 Mr. O'Mara testified about the possibilities
5 of a vessel oil spill from this project. His testimony
6 was confounding for several reasons. First, he
7 acknowledged upfront that to calculate risk you must
8 look at probability times consequence, and that
9 consequences are the fate and effect of spilled oil in
10 the river and in the environment.

11 Yet, Mr. O'Mara performed no such risk
12 assessment. Instead, his version of consequences simply
13 estimates the amount of oil that would be spilled as if
14 volume alone will tell you about what's going to happen.

15 Second, Mr. O'Mara's calculations were
16 wildly divergent, finding his models were similar when
17 the numbers differed by several orders of magnitude.

18 Third, Mr. O'Mara treated oil spill
19 probabilities as separate components for the rail, for
20 the facility, for the vessels, as opposed to in the
21 aggregate, which is how people and the real world
22 experience these events.

23 Nonetheless, he estimated a marine vessel
24 oil spill of up to 5,000 barrels once every seven to
25 eight years.

CLOSING ARGUMENT - INTERVENOR COLUMBIA RIVERKEEPERS

1 Dr. Barkan, who we just heard from on
2 Wednesday, engaged in similar math games, provided he
3 had a calculator. Perhaps not even realizing that he
4 failed to present the whole story, his model was based
5 on data from 2005 to 2009, a time period before oil
6 trains were a thing.

7 His estimates were presented in an obscure
8 way by individual train car, by using 100-year
9 increments to present estimated chance of recurrence for
10 smaller accidents, and by ignoring the most common and
11 more frequent oil spill scenarios. And he looked only
12 at inbound trains, cutting in half the train journeys in
13 his model. Yes, even with all those flaws, his math
14 still says we're going to suffer derailments with a
15 spill on this route once every 1.48 to 2.4 years.

16 Mr. Thomas produced a hyperspecialized model
17 with limited inputs to look at risks from an accident at
18 the facility. But let's be clear, he looked only at
19 risk at the facility caused by the facility itself, no
20 earthquakes or terrorist attacks or micrometeorites.

21 He set his tolerance risk at one death in a
22 million for offsite populations but set it notably lower
23 for onsite workers to one death in 10,000 because
24 workers at the site understand the risk.

25 I find his view, a view that was repeated by

CLOSING ARGUMENT - INTERVENOR COLUMBIA RIVERKEEPERS

1 Mr. Corpron yesterday, that workers assume risks like
2 these associated with their jobs, offensive, and it is
3 especially so for the ILWU workers who will be working
4 inside the rail loop. And I can assure you that they do
5 not accept this higher risk.

6 Ms. Larson has already addressed the
7 problems with Mr. Schatzki's testimony and model, so
8 I'll just highlight two.

9 His simplistic model failed to consider the
10 reasons people would not sell homes, including the
11 environmental justice realities of areas like Fruit
12 Valley. And Mr. Schatzki failed to recognize even the
13 most fundamental aspects of recreational and commercial
14 fishing, that there are seasons and permits and
15 specialized equipment and other people fishing in the
16 areas that you might want to move to.

17 Mr. Schatzki completely ignored the fishing
18 and cultural needs of the tribal nations who have lived
19 on the banks of the Columbia River since time immemorial
20 and cannot and will not just move to a different fishing
21 spot.

22 Ms. Kaitala from BNSF played the slickest
23 math game of all for she made eight trains a day
24 disappear. According to her testimony, there are no
25 additional trains on BNSF rail lines serving this

CLOSING ARGUMENT - INTERVENOR COLUMBIA RIVERKEEPERS

1 project because the rail system is fluid and
2 everchanging. Even Dr. Barkan admitted that whatever
3 the fluidity of the rail traffic in general, four
4 additional trains filled with crude oil will pull into
5 the Tesoro Savage facility every day.

6 The question isn't about sluff in the
7 system. It's a question about honestly looking at the
8 impacts that will be caused by this facility which
9 includes the increased oil unit train traffic.

