

**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 KARPINSKI  
REPRESENTATION REQUEST

1        On May 31, 2016, the City of Washougal filed a Motion to Admit John Karpinski as  
2        Additional Hearing Representative for the City of Washougal, with supporting Declaration in  
3        Support of Motion of Donald L. English, and a Declaration of John S. Karpinski, with  
4        attachments.<sup>1</sup> On June 6, 2016, Tesoro Savage, LLC (Tesoro-Savage) filed a Motion to Strike  
5        and an Alternate Motion to Limit Participation. On June 13, 2016, the City of Washougal  
6        filed a Response to Motion to Strike and a Declaration of John Karpinski in Opposition to  
7        Motion to Strike.

8        The City of Washougal (the City) asks that John S. Karpinski (Mr. Karpinski) be  
9        admitted to practice before the Energy Facility Site Evaluation Council (EFSEC, the Council)  
10       in the adjudication hearing scheduled to commence on June 27, 2016. Mr. Karpinski is a  
11       member of the Washington State Bar, in inactive status. The City's request is that Mr.  
12       Karpinski be allowed "...to attend the adjudication for the City of Washougal without the  
13       expensive and duplicative attendance of the City attorney."<sup>2</sup> In his declaration, Mr. Karpinski  
14       emphasizes his lengthy experience as a practicing attorney, detailed in his declaration and  
15       attached resume, and he asserts that he would be using that legal skill and experience to  
16       appear in a representative capacity for the City of Washougal. The City confirms that Mr.  
17       Karpinski has been hired as a city employee for the sole purpose of representing the city in the  
18       EFSEC adjudication hearing.

19       Tesoro-Savage moves to limit Mr. Karpinski's adjudication participation to legal  
20       assistant work and asserts that he not be allowed to question or present witnesses or argument  
21       on behalf of the city to the Council, which, it argues, are not the type of assistance that is  
22       authorized by EFSEC's rule on appearance and practice before the Council.

---

<sup>1</sup> Unsigned motion paperwork had been previously filed, corrected with the filling of the signed motion.

<sup>2</sup> City of Washougal Response to Motion to Strike, page 1.

1 WAC 463-30-100(c) provides that, upon permission of the presiding officer, a person  
2 may appear before the Council in a representative capacity if they are "...an officer or  
3 employee of a party or person seeking party status." Tesoro-Savage points out that, as an  
4 inactive member of the Washington State Bar, Mr. Karpinski is not allowed to practice law  
5 except in limited circumstances that do not apply in this instance. Washington State Bar  
6 Association Bylaw 2a states that "[i]nactive members shall not practice law in Washington,  
7 nor engage in employment or duties in the State of Washington that constitute the practice of  
8 law." The Washington courts Rules of General Application define the practice of law as  
9 follows:

10 The practice of law is the application of legal principles and judgment with regard to  
11 the circumstances or objectives of another entity or person(s) which require the  
12 knowledge and skill of a person trained in the law. This includes but is not limited  
13 to:

- 14 (1) Giving advice or counsel to others as to their legal rights or the legal rights or  
15 responsibilities of others for fees or other consideration.
- 16 (2) Selection, drafting, or completion of legal documents or agreements which  
17 affect the legal rights of an entity or person(s).
- 18 (3) Representation of another entity or person(s) in a court, or in a formal  
19 administrative adjudicative proceeding or other formal dispute resolution  
20 process or in an administrative adjudicative proceeding in which legal  
21 pleadings are filed or a record is established as the basis for judicial review.
- 22 (4) Negotiation of legal rights or responsibilities on behalf of another entity or  
23 person(s)

24 GR 24(a).

25 GR 24 provides an exception to one acting as a lay representative authorized by  
26 administrative agencies or tribunals. GR 24(b)(3).

27 City Attorney English asks that Mr. Karpinski be allowed to attend the adjudication for  
28 the city to avoid expense and assures the Council that Mr. English remains the City Attorney.  
29 Yet he describes Mr. Karpinski's role as duplicative of that of the city attorney. Mr. English  
30 cites EFSEC's rule that allows city officers and employees to appear before the Council and  
31 argues that if the city manager or planning director can represent the city at the adjudication,  
32 then Mr. Karpinski should be allowed to. In support of this argument, Mr. English  
33 emphasizes Mr. Karpinski's particular experience and skill, especially his legal background,  
34 which is extensive. These are not the sort of skills and experience that a city manager or  
35 planning director would have. Mr. Karpinski was hired specifically for his legal skills.

36 Although EFSEC's rule allows some types of lay representation, I find that it is a limited  
37 kind of representation that could be performed by officers or employees of a party that have

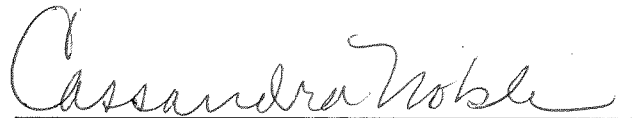
1 that status as officers or employees of the party, and not hired specifically for the purpose  
2 acting in the manner of an attorney. The Bylaws of the Washington State Bar Association and  
3 the General Court Rule do not allow inactive attorneys to practice law. I find that the  
4 emphasis in the submittals on Mr. Karpinski's legal skills indicates that he intends to perform  
5 for the City as if he were an active attorney, which he is not. I cannot therefore, allow him to  
6 practice law without a license, and cannot grant him permission that would, in effect, allow  
7 him to do so.

