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

5 In the Matter of:
6 Application No. 2013-01

7 TESORO SAVAGE, LLC

8 VANCOUVER ENERGY DISTRIBUTION
9 TERMINAL

CASE NO. 15-001

10 **CITY OF VANCOUVER'S AND**
11 **PARTIES' JOINT OBJECTION TO**
12 **EFSEC'S FIRST PRE-HEARING**
13 **ORDER**

14 The City of Vancouver, along with the below parties joining the City, objects to the
15 portion of EFSEC's First Pre-Hearing Order which provides that attendance, testimony, and
16 production of evidence may not be compelled of EFSEC staff, including from any of the
17 Council's independent consultants.¹ The extent to which the City² will require such evidence
18 from any EFSEC staff member or consultant is not yet known. However, as EFSEC provides for
19 objections to its orders to be filed within ten days, in an abundance of caution, the City files this
20 objection.

21 Evidence and testimony from those preparing technical analysis or other documents
22 EFSEC will rely upon, and which the parties may have questions on, may not be shielded simply
23 because EFSEC compensates those individuals for their time. In any adjudicative proceeding,
witnesses with first-hand knowledge of information which is important to making a decision
must be made available. If they are not, that proceeding is vulnerable to challenge on
constitutional due process grounds. Even without resorting to constitutional analysis, the State
Supreme Court has not hesitated to strike down closed record administrative appeal processes as
inadequate, expressing sympathy in a situation where questions could not be asked.³ Consistent

¹ EFSEC's First Pre-Hearing Order (May 5, 2015), pg. 2, ¶ 2.

² For purposes of this motion references to "City" includes the below signing parties.

³ *Ellensburg Cement Products, Inc. v. Kittitas County*, 179 Wn.2d 737, 752, FN 3, 317 P.3d 1037 (2014).

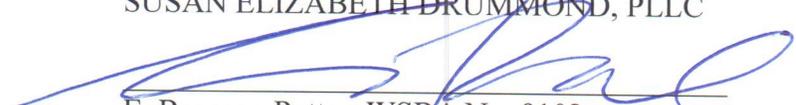
1 with this decision, it is common practice in Washington for experts who have prepared key
2 environmental review documents which a state or local government entity will be relying upon to
3 make a decision, to be available for questioning. Evidence cannot be withheld simply because
4 the same agency holding the hearing also compensated those individuals. Such an approach
5 would encourage an applicant to retain experts not directly, but through cost reimbursement
6 agreements with the agency, at least in those situations where the applicant is concerned about
7 questions which may later be raised. Such an approach is not consistent with Washington's
8 Appearance of Fairness doctrine, which is designed to ensure adjudicative processes are fair in
both practice and appearance.

9 In this matter, the importance of the DEIS has been acknowledged by scheduling the
10 identification of issues and witnesses based upon its release. The City may have important
11 evidentiary questions for individuals who have prepared certain documents, but who work for
12 EFSEC's consultant or subconsultant. Those individuals may not be shielded from answering
13 these questions simply because they are EFSEC consultants. This may not ultimately be an
14 issue, as the City has not yet identified its witnesses and issues. However, the City files this
15 objection in order to reserve the right to raise this concern later in this adjudication, should that
16 be necessary to protect its interests.

17 DATED this 15th day of May, 2015.

18 CITY ATTORNEY'S OFFICE
VANCOUVER, WASHINGTON, and,

19 LAW OFFICES OF
20 SUSAN ELIZABETH DRUMMOND, PLLC

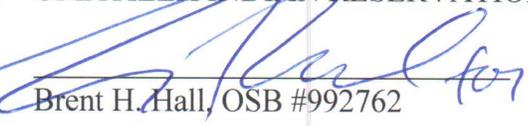
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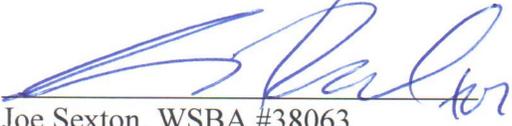
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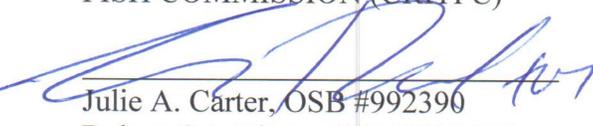

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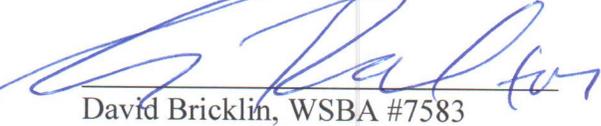

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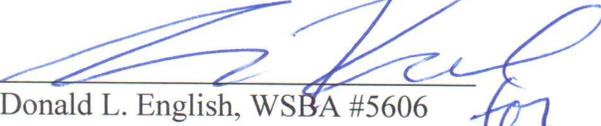
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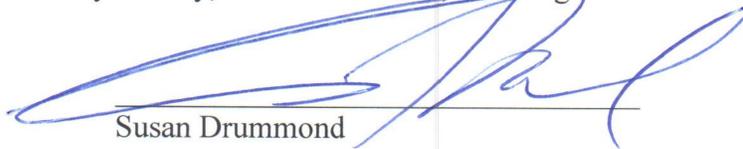
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CERTIFICATE OF SERVICE

I certify that on March 15, 2015, I served the foregoing CITY OF VANCOUVER'S AND PARTIES' JOINT OBJECTION TO EFSEC'S FIRST PRE-HEARING ORDER on the parties identified below via e-mail. I declare under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

DATED this 15th day of May, 2015 at Kirkland, Washington.



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