

**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

ORDER ON OBJECTIONS AND
SETTING PRE-HEARING CONFERENCE

Procedural Setting:

On February 9, 2016, the City of Washougal filed an Objection to Order Clarifying EFSEC's Process, Modifying Dispositive Motion Deadline, Summarizing Preliminary Issues, and Setting Hearing Dates. On February 12, 2016, Tesoro Savage, LLC (Tesoro/Savage) filed Applicant's Objection to Prehearing Order Seeking Clarification of Issues. No responses were filed to either objection.

Discussion:

The City of Washougal's request that its three areas of concern as stated in its Intervenor City of Washougal's Preliminary Prehearing Order Disclosures, be listed and called out as location-specific preliminary issues, as opposed to issues of more general focus. Although listing the City of Washougal's issues as location-specific is appropriate, the original listing is worded as a list of subjects, and not as a list of adjudication legal issues to be resolved by the Council in its findings and conclusions. Therefore the City of Washougal should re-word its issues as such, and they will be added to the list of preliminary issues for the benefit of the parties' preparations and discovery efforts.

Tesoro/Savage objects to the inclusion of any factual matters asserted in the preliminary issues and states that any such facts must be proven if they are to serve as the basis for a legal issue. Tesoro/Savage is correct on that point, and it is well-taken. Any facts presented in the adjudication are subject to adequate proof. Nevertheless, the Council's re-framed list of preliminary issues is intended to clarify the nature of the adjudication to the parties, rather than a final statement of the parties' issues. As the parties are able to conduct discovery and make choices about the matters most pertinent to the adjudication, they will be able to write their own final issues in more precise language, without the assumption of unproven facts. In its articulation of a rationale for the requirement of proof and its careful re-writing of several preliminary issues, Tesoro/Savage has now informed the other parties about how it believes they should articulate their final issues and they are sufficiently advised. Therefore re-writing the preliminary issues in an order is unnecessary.

Similarly, with regard to Tesoro/Savage's objection to preliminary issues that raise land use consistency matters, the parties are informed and on notice of Tesoro/Savage's position and argument regarding the raising of land use-related issues. It is premature to resolve such matters in the abstract at this time. If a specific legal argument related to a purported land use issue needs to be resolved by the Council, it should be done in the context of the adjudication hearing or in a pre-hearing motion after the submission of the parties' final issues and after the matter has been fully briefed and argued.

Tesoro/Savage's request for a conference with the parties and the Administrative Law Judge is a helpful one. A conference will serve all parties in their adjudication preparation and give the parties the opportunity to ask procedural questions. For the convenience of the parties, it will be a telephonic conference, but parties should also be free to attend in person. For clarity and future reference about what is established in the conference, it will be on the record.

Order:

The City of Washougal shall file and serve on all parties a revised and appropriately worded list of its preliminary City of Washougal-specific issues by **March 7, 2016**.

Tesoro/Savage's request for a re-writing of the preliminary issues list to reflect its concerns about assumed facts is denied as it is unnecessary.

Resolution of Tesoro/Savage's objection to preliminary issues raising land use consistency is reserved, but it may be raised before the Council at a later time after full briefing and argument.

A telephonic pre-hearing conference with the parties is set for **March 11, 2016 at 11:00 a.m. PST**. Parties will receive the call-in specifics from EFSEC staff via email prior to the scheduled conference. Parties are also free to attend the conference in person at the Utilities and Transportation Commission, Room 206, 1300 S. Evergreen Park Drive SW, Olympia WA 98504.

Notice to Parties: Unless modified, this prehearing order shall control all further proceedings in this matter. In accordance with WAC 463-30-270(3), any objections to this order must be filed with EFSEC and served on all other parties within ten days after the date of mailing of this order.

DATED and effective at Olympia, Washington this 29th day of February, 2016.

STATE OF WASHINGTON ENERGY SITE EVALUATION COUNCIL



Cassandra Noble
Administrative Law Judge

CERTIFICATE OF SERVICE

I, Kali Wraspir, am a citizen of the United States and a resident of the State of Washington. I am over 18 years of age and not a party to this action. My business address is 1300 S. Evergreen Park Drive S.W., Olympia, Washington 98504.

