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6 BEFORE THE STATE OF WASHINGTON  
ENERGY FACILITY SITE EVALUATION COUNCIL

7  
8 In the Matter of:  
Application No. 2013-01

9 TESORO SAVAGE, LLC

10 VANCOUVER ENERGY DISTRIBUTION  
11 TERMINAL

CASE NO. 15-001

PRELIMINARY IDENTIFICATION  
OF ADJUDICATION ISSUES  
CITY OF VANCOUVER

12  
13 The City of Vancouver preliminarily identifies its central adjudication issues below,  
14 while reserving the right to revise or add to these issues as additional factual information is  
15 provided through the discovery, SE PA, and adjudicative processes. To promote efficiency,  
16 the City focuses below on certain key issues and, rather than restating others, incorporates the  
17 issues presented by all parties to the adjudicative proceeding raising concerns over the  
18 Proposal. Further, the City reserves the right to present argument and evidence on all issues  
19 EFSEC considers.  
20

21 **Issue No. 1 - Public Safety is Paramount.** EFSEC must balance the demand for  
22 energy "with the broad interests of the public."<sup>1</sup> As such, a project must be able to  
23 demonstrate it will have in place "operational safeguards" which "are technically sufficient" to  
24

25  
<sup>1</sup> RCW 80.50.010; *see also* WAC 463-14-020(2).

1 "assure Washington state citizens" that the Proposal is consistent with their welfare and that  
2 their protection and safety is assured.<sup>2</sup> Further, EFSEC "shall" use "all practicable means" to  
3 assure this safety.<sup>3</sup> This right to a safe environment is not one of minor import, but is  
4 recognized by EFSEC and under state law as a "fundamental and inalienable right."<sup>4</sup>  
5

6 Given the Proposal's impacts, including the potential for catastrophic accidents  
7 stemming from the transportation and handling of Bakken crude oil and diluted bitumen, has  
8 the Proposal to handle over 15 million gallons of crude oil per day in the heart of the fourth  
9 largest city in Washington failed to include technically sufficient operational safeguards to  
10 assure the state's citizens that they are adequately protected?

11 **Issue No. 2 - Reasonableness of Public Costs.** EFSEC must consider whether a  
12 project is consistent with the state's policy of providing "abundant energy at reasonable cost."<sup>5</sup>  
13 Given the impacts and risks that the Proposal presents to the City's citizens, private and public  
14 property, environs, and infrastructure and emergency response services; the gap in funding to  
15 ensure adequate emergency response capability; the gap in adequate financial insurance and  
16 other mechanisms to make the City and its citizens whole in the event of a Lac-Megantic style  
17 or other catastrophic event; has the proponent failed to demonstrate the Proposal's cost to the  
18 public is reasonable?  
19  
20

21 <sup>2</sup> RCW 80.50.010(1).

22 <sup>3</sup> WAC 463-47-110(1)(b) and 1(b)(ii).

23 <sup>4</sup> "The council recognizes that each person has a **fundamental and inalienable right** to a healthful environment  
24 and that each person has a responsibility to contribute to the preservation and enhancement of the environment."  
25 WAC 463-47-110(1)(c), emphasis added; *see also* RCW 43.21C.020(3) ("The legislature recognizes that each  
person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility  
to contribute to the preservation and enhancement of the environment."), and RCW 43.21C.020 generally,  
including specifically sections (2)(b) and (c).

<sup>5</sup> RCW 80.50.010(3); WAC 463-14-020(3).

1                   **Issue No. 3 - Environment: Proposal Must Ensure Environmental Effects are**

2                   **"Minimal."** EFSEC is required "to ensure through available and reasonable methods, that the  
3 location and operation of" a proposed facility "will produce minimal adverse effects on the  
4 environment...."<sup>6</sup> In addition, the Proposal must be consistent with the State's policy to  
5 "preserve and protect" the environment and to "enhance" air, water and land resources, and  
6 "with the State's policy of pursuing "beneficial changes in the environment."<sup>7</sup> In addition to  
7 EFSEC's duty to deny a proposal with greater than "minimal" adverse effects pursuant to Ch.  
8 80.50 RCW and EFSEC's implementing regulations, under SEPA, if impacts cannot be  
9 mitigated, EFSEC may also deny the proposal.<sup>8</sup> Given the impacts and risks that the Proposal  
10 presents to the City's citizens and urban environment, including the City center and Columbia  
11 River environs, has the Proposal failed to: (a) "ensure" there will be only "minimal adverse"  
12 environmental effects?; and (b) achieve consistency with the State's policy to preserve and  
13 protect the environment as well as to enhance it?  
14  
15