10 The invisible trains infected other
11 testimony, including that of Mr. Dunn who found there
12 were no delays at railroad crossings because there were
13 no additional trains. There is no science of risk here.
14 It's more like a game of chance with some of the cards
15 missing.

16 And that brings me to my second category of
17 Tesoro Savage experts, because those experts demonstrate
18 the company's increased tolerance of risk. We all agree
19 there is risk, actually, and we all agree that an oil
20 spill in the Columbia River would be devastating. But
21 where we differ is on how much risk we are willing to
22 take, how willing we are to roll those dice.

23 The company is willing to take those risks
24 because it is gambling with house money and the house
25 here is the people and the environment of the State of

CLOSING ARGUMENT - INTERVENOR COLUMBIA RIVERKEEPERS

1 Washington.

2 For example, Mr. Russ Gibbs in response to
3 council questions stated that while oil tanks were
4 overdesigned for Risk Category 2, he did not know if the
5 design risk met Category 3, which would be the correct
6 and more protective standard.

7 Mr. Rohrbach and Mr. Shanahan had excuses
8 for the lack of complete seismic mitigation, all of
9 which boiled down to, trust us, we don't need to do
10 that, or, in the case of Mr. Shanahan and the lack of
11 ground improvements under Area 200, we were told that we
12 didn't need to do that.

13 Careful stewards of the land and the river
14 would not take such chances. Dr. Barkan's work also
15 displays this tolerance of risk. His oil spill analysis
16 of one spill every 1.48 to 2.4 years is a bet, and I
17 wouldn't count cards with him because his deck appears
18 to change based on the annual basis and depending on
19 what you consider a consequence.

20 Dr. Barkan's rail risk model is of no use to
21 understanding the real risks to this state, including
22 all the environmental, human and economic consequences
23 of crude oil train accidents.

24 Dr. Taylor testified that he was certain
25 that spilled diluted bitumen, or dilbit, would not sink.

CLOSING ARGUMENT - INTERVENOR COLUMBIA RIVERKEEPERS

1 His confidence falls well beyond the current state of
2 the science according to the National Academy of
3 Sciences, beyond the real world experience from other
4 dilbit spills, including that in Kalamazoo, and beyond
5 the testimony of the Council For Environment witness
6 Mr. Holmes who explained that turbulence can drive oil
7 under the water, that tides can create turbulence, that
8 ship wakes can further mix oil into water.

9 But even with his misplaced certainty,
10 Dr. Taylor acknowledged that when spilled oil encounters
11 sediment, it can become denser and submerge or even
12 sink. He also discussed entrainment, the rising to the
13 surface and sinking again of that oil that can occur
14 following an oil spill.

15 Dr. Challenger similarly soft pedalled the
16 ecological impacts of an oil spill. In fact, during his
17 rebuttal testimony, he doubled down on his assertion
18 that oil spills cause no population impacts despite a
19 slew of scientific studies finding otherwise.

20 To do so, he appears to define population
21 impacts as complete extirpation, a notion that Dr. Rice
22 and Dr. Penney would dismiss. Dr. Challenger dismissed
23 sublethal effects and significant adverse consequences
24 like the two million missing sockeye salmon spawners
25 that failed to return one year. Those cause harm to

CLOSING ARGUMENT - INTERVENOR COLUMBIA RIVERKEEPERS

1 salmon and to people and animals that rely on those
2 salmon.

3 Dr. Challenger's dismissal of this kind of
4 impact should be unacceptable in the State of
5 Washington.

6 But let me end where I began a long time
7 ago, on the question of need and the expert testimony of
8 Mr. Ian Goodman. You are engaged in a statutory
9 balance.

10 Now, Mr. Derr rejects the term "balance,"
11 but I see no way to fulfill your duties to both an
12 energy and environmental -- both having energy and
13 environmental and public health without doing such a
14 balance. You must look at the risks and harms and
15 benefits of the project on this side.

16 But over here lies that counterbalance which
17 is the question of need for this project, and that
18 question can almost be answered without any evidence at
19 all.

