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**ENERGY FACILITY SITE
EVALUATION COUNCIL**

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

In the Matter of the Petition of)	
QUINAULT INDIAN NATION)	
For a Declaratory Order re: Jurisdiction Over)	WESTWAY TERMINAL COMPANY LLC'S
)	REPLY IN SUPPORT OF ITS OBJECTION
WESTWAY TERMINAL COMPANY and)	TO QUINAULT INDIAN NATION'S
IMPERIUM TERMINAL SERVICES.)	PETITION FOR DECLARATORY ORDER

Westway Terminal Company (Westway) has exercised its right under RCW 34.05.240(7) to object to the Energy Facility Site Evaluation Council (EFSEC) considering a petition from the Quinault Indian Nation (the Quinault) seeking a declaratory order that EFSEC has jurisdiction over Westway's terminal expansion project. The Quinault's sole response is to question whether Westway would be substantially prejudiced by such an order because (the Quinault claim) Westway has not explained how its rights would be substantially prejudiced by the Quinault's dilatory collateral attack on an ongoing permitting process being conducted by the City of Hoquiam and the Department of Ecology.

First, the Quinault have wrongly reversed the burden of proof. As Washington's Utilities and Transportation Commission ("UTC") has recognized, the petitioner – as the moving party - has the burden of demonstrating consent from necessary parties. *In the Matter of the Petition Partnership for Equitable Rates for Commercial Customers, for a Declaratory Order*, UTC Docket No. UG-940326, 1994 WL 16963085 (March 9, 1994). In that proceeding, the UTC

found on its own initiative that Washington Natural Gas could be prejudiced by a petition seeking an interpretation of its tariff because a decision on the petition could affect the company's revenue and issued an order requiring the petitioner to obtain Washington Natural Gas's written consent before it would proceed to consider the petition. *Id.*

Second, the Quinault have suggested that EFSEC should set a high bar for objections to declaratory orders, but noticeably absent from the Quinault response is any citation to any authority for this proposition. To the contrary, the Shoreline Hearings Board has dismissed petitions for declaratory orders without any inquiry into the merits of a necessary party's claim of prejudice. *In the Matter of the Petition of the City of Bainbridge Island, Washington for a Declaratory Order*, SHB No. 93-44, 1993 WL 289327 (July 14, 1993); *Sandra Sander Noreen v. City of Burien*, SHB No. 03-006, 2003 WL 1441309 (March 18, 2003). Washington's UTC likewise has found it sufficient that a necessary party claim a potential impact on commercial transactions, without any examination of the nature or expense of those impacts. *In re Washington Independent Telephone Ass'n*, UT-020667, 2002 WL 31970282 (2002).

Third, the Quinault fail to acknowledge that their petition amounts to a collateral attack on a permitting process in which they have actively participated and which has been going on for more than a year in front of a different jurisdiction. The Quinault argue that Westway has no right to a permit from the incorrect jurisdiction, Objection at 4, but Westway does have a right to a fair and predictable administrative process. *See, e.g., Weyerhaeuser v. Pierce County*, 95 Wash.App. 883, 891-92, 976 P.2d 1279, 1284 (Wn. App. 1999) (vested rights doctrine recognizes developer's due process interest in certainty and fairness). The Quinault offer no examples of the declaratory order process under RCW 34.05.240 having been used to collaterally attack an ongoing permitting process, let alone any case where an agency used a declaratory

order to take jurisdiction over an ongoing process away from another state agency.

Westway has properly objected to EFSEC considering the Quinault petition because of the potential for substantial prejudice to Westway's right to a fair and predictable process for consideration of its application for a shoreline substantial development permit. The Quinault response to that objection is entirely unsupported by any legal authority and is entirely unfounded.

Dated: December 22, 2014

Respectfully submitted,



Svend A. Brandt-Erichsen, WSBA No. 23923
Meline G. MacCurdy, WSBA No. 39467
Marten Law PLLC
1191 Second Avenue, Suite 2200
Seattle, WA 98101

Attorneys for Westway Terminal Company LLC

CERTIFICATE OF FILING AND SERVICE

Svend A. Brandt-Erichsen declares as follows:

1. I am a resident of the State of Washington, over the age of eighteen years, and not a party to the within action.
2. I am employed by the firm of Marten Law, 1191 Second Avenue, Suite 2200, Seattle, Washington 98101.
3. On the date indicated below, I caused a true and correct copy of WESTWAY TERMINAL COMPANY LLC'S REPLY IN SUPPORT OF ITS OBJECTION TO QUINAULT INDIAN NATION'S PETITION FOR DECLARATORY ORDER to be filed with EFSEC via courier and to be served by electronic mail to the following parties:

Kristen L. Boyles
Earthjustice
705 Second Ave, Ste 203
Seattle, WA 98104
kboyles@earthjustice.org

Tadas Kisielius
Van Ness Feldman GordonDerr
719 2nd Ave, Suite 1150
Seattle, WA 98104
tak@vnf.com

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

Executed on December 22, 2014, at Seattle, Washington.



Svend A. Brandt-Erichsen