8 **Order**

9 Tesoro-Savage's Motion to Strike the papers filed in connection with its Motion to Admit  
10 John Karpinski is DENIED.

11 The City of Washougal's Motion to Admit John Karpinski as *Additional* Hearing  
12 Representative for the City of Washougal is DENIED. Tesoro-Savage's Motion to Limit  
13 Participation of John Karpinski is GRANTED. Mr. Karpinski may attend the adjudication  
14 hearing to observe and assist the City of Washougal. He may only address the Council on  
15 behalf of the City in the course of the public comment period following the evidentiary  
16 portion of the adjudicative hearing. Mr. Karpinski may not participate in the adjudication in  
17 any attorney role, function or duty, such as presenting and questioning witnesses, making  
18 argument to the Council, or engaging in any other function that, in the judgment of the  
19 undersigned Administrative Law Judge, constitutes the practice of law.

20 DATED and effective at Olympia, Washington, the 15th day of June, 2016.

21  
22  
23 

24 Cassandra Noble  
25 Administrative Law Judge  
26 State of Washington Energy Facility  
27 Site Evaluation Council  
28

## CERTIFICATE OF SERVICE

I, Kara Denny, 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 June 15, 2016 I served a copy of the ORDER ON KARPINSKI REPRESENTATION REQUEST 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: <a href="mailto:kellyf@savageservices.com">kellyf@savageservices.com</a> Phone: 801/944-6600  <i>Applicant</i>	<input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service  <input checked="" type="checkbox"/> email
<u>Party</u>	<u>Method of Service</u>
Matthew D Wells, Counsel Tupper Mack Wells PLLC 2025 First Avenue, Suite 1100 Seattle WA, 98121  Email: <a href="mailto:wells@tmw-law.com">wells@tmw-law.com</a> Phone: 206-493-2300  <i>Counsel for BNSF Railway Company</i>	<input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service  <input checked="" type="checkbox"/> email
<u>Party</u>	<u>Method of Service</u>
Jay Derr, Counsel Van Ness Feldman, LLP 719 Second Avenue, Suite 1150 Seattle, WA 98104-1728  Email: <a href="mailto:jpd@vnf.com">jpd@vnf.com</a> Phone: 206/623-9372  Dale N. Johnson Email: <a href="mailto:dnj@vnf.com">dnj@vnf.com</a>  Tadas A. Kisieliuss Email: <a href="mailto:tak@vnf.com">tak@vnf.com</a>  <i>Counsel for Tesoro Savage</i>	<input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service  <input checked="" type="checkbox"/> email
<u>Party</u>	<u>Method of Service</u>
Matthew R. Kernutt, Assistant Attorney General Office of the Attorney General 1125 Washington Street SE PO Box 40100 Olympia, WA 98504-0100  Email: <a href="mailto:Mattkl@atg.wa.gov">Mattkl@atg.wa.gov</a> 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 &amp; Wyatt, P.C. 1211 SW Fifth Avenue, Suite 1900 Portland, OR 97204-3795</p> <p>Email: <a href="mailto:dbartz@schwabe.com">dbartz@schwabe.com</a> Phone: 503/905-1427</p> <p>Alicia L. ("Lisa") Lowe Email: <a href="mailto:alowe@schwabe.com">alowe@schwabe.com</a> Phone: 360/905-1427</p> <p>Connie Sue Martin Email: <a href="mailto:csmartin@schwabe.com">csmartin@schwabe.com</a> 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>
Party	Method of Service
<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: <a href="mailto:taylor.hallvik@clark.wa.gov">taylor.hallvik@clark.wa.gov</a> 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>
Party	Method of Service
<p>E. Bronson Potter, Vancouver City Attorney City of Vancouver PO Box 1995 Vancouver, WA 98668-1995</p> <p>Email: <a href="mailto:bronson.potter@cityofvancouver.us">bronson.potter@cityofvancouver.us</a> 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: <a href="mailto:susan@susandrummond.com">susan@susandrummond.com</a> Phone: 206/682.0767</p> <p>Karen L. Reed, Assistant City Attorney City of Vancouver PO Box 1995 Vancouver, WA 98668-1995</p> <p>Email: <a href="mailto:Karen.reed@cityofvancouver.us">Karen.reed@cityofvancouver.us</a> <a href="mailto:Tammy.zurn@cityofvancouver.us">Tammy.zurn@cityofvancouver.us</a> Phone: 360/487-8500</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: <a href="mailto:terryp@atg.wa.gov">terryp@atg.wa.gov</a> &amp;  <a href="mailto:RESOLyEF@atg.wa.gov">RESOLyEF@atg.wa.gov</a>  