20 This is an oil shipping terminal. Mr. Derr
21 called it a transfer operation on our very first day.
22 Oil comes in by rail and goes out by boat. It by
23 definition and design does not create any energy. It is
24 not a wind farm, it is not a coal plant, it is not a
25 nuclear plant, it is not a solar facility.

CLOSING ARGUMENT - INTERVENOR COLUMBIA RIVERKEEPERS

1 The answer to the question of need is even
2 clearer when you look at the evidence in this record.
3 You heard from Tesoro Savage witness Mr. Brad Roach
4 twice. The first time he stressed the perceived need
5 for oil in all of the West Coast, although what he was
6 really talking about was California. And the graphs he
7 displayed that very first day showed remarkably
8 consistent oil stock levels in PADD 5, our region, over
9 the last ten years, and a Washington energy use graph
10 that showed a decline in energy use.

11 Yesterday Mr. Roach spoke mainly of his
12 concern over the decline of Alaska North Slope crude, a
13 decline that began long before the Bakken boom and any
14 notion that crude oil unit trains could be the savior of
15 refineries. And while no one disagrees that Alaska
16 North Slope crude is in a long, slow decline, as Ian
17 Goodman testified, there is no void in the slate of
18 crudes available to refineries in Washington and
19 California.

20 There is no pressing need for this oil. In
21 Washington, four of the five refineries already get
22 crude-by-rail directly to their refineries and four of
23 the five refineries get oil directly from Canada, from
24 the Kinder Morgan Trans Mountain spur pipeline, and they
25 have done so for decades.

CLOSING ARGUMENT - INTERVENOR COLUMBIA RIVERKEEPERS

1 So as Mr. Moss asked, what's the angle? As
2 Ian Goodman explained, the angle is California
3 refineries and Tesoro profit, a point echoed yesterday
4 by Mr. Roach as he described the additional value
5 inherent in the ability of Tesoro to move oil around its
6 multi-state refineries.

7 And perhaps his most telling statement came
8 in an answer to a question from Mr. Rossman about why
9 build an oil terminal here when he noted that, quote, if
10 we had the ability to execute a project in California,
11 that might be attractive. Washington should not serve
12 Tesoro's needs.

13 And as the oil market continues to change
14 and shipping crude oil by rail becomes less common, as
15 was shown by the exhibits yesterday, a 22 percent
16 decline just in the last year in crude-by-rail traffic,
17 even that narrow need looks less and less plausible.

18 This project is not a bridge to the future;
19 it is a transfer terminal. It takes crude oil from
20 someplace else and sends it to someplace else. It is a
21 moving pipeline from North Dakota and Alberta, through
22 Vancouver, out the Columbia River and down to California
23 refineries.

24 Just as this council found, in 1982 in the
25 Northern Tier pipeline decision, this project will not

CLOSING ARGUMENT - INTERVENOR COLUMBIA RIVERKEEPERS

1 bring energy to Washington and it will not even
2 eventually trickle down as a benefit to Washington
3 consumers. Tesoro may need this project, but the
4 company's need is not the statutory need that you must
5 balance.

6 You have three choices before you. The
7 first is a recommendation of straight-up project
8 approval. Given the record we've compiled over the last
9 five weeks, I submit that that option is off the table.

10 Your second option is a recommendation of
11 approval with some mandatory mitigation conditions.
12 Here again, I think this result would be unsupportable.
13 I know this board is a facility siting board, and your
14 inclination is likely to be with some sort of approval.
15 Indeed, it may be tempting to approve Tesoro Savage with
16 conditions with the thought that if the conditions are
17 strict enough or perhaps costly enough, Tesoro Savage
18 will never actually build or operate this to him. A
19 pocket veto, if you will.

20 I believe that would be an unwise choice,
21 although increasing the safety of this project, should
22 it be built, is vital. But mitigation like that will
23 involve the council deeply in the design and operation
24 of the project and indeed, some desired mitigation
25 measures may be impossible as they would lead the

CLOSING ARGUMENT - INTERVENOR COLUMBIA RIVERKEEPERS

1 council into areas preempted by other laws and
2 regulations, especially with rail traffic.