16                   **Issue No. 4 - SEPA: A Deficient Draft EIS Cannot Inform EFSEC Deliberations.**

17 EFSEC's review of the Proposal must be informed through SEPA.<sup>9</sup> As will be addressed in  
18 City comments on the Draft EIS, that document is deficient. EFSEC's SEPA regulations  
19  
20

21 \_\_\_\_\_  
22 <sup>6</sup> RCW 80.50.010; WAC 463-14-020(1); WAC 463-14-010 (Ch. 463-14 publishes the "significant policy  
23 determinations and interpretations" which guide EFSEC's decision making); *see also* WAC 463-47-110(1)(a)  
24 ("The overriding policy of the council is to avoid or mitigate adverse environmental impacts which may result  
25 from the council's decisions.").

<sup>7</sup> RCW 80.50.010(2).

<sup>8</sup> EFSEC may "[r]eject or recommend rejection of the application if reasonable mitigation measures are  
insufficient to mitigate significant adverse environmental impacts and the proposal is inconsistent with the policies  
in subsection (1) of this section." WAC 463-47-110(2)(b)(ii).

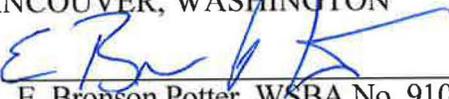
<sup>9</sup> RCW 43.21C.030(2).

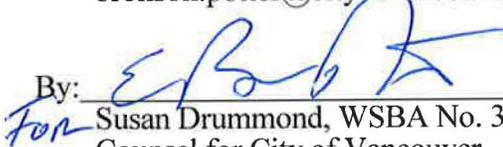
1 require that those inadequacies be resolved before deliberations commence.<sup>10</sup> Given both  
2 SEPA and EFSEC requirements, must the infirmities in the Draft EIS be corrected and the  
3 document issued in its final form before EFSEC begins the evidentiary hearing so that it  
4 evaluates the Proposal's consistency with its decision making criteria?  
5

6 **Issue 5 - Conflicts with City's Land Use/Built Environment.** EFSEC considers land  
7 use consistency through SEPA, as well as under Ch. 80.50 RCW.<sup>11</sup> The City's land use plans  
8 and zoning currently accommodate and plan for a heavily populated urban environment with a  
9 high quality of life. Are the Proposal's risks and impacts inconsistent with these plans, which  
10 articulate the City's vision for its future?

11 DATED this 8th day of January, 2016.

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<sup>10</sup> "The council shall ensure that presently unquantified environmental amenities and values will be given appropriate consideration in **decision making** along with economic and technical considerations." WAC 463-47-110(1)(d), emphasis added; *see also* RCW 43.21C.030(2)(b).

<sup>11</sup> WAC 197-11-444(2) (impacts to the "built environment" must be considered).

1 **CERTIFICATE OF SERVICE**

2 I certify that on the date provided below, I e-mailed a copy of the foregoing document  
3 to all parties or their counsel of record as listed below:

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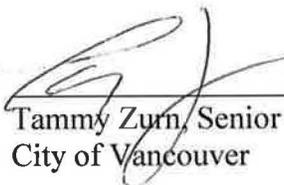
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1 *Neighborhood Association, Sierra Club,*  
2 *Spokane Riverkeeper, and Washington*  
3 *Environmental Council*

4 I declare under penalty of perjury under the laws of the State of Washington that the  
5 foregoing is true and correct.

6 EXECUTED this 8<sup>th</sup> day of January, 2016, in Vancouver, Washington.

7  
8 

9 Tammy Zurn, Senior Legal Assistant  
10 City of Vancouver