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: <a href="mailto:kboyles@earthjustice.org">kboyles@earthjustice.org</a>  Phone: 206/343-7340</p> <p>Janette K. Brimmer  Email: <a href="mailto:jbrimmer@earthjustice.org">jbrimmer@earthjustice.org</a></p> <p>Anna Sewell  Email: <a href="mailto:asewell@earthjustice.org">asewell@earthjustice.org</a></p> <p>Eudora Powell  Email: <a href="mailto:epowell@earthjustice.org">epowell@earthjustice.org</a></p> <p>David Bricklin  Bricklin &amp; Newman, LLP  1424 Fourth Avenue, Suite 500  Seattle, WA 98101</p> <p>Email: <a href="mailto:bricklin@bnd-law.com">bricklin@bnd-law.com</a>  Phone: 206/264-8600</p> <p>Bryan Telegin  Email: <a href="mailto:telegin@bnd-law.com">telegin@bnd-law.com</a></p> <p>Peggy Cahill  Email: <a href="mailto:cahill@bnd-law.com">cahill@bnd-law.com</a></p> <p>Anne Bricklin  Email: <a href="mailto:miller@bnd-law.com">miller@bnd-law.com</a></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: <a href="mailto:llarson@martenlaw.com">llarson@martenlaw.com</a> Phone: 206/292-2600</p> <p>Daniel Timmons Marten Law, PLLC 1001 SW Fifth Avenue, Suite 1500 Portland, OR 97217</p> <p>Email: <a href="mailto:dtimmons@martenlaw.com">dtimmons@martenlaw.com</a> 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: <a href="mailto:carj@critfc.org">carj@critfc.org</a> Phone: 503/238-0667</p> <p>Robert C. Lothrop Email: <a href="mailto:lotr@critfc.org">lotr@critfc.org</a></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: <a href="mailto:cagerclabaugh@aol.com">cagerclabaugh@aol.com</a> Phone: 360/903-7678</p> <p>Jared Smith Email: <a href="mailto:mithared@yahoo.com">mithared@yahoo.com</a> 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 7<sup>th</sup> 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 5<sup>th</sup> Floor Municipal Building W. 808 Spokane Falls Blvd Spokane, WA 99201</p> <p>Email: <a href="mailto:nisserlis@spokanecity.org">nisserlis@spokanecity.org</a> Phone: 509/625-6225</p> <p>Michael J. Piccolo, Assistant City Attorney Email: <a href="mailto:mpiccolo@spokanecity.org">mpiccolo@spokanecity.org</a></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: <a href="mailto:Brenthall@ctuir.org">Brenthall@ctuir.org</a> 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 35<sup>th</sup> Ave NE, Suite L1 P.O. Box 15146 Seattle, WA 98115</p> <p>Email: <a href="mailto:joe@galandabroadman.com">joe@galandabroadman.com</a> Phone: 206/557-7509</p> <p>Amber Penn-Roco Galanda Broadman, PLLC 8606 35<sup>th</sup> Ave NE, Suite L1 P.O. Box 15146 Seattle, WA 98115</p> <p>Email: <a href="mailto:amber@galandabroadman.com">amber@galandabroadman.com</a> 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: <a href="mailto:english@elmbsv.com">english@elmbsv.com</a></p> <p>Scott Russon City Attorney, City of Washougal 12204 SE Mill Plain, Suite 200 Vancouver, WA 98684</p> <p>Email: <a href="mailto:russon@elmbsv.com">russon@elmbsv.com</a> <i>Counsel City of Washougal</i></p>	<p><input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service</p> <p><input type="checkbox"/> email</p>



<u>Party</u>	<u>Method of Service</u>
Brian Bonlender, Director Department of Commerce 1011 Plum Street SE PO Box 42525 Olympia, WA 98504-2525 Email: <a href="mailto:brian.bonlender@commerce.wa.gov">brian.bonlender@commerce.wa.gov</a> Phone: 360/725-4021	<input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service  <input checked="" type="checkbox"/> email
<u>Party</u>	<u>Method of Service</u>
Maia D. Bellon, Director Department of Ecology 300 Desmond Drive PO Box 47600 Olympia, WA 98504-7600 Email: <a href="mailto:maia.bellon@ecy.wa.gov">maia.bellon@ecy.wa.gov</a> Phone: 360/902-1004	<input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service  <input checked="" type="checkbox"/> email
<u>Party</u>	<u>Method of Service</u>
Jim Unsworth, Director Department of Fish and Wildlife 600 Capitol Way N. Olympia, WA 98501 Email: <a href="mailto:Jim.Unsworth@dfw.wa.gov">Jim.Unsworth@dfw.wa.gov</a> Phone: 360/902-2200	<input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service  <input checked="" type="checkbox"/> email
<u>Party</u>	<u>Method of Service</u>
David Danner, Chairman Utilities and Transportation Commission 1300 