3 So that leaves Door Number 3, rejection of
4 the Tesoro Savage project. There is ample evidence in
5 the record to support a recommendation of project
6 denial. Your statutory duties demand a balancing of
7 risks and harms against the need for the project. The
8 evidence and arguments you've heard over the last five
9 weeks point to unknowns, project shortcuts, math games,
10 and tolerance of risk levels that are beyond what this
11 community wants, and there is no need for this project
12 in Washington.

13 Based on all the evidence in the record, I
14 join my colleagues in opposition to this project in
15 urging you to issue a recommendation of denial.

16 And I'll note this has been an extraordinary
17 five weeks, and I mean that in both senses of the word
18 both as out of the ordinary and also amazing. In
19 writing or live, you've heard from over 80 witnesses,
20 some of them more than once. We had a hundred-plus page
21 spreadsheet of exhibits, at least one of those exhibits
22 was 8,000 pages long. The EFSEC staff have been beyond
23 helpful and gracious, and we thank them for all of their
24 hard work and good cheer.

25 I sincerely thank you for your attention

CLOSING ARGUMENT - PROPONENT PORT OF VANCOUVER

1 today, for your attention and questions over the last
2 weeks, and for the hard work you have before you to make
3 this decision and recommendation. Thank you.

4 JUDGE NOBLE: Thank you, Ms. Boyles.

5 Mr. Bartz?

6 MR. BARTZ: Thank you, Your Honor.

7 Dave Bartz for the Port of Vancouver USA.

8 We switched it up a little bit so the applicant who
9 carries the burden here gets to speak to you last. So I
10 know you're dying to hear some responses to what you
11 just heard for the last little hour. Consider me a rest
12 area on a long car trip. We'll talk about a few things
13 we've talked about, and I've got some observations and
14 then I'll sit down.

15 The observations are, we talked before about
16 don't do things that hurts the fundamentally
17 functionally well system that the Port works with and
18 relies, and some of the witnesses have cited some
19 testimony that I'm going to ask you to think about as
20 you go back to this hard work. We're going to file
21 briefs that will be full of references and citations,
22 but some fundamental analysis of what do you believe and
23 when do you believe it.

24 And I can't capture all of the witnesses but
25 I'll pick on a few that scream out for me to suggest to

CLOSING ARGUMENT - PROPONENT PORT OF VANCOUVER

1 you that you need to look at them skeptically because
2 they would lead to impacts on the system that the Port
3 of Vancouver represents as a positive.

4 One of those is Susan Harvey. She has a lot
5 of experience in spill planning. She's never been to
6 Oregon. She's never visited the Oregon-Washington area,
7 the Columbia River; she doesn't know how it works here.
8 She didn't talk to anybody that runs the Marine Fire and
9 Safety Association or any of the people that work with
10 the current spill system, a system which experts on both
11 sides of the coin in this case admitted is one of the
12 most stringent, well-done systems there is, or the best.
13 Wasn't any equivocation. She doesn't know anything
14 about that, and told you it was inadequate.

15 So I would suggest to you that advocacy
16 by -- or analysis by advocate is misplaced. So that's
17 one analysis by an advocate.

18 Another one is Dr. Sahu who has testified
19 that he tried to present the same emission factors,
20 those are how the rate at which things emit. He talked
21 to you about tanks, he talked to you about the loading
22 of marine vessels with the exact same testimony that he
23 tried to do across the river in Oregon to defeat another
24 crude oil-by-rail project. And in that case, the agency
25 and the federal court said, no, Dr. Sahu, you don't have

CLOSING ARGUMENT - PROPONENT PORT OF VANCOUVER

1 the right method.

2 And I'm encouraging you to look skeptically
3 at his testimony, and we'll talk more about it in our
4 briefs, that the emission factors he's trying to have
5 you accept are not worthy of being adopted. Analysis by
6 an advocate should be treated skeptically.