I HEREBY CERTIFY that on February 29, 2016 I served a copy of ORDER ON OBJECTIONS AND SETTING PRE-HEARING CONFERENCE on the following parties:

<u>Party</u>	<u>Method of Service</u>
Kelly J. Flint Tesoro Savage Petroleum Terminal, LLC 110 Columbia Boulevard, Suite 108 & 110 Vancouver, WA 98660 Email: kellyf@savageservices.com Phone: 801/944-6600 <i>Applicant</i>	<input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service <input checked="" type="checkbox"/> email
Jay Derr, Counsel Van Ness Feldman, LLP 719 Second Avenue, Suite 1150 Seattle, WA 98104-1728 Email: jpd@vnf.com Phone: 206/623-9372 Dale N. Johnson Email: dnj@vnf.com Tadas A. Kisielius Email: tak@vnf.com <i>Counsel for Tesoro Savage</i>	<input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service <input checked="" type="checkbox"/> email
Matthew R. Kernutt, Assistant Attorney General Office of the Attorney General 1125 Washington Street SE PO Box 40100 Olympia, WA 98504-0100 Email: Mattkl@atg.wa.gov Phone: 360/586-0740 <i>Counsel for the Environment</i>	<input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service <input checked="" type="checkbox"/> email

Party	Method of Service
<p>David F. Bartz, Jr. Schwabe, Williamson & Wyatt, P.C. 1211 SW Fifth Avenue, Suite 1900 Portland, OR 97204-3795</p> <p>Email: dbartz@schwabe.com Phone: 503/905-1427</p> <p>Alicia L. ("Lisa") Lowe Email: alowe@schwabe.com Phone: 360/905-1427</p> <p>Connie Sue Martin Email: csmartin@schwabe.com Phone: 206/407-1556</p> <p><i>Attorneys for the Port of Vancouver</i></p>	<p><input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service</p> <p><input checked="" type="checkbox"/> email</p>
<p>Taylor Hallvik, Deputy Prosecuting Attorney Christopher Horne, Chief Civil Deputy Clark County Board of Commissioners Civil Division PO Box 5000 Vancouver, WA 98666-5000</p> <p>Email: taylor.hallvik@clark.wa.gov Phone: 360/397-2478</p> <p><i>Counsel for Clark County Board of Commissioners</i></p>	<p><input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service</p> <p><input checked="" type="checkbox"/> email</p>
<p>E. Bronson Potter, Vancouver City Attorney City of Vancouver PO Box 1995 Vancouver, WA 98668-1995</p> <p>Email: bronson.potter@cityofvancouver.us Phone: 360/487-8500</p> <p>Susan Drummond, Counsel for the City of Vancouver Law Office of Susan Elizabeth Drummond 5400 Carillon Pt. Bldg 5000 Kirkland, WA 98033-7357</p> <p>Email: susan@susandrummond.com Phone: 206/682.0767</p> <p><i>Counsel for City of Vancouver</i></p>	<p><input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service</p> <p><input checked="" type="checkbox"/> email</p>

Party	Method of Service
<p>Robert W. Ferguson, Attorney General Terence A. Pruitt, Assistant Attorney General Natural Resources Division 1125 Washington Street SE PO Box 40100 Olympia, WA 98504-0100</p> <p>Email: terryp@atg.wa.gov & RESOlyEF@atg.wa.gov Phone: 360/586-0642</p> <p><i>Counsel for Washington State Department of Natural Resources</i></p>	<p><input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service</p> <p><input checked="" type="checkbox"/> email</p>
Party	Method of Service
<p>Kristen L. Boyles *Earthjustice 705 Second Avenue, Suite 203 Seattle, WA 98104</p> <p>Email: kboyles@earthjustice.org Phone: 206/343-7340</p> <p>Janette K. Brimmer Email: jbrimmer@earthjustice.org <i>Continued from page 2</i></p> <p>Matthew R. Baca Email: mbaca@earthjustice.org</p> <p>David Bricklin Bricklin & Newman, LLP 1001 Fourth Avenue, Suite 3303 Seattle, WA 98154</p> <p>Email: bricklin@bnd-law.com Phone: 206/264-8600</p> <p>Bryan Telegin Email: telegin@bnd-law.com</p> <p><i>*Counsel for Columbia Riverkeeper et al. Columbia Riverkeeper, Climate Solutions, ForestEthics, Friends of the Columbia Gorge, Fruit Valley Neighborhood Association, Sierra Club, Spokane Riverkeeper, and Washington Environmental Council</i></p>	<p><input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service</p> <p><input checked="" type="checkbox"/> email</p>

