

**BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL**

In the Matter of:
Application No. 2013-01

TESORO SAVAGE, LLC

VANCOUVER ENERGY DISTRIBUTION
TERMINAL

CASE NO. 15-001

SECOND ORDER CLARIFYING
PROCEDURES

On behalf of the majority of the parties, on April 8, 2016, Tesoro Savage, LLC filed a Stipulated Request for Clarification Regarding the March 31, 2016 Order Summarizing Hearing Procedures. This request concerned the allocation of time for cross examination and argument, a request for written rebuttal testimony, and witness availability. On April 11, 2016, attorneys for opposition parties filed an Additional Request for March 31, 2016 Order Clarification. This request concerned post-hearing briefing. They are resolved as follows:

Allocation of Time for Witness Cross-Examination and Argument

The parties' understanding about the allocation of time is correct. **The time for cross-examination will be counted against the party conducting the cross-examination.** To the extent that the earlier Order Summarizing Hearing Procedures implied otherwise, it is hereby amended. With regard to general argument, argument concerning witnesses, or objections to testimony, that allocation will be addressed by the Administrative Law Judge (ALJ) at the time the argument or objection is made in the course of the hearing. As a general rule, switching back and forth for minor usages of time is impractical and is itself wasteful of time. Overly formal arrangements for that would be counterproductive. For lengthy arguments and objections (as determined by the ALJ) time will be allocated to the party conducting same.

Written Rebuttal Testimony

It is assumed that the parties are using the term 'rebuttal testimony' to mean evidence used to contradict, impeach, or defuse the impact of evidence offered by an adverse party, presented after resting a case in chief. Rebuttal testimony offered only as additional support to an argument already made in a party's case in chief will be deemed improper. It is important that Energy Facility Site Evaluation Council (Council) members have an opportunity to assess witnesses' credibility and to ask any questions they may have. For these reasons, written rebuttal testimony will **not** be allowed unless, in the judgment of the ALJ, it is of a minor, clarifying nature, and not lengthy. Otherwise the parties should expect to present their rebuttal witnesses in person, or, upon prior approval by the ALJ, via video transmission.

Witness Availability

The parties have requested to present only written direct testimony for witnesses who, by agreement among the parties, will not be cross-examined and will not be called in rebuttal. This request cannot be completely granted because of the needs of the Council to have

sufficient time to read the pre-filed testimony. During the hearing, the Council must be provided with a full opportunity to assess witness credibility, and to ask questions based on the witness' own testimony, or suggested by other testimony. For these reasons, a ruling from the ALJ that a witness need not appear in person at the hearing cannot be made until Council members have had an adequate opportunity to read and consider all the pre-filed testimony, which may not be accomplished until just prior to commencement of the hearing.

The parties shall provide the ALJ with a list of witnesses not anticipated to be cross-examined or called in rebuttal no later than **7 days prior to commencement of the hearing on June 27, 2016**. At the commencement of the hearing, the ALJ will rule on the need for any such witnesses to appear in person. The parties are again reminded that all written testimony must be under oath. The Council and the ALJ reserve the right to request the appearance of any witness providing testimony in the hearing, even if the witnesses was not previously required to personally appear. Also, the parties' proposed exhibits must include a full resume or curriculum vitae for any witness not anticipated to appear in person or via video transmission.

Hearing Briefing

The parties' request for post-hearing briefing is **granted** with the following conditions:

1. Post-hearing briefing will be allowed, but not required, after the conclusion of the adjudication hearing.
2. The parties will be allowed three weeks (21 calendar days) after the conclusion of the hearing for the submission of post-hearing briefs.
3. Parties wishing faster production of transcripts than is provided by EFSEC's court reporter must make their own separate arrangements.
4. The filing of post-hearing briefs will **not** preclude any other hearing briefing a party may deem necessary to their case.
5. Regardless of their intention to file a post-hearing briefs, parties shall make oral closing arguments for the benefit of the Council and the public after the testimony is completed.
6. The conclusion of the adjudication hearing will be immediately after the last closing argument is presented.

DATED and effective at Olympia, Washington, the 18th day of April, 2016.

_____/s/_____
Cassandra Noble
Administrative Law Judge
State of Washington Energy Facility
Site Evaluation Council