7 And finally, the Columbia Riverkeeper.
8 They're the ones that under oath testified that what
9 this projects presents is Exxon Valdez-style shipping;
10 200,000-plus deadweight ton ships, more than four times
11 the kind of ships that will predominate this project.

12 What I'm suggesting to you is when somebody
13 feels the need to advocate in their testimony, their
14 testimony should be viewed skeptically. So please bring
15 that healthy skepticism to the testimony that you read
16 and the evidence you evaluate.

17 I'm going to finish with a comment by an
18 opponent that I think is important in a fitting way to
19 end what seems to be a very hard-pitched battle on both
20 sides. City manager for the City of Vancouver, Eric
21 Holmes, acknowledged that there are things the Port of
22 Vancouver does that are consistent with some of those
23 very same plans, land use plans and others, that he
24 thinks say you shouldn't have this project.

25 But the important part for me to share with

CLOSING ARGUMENT - APPLICANT VANCOUVER ENERGY

1 you is how he reflects, even though he's an opponent,
2 even though his City is so opposed to this project that
3 they won't let their public servants respond to a
4 request for information. That's how much they oppose
5 this project. And yet he was willing, under oath in
6 front of you, to acknowledge that the Port of Vancouver
7 presents some unique characteristics that allow it to
8 compete well in a global economy.

9 And as I said to you at the very beginning
10 today, we're asking you to make sure that as you go
11 through your evaluations you deal straight on and
12 directly with the difficult choices that Mr. Derr will
13 address in a few minutes, but that you leave alone and
14 leave well functioning the Port of Vancouver USA.

15 We do thank you for your time. Thank you.

16 JUDGE NOBLE: Thank you, Mr. Bartz.

17 Mr. Derr? Do you have some final remarks?

18 MR. DERR: Yes, Your Honor, and I will
19 emphasize the word "final." I can see everyone smiling
20 and watching the clock, and I realize I stand between
21 all of us and lunch.

22 Let me just offer a few responsive comments
23 and I'll wrap up. The first, as I said in my remarks
24 earlier this morning, I asked that you hold us all of us
25 accountable to the evidence that actually was presented,

CLOSING ARGUMENT - APPLICANT VANCOUVER ENERGY

1 not just to the way we might have characterized it in
2 the last couple of hours. Let me give you just a couple
3 of examples. But that's my encouragement and my request
4 of you.

5 For example, Mr. Potter says what the
6 seismic evidence shows is that this facility will not
7 withstand even a moderate quake. That's not what the
8 evidence shows.

9 What the evidence shows, in fact this
10 facility may be the only thing standing in a significant
11 quake. So I ask you to look at the seismic evidence and
12 make sure the evidence explains and says what the
13 lawyers are saying it is.

14 A couple of the intervenors either
15 oversimplify or mischaracterize Mr. Barkan's analysis.
16 I remember, and I realize it was a lot of time, it was a
17 long day. Mr. Barkan looked at two things; he looked at
18 a probability of derailment, he looked at a probability
19 of release.

20 He used freight trains generally for
21 probability of derailment, he used tank cars for
22 probability of release, and he explained the reasons for
23 that difference. The once every 2.4 years was not a
24 probability of a derailment with a release; it was a
25 probability of a derailment. Make sure you look into

CLOSING ARGUMENT - APPLICANT VANCOUVER ENERGY

1 the explanation and the understanding carefully as you
2 consider how risk is characterized and how that
3 testimony is characterized.

4 The County, the situation of the County's
5 comments today, I'd ask you to consider the sequencing
6 and the depth of the analyses on the facility risk. In
7 fact, when you look at the timing, their witness,
8 Mr. Peterson, submitted prefiled testimony of
9 Qualitative Risk Assessment of the facility. Dr. Kelly
10 Thomas, the applicant's witness, presented a
11 Quantitative Risk Assessment at the same time.

12 Mr. Peterson did not critique, never did
13 critique the BakerRisk report. The County chose not to
14 bring Mr. Peterson here to critique that report. So
15 it's not correct to say that Mr. Peterson's work is
16 unrefuted. Dr. Thomas was here to explain to you the
17 differences.

18 I also ask you to consider carefully
19 criticisms of evidence and studies based on when they
20 were presented. There was a lot of talk about
21 Mr. Schatzki's impact analysis. Understand carefully
22 the purpose and the context for that analysis.

23 His primary impacts report was specifically
24 intended to address the IMPLAN model and projected
25 economic benefits. It was not meant to be a full

CLOSING ARGUMENT - APPLICANT VANCOUVER ENERGY

1 economic impact assessment that the draft EIS was
2 supposed to deal with and is supposed to deal with.

3 His secondary impacts report looked at a
4 couple key questions like economic impact from crossing
5 delays, and he offered his thoughts on that.

6 His third report has been criticized as
7 faulty assumptions. Well, the reality is there is no
8 studies about the impact on property values of
9 crude-by-rail transport; they don't exist.

10 So Mr. Schatzki, what he tried to do, is to
11 create a statistical analysis that looked at the facts
12 of Vancouver based on where we are today. We have an
13 announcement of a project that has generated significant
14 concern. He was reacting to testimony and to evidence
15 that started with I declare it's a 30 percent impact,
16 then it switched to something else.

17 Mr. Schatzki was trying to give this council
18 some information about how do you look at this. The
19 best we had is we have an announcement, we don't have a
20 project. It's unfair to criticize that attempt.

21 Now, in contrast, Mr. Johnson pulls up a
22 study and equates nuclear waste, global nuclear waste
23 disposal with crude-by-rail transport through the City
24 of Vancouver. Every other witness that was asked if
25 nuclear waste is the same as crude oil said no. But yet

CLOSING ARGUMENT - APPLICANT VANCOUVER ENERGY

1 they ask you to rely on that testimony as the basis of
2 the property value impacts. I ask you to look carefully
3 at the evidence that was presented as you make your
4 decision.

5 And the issues of air quality and air
6 impacts, again, maybe we're coming close to agreeing the
7 air permit process is the place to deal with that. It
8 should be robust, it should require enforcement, it
9 should meet the standards.

10 Many of the air quality standards do take
11 into consideration the toxic air emissions that
12 Ms. Boyles talks about. That is the place, those are
13 the experts where those issues can and will be dealt
14 with and I encourage you to recognize that.

15 I also ask you again to hold us all
16 accountable to the law, and the best example of this I
17 can give is on financial assurances. The statute or the
18 regulation that was identified and, in fact, the Court
19 of Appeals decision in this case, which we'll explain to
20 you in our briefing, says you don't have to have your
21 financial assurances in place at this time.

22 The witnesses for the applicant testified
23 that they understand the process to be a process with
24 agency oversight to identify what is the appropriate
25 amount, to look at natural resource damage issues, to

CLOSING ARGUMENT - APPLICANT VANCOUVER ENERGY

1 look at cleanup issues, to look at facility risk, to
2 look at offsite liability risk and to come up with an
3 appropriate number. And the applicant's witnesses have
4 testified and agreed, they understand that's the
5 process, they intend to do that, they intend to provide
6 information that they have collected to assist with
7 that.

8 But we need Ecology and others to
9 participate in that process, and we expect your decision
10 to include that requirement as part of this process, and
11 we intend to comply with that.

12 I'm not sure what to do with DNR's comments
13 today. I wrote down, it sounds like it's now my fault
14 that lightning and campfires caused devastating fires
15 two years ago. That's not this project's fault.

16 What the testimony did show is that BNSF has
17 a robust response to fire response that's caused by rail
18 traffic. It also showed that spark issues from rail are
19 no different with crude trains than with other. I spoke
20 earlier this morning and the testimony has spoken at
21 length about responding to a crude incident, and we
22 believe that response, that equipment, that training, is
23 the proper way to deal with that issue.

24 A standard for provision of energy has been
25 addressed several times this morning. I want to come

CLOSING ARGUMENT - APPLICANT VANCOUVER ENERGY

1 back to that.

2 This is a transfer facility. This facility
3 does not extract crude oil from the State of Washington.
4 That is correct, and we don't deny that. But that is
5 not the standard for EFSEC council's decision.

6 If that standard were the standard, you
7 would deny every transmission project of energy in the
8 State. You would only approve projects where the energy
9 is consumed at the location where it is produced. That
10 is not the standard.

11 This is a project that is subject to EFSEC's
12 jurisdiction. We believe the evidence has demonstrated
13 why this mode of transport of crude oil to the
14 Washington refineries is necessary, and we urge you to
15 recognize that and include that.

16 And finally, on that point, I would ask you,
17 I strongly suspect or encourage you to consider, I
18 strongly suspect the same parties here would not be
19 embracing direct transport of crude oil all the way to
20 the refineries in the northern part of the state. They
21 talk about, well, why don't you just deliver it directly
22 to the refineries?

23 I submit to you, the city manager actually
24 testified that no, the City's policy is they would
25 resist all such efforts. So I suggest to you that

CLOSING ARGUMENT - APPLICANT VANCOUVER ENERGY

1 that's not the solution. Do it another way.

2 I suggest to you the same groups would be
3 opposing any pipeline expansion to provide a route for
4 crude oil to serve the refineries in this state.

5 They've already asked several of our
6 witnesses about the Magnuson Act, and I suspect these
7 same opponents would be resisting any increase in marine
8 vessel mode of transportation of crude oil to the State
9 and to the refineries in this State. If you can't bring
10 it by pipeline and you can't bring it by marine vessel
11 and you can't extract it from underneath the ground in
12 the State of Washington, how do you get the petroleum we
13 need to our refineries to supply our energy needs?

14 I submit to you that's not the way to look
15 at this project. You must take a bigger picture view.

16 And finally, I want to come back to risk.
17 Counsel for the environment this morning actually
18 confirmed what I feared was the expectation, that you
19 can only approve the project if it's deemed to be
20 without risk. Well, then we're done, because nothing is
21 without risk. That is not the standard.

22 The standard is to evaluate the risk but to
23 evaluate it in the context of the need. Vancouver
24 Energy has never tried to hide, ignore, or downplay the
25 risk. That's, frankly, over the years we've been

CLOSING ARGUMENT - APPLICANT VANCOUVER ENERGY

1 pressed multiple times to say can't you guarantee or can
2 you guarantee that there will never be an incident, and
3 the answer to that is no. It simply doesn't work that
4 way. You cannot guarantee it; no one can. And in fact,
5 in pretty much any business or industry the same holds
6 true. There is always an element of risk.

7 Our state's economy is strong because we
8 don't approach risk the way Intervenors are asking you
9 to approach it. We don't identify a maximum foreseeable
10 disaster assuming nothing works to prevent or respond,
11 and then say we better not allow that activity at all.
12 Or we better require insurance at that amount to perhaps
13 five times that amount to make sure we're fully covered.

14 We don't shut down -- excuse me. The City,
15 I thought they had left the Titanic behind, but the City
16 once again today asks you to remember the Titanic.

17 Well, I would ask you to also remember what
18 happened after the Titanic. We didn't shut down vessel
19 traffic across the North Atlantic. We don't shut down
20 all air traffic when we have a tragic air accident.

21 Instead, we approach risk, we approach
22 accidents and incidents with courage and with diligence,
23 investigating the incidents and the causes, continuously
24 improving the safety design and regulatory requirements
25 where needed. That is what is happening in the

CLOSING ARGUMENT - APPLICANT VANCOUVER ENERGY

1 petroleum energy industry with storage, vessel loading,
2 vessel transport, crude-by-rail, and the responsive
3 measures being put in place to respond, should we ever
4 have an incident.

5 If you were to apply the approach and
6 standards that intervenors are requesting be applied to
7 the Vancouver Energy terminal to other businesses or
8 industries in the State, I submit to you, you wouldn't
9 have much. If you show business or industry or even
10 other energy companies that in spite of the strongest
11 environmental regulations in the country, compliance
12 with those standards is simply not enough, Washington
13 wants more, many businesses would not bother to try to
14 get a permit here.