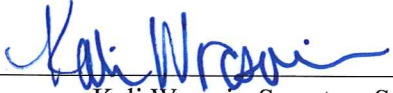
Party	Method of Service
<p>Linda R. Larson Marten Law, PLLC 1191 Second Avenue, Suite 2200 Seattle, WA 98101</p> <p>Email: llarson@martenlaw.com Phone: 206/292-2600</p> <p>Daniel Timmons Marten Law, PLLC 1001 SW Fifth Avenue, Suite 1500 Portland, OR 97217</p> <p>Email: dtimmons@martenlaw.com Phone: 503/243-2200</p> <p><i>Counsel for Columbia Waterfront LLC</i></p>	<p><input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service</p> <p><input checked="" type="checkbox"/> email</p>
Party	Method of Service
<p>Julie A. Carter Columbia River Inter-Tribal Fish Commission (CRITFC) 700 NE Multnomah Street, Suite 1200 Portland, OR 97213</p> <p>Email: carj@critfc.org Phone: 503/238-0667</p> <p>Robert C. Lothrop Email: lotr@critfc.org</p> <p><i>Counsel for CRITFC</i></p>	<p><input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service</p> <p><input checked="" type="checkbox"/> email</p>
Party	Method of Service
<p>Cager Clabaugh, International Longshore Warehouse Union Local 4 1205 Ingalls Road Vancouver, WA 98660</p> <p>Email: cagerclabaugh@aol.com Phone: 360/903-7678</p> <p>Jared Smith Email: mithared@yahoo.com Phone: 360/241-0314</p> <p><i>Representatives of International Longshore Warehouse Union Local 4</i></p>	<p><input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service</p> <p><input checked="" type="checkbox"/> email</p>
Party	Method of Service
<p>City of Spokane Office of the Mayor 7th Floor Municipal Building W. 808 Spokane Falls Blvd Spokane, WA 99201</p>	<p><input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service</p> <p><input checked="" type="checkbox"/> email</p>

<p>Nancy Isserlis, City Attorney Office of the City Attorney 5th Floor Municipal Building W. 808 Spokane Falls Blvd Spokane, WA 99201</p> <p>Email: nisserlis@spokanecity.org Phone: 509/625-6225</p> <p>Michael J. Piccolo, Assistant City Attorney Email: mpiccolo@spokanecity.org</p> <p><i>Counsel for City of Spokane</i></p>	
Party	Method of Service
<p>Brent H. Hall Confederated Tribes of the Umatilla Indian Reservation 46411 Timine Way Pendleton, OR 97801</p> <p>Email: Brenthall@ctuir.org Phone: 541/429-7407</p> <p><i>Attorney for Confederated Tribes of the Umatilla Indian Reservation</i></p>	<p><input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service</p> <p><input checked="" type="checkbox"/> email</p>
Party	Method of Service
<p>Joe Sexton Galanda Broadman PLLC 8606 35th Ave NE, Suite L1 P.O. Box 15146 Seattle, WA 98115</p> <p>Email: joe@galandabroadman.com Phone: 206/557-7509</p> <p>Amber Penn-Roco Galanda Broadman, PLLC 8606 35th Ave NE, Suite L1 P.O. Box 15146 Seattle, WA 98115</p> <p>Email: amber@galandabroadman.com Phone: 206/557-7509</p> <p><i>Attorney for The Confederated Tribes and Bands of the Yakama Nation</i></p>	<p><input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service</p> <p><input checked="" type="checkbox"/> email</p>
Party	Method of Service
<p>Donald L. English City Attorney, City of Washougal 12204 SE Mill Plain, Suite 200 Vancouver, WA 98684</p> <p>Email: english@elmbstv.com</p> <p>Scott Russon City Attorney, City of Washougal 12204 SE Mill Plain, Suite 200 Vancouver, WA 98684</p> <p>Email: russon@elmbstv.com</p>	<p><input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service</p> <p><input type="checkbox"/> email</p>

Party	Method of Service
Brian Bonlender, Director Department of Commerce 1011 Plum Street SE PO Box 42525 Olympia, WA 98504-2525 Email: brian.bonlender@commerce.wa.gov Phone: 360/725-4021	<input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service <input checked="" type="checkbox"/> email
Party	Method of Service
Maia D. Bellon, Director Department of Ecology 300 Desmond Drive PO Box 47600 Olympia, WA 98504-7600 Email: maia.bellon@ecy.wa.gov Phone: 360/902-1004	<input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service <input checked="" type="checkbox"/> email
Party	Method of Service
Jim Unsworth, Director Department of Fish and Wildlife 600 Capitol Way N. Olympia, WA 98501 Email: Jim.Unsworth@dfw.wa.gov Phone: 360/902-2200	<input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service <input checked="" type="checkbox"/> email
Party	Method of Service
David Danner, Chairman Utilities and Transportation Commission 1300 S. Evergreen Park Drive SW PO Box 47250 Olympia, WA 98504-7250 Email: ddanner@utc.wa.gov Phone: 360/664-1208	<input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service <input checked="" type="checkbox"/> email
Party	Method of Service
Lynn Peterson Department of Transportation 310 Maple Park Avenue SE PO Box 47300 Olympia, WA 98504-7300 Email: lynnp@swdot.wa.gov	<input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service <input checked="" type="checkbox"/> email

Hereby certify under penalty of perjury under the law of the state of Washington that the foregoing is true and correct.

DATED this 29th day of February, 2016, at Olympia, Washington.


 Kali Wraspir, Secretary Senior