15 If you show them that an industry doing
16 business in this state must hunt for the most unlikely
17 maximum foreseeable loss and then insure to that amount
18 before doing business in this state, then most won't
19 come. We are not minimizing the importance of the
20 safety and environmental protections that are necessary
21 for a facility such as this.

22 However, we are asking that our compliance
23 be measured like anyone else, against the standards and
24 regulations that have been adopted by the State and
25 federal government to address the risks to protect the

CLOSING ARGUMENT - APPLICANT VANCOUVER ENERGY

1 public health, safety and to preserve and protect the
2 quality of our environment.

3 We believe the evidence shows we have done
4 that and can do that, and we expect to be able to finish
5 that process with EFSEC staff and with the agencies as
6 we complete the permitting.

7 For that reason, we believe the evidence
8 supports a recommendation of approval and look forward
9 to the ongoing discussions with EFSEC staff to define
10 the conditions and mitigation measures deemed necessary
11 to support that recommendation.

12 I agree with Ms. Boyles, approval with no
13 conditions is off the table. That's not our
14 expectation, but we do believe we've met the standard
15 and the burden for approval with appropriate conditions
16 and mitigation measures.

17 And lastly, I want to leave you again where
18 we began, with your obligation to assure abundant energy
19 and at reasonable cost for the citizens of the State of
20 Washington. You should consider very carefully the
21 cautions from Mr. Roach about the Washington petroleum
22 industry.

23 The existing supplies of crude oil to
24 Washington refineries is declining. It may in fact
25 decline much more abruptly than the gradual decline that

CLOSING ARGUMENT - APPLICANT VANCOUVER ENERGY

1 we have experienced over the past several decades. If
2 that occurs, the benefit that Washington has enjoyed for
3 years from a relatively safe and reliable supply of ANS
4 crude oil will be in jeopardy. That's a different but a
5 very important risk in and of itself.

6 If the Vancouver Energy project has been
7 denied, the State could be left scrambling in less
8 reliable and uncertain crude oil markets to replace the
9 supply to support our industry. The Vancouver Energy
10 project addresses that risk, provides a reasonable path
11 to bring North American crude oil to Washington and
12 other West Coast refineries, and thus satisfies EFSEC's
13 charge to assure abundant energy for our future.

14 Thank you.

15 JUDGE NOBLE: Thank you, Mr. Derr.

16 Is there any further argument?

17 That being the case, the record -- with the
18 exception of the previous order and the orders during
19 this proceeding, August 22nd will be the date the
20 opponents' additional testimony and submittals will be
21 due. August 26th the proponents may submit responsive
22 testimony and submittals in the limited areas that have
23 been granted. And then post-hearing briefs are due on
24 August 31. Other than those submittals and arguments,
25 the record is closed. And we are adjourned.

CLOSING ARGUMENT - APPLICANT VANCOUVER ENERGY

1 Thank you very much all for your diligence
2 and for your patience and I appreciate that and the
3 council does as well. We are adjourned.

4 (Proceedings adjourned at 11:34 a.m.)
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CLOSING ARGUMENT - APPLICANT VANCOUVER ENERGY

C E R T I F I C A T E

STATE OF WASHINGTON)
) ss.
COUNTY OF SNOHOMISH)

THIS IS TO CERTIFY that I, Diane Rugh, Certified Court Reporter in and for the State of Washington, residing at Snohomish, reported the within and foregoing testimony; said testimony being taken before me as a Certified Court Reporter on the date herein set forth; that the witness was first by me duly sworn; that said examination was taken by me in shorthand and thereafter under my supervision transcribed, and that same is a full, true and correct record of the testimony of said witness, including all questions, answers and objections, if any, of counsel, to the best of my ability.

I further certify that I am not a relative, employee, attorney, counsel of any of the parties; nor am I financially interested in the outcome of the cause.

IN WITNESS WHEREOF I have set my hand this _____ day of _____, 2016.

DIANE RUGH, RPR, RMR, CRR, CCR
CCR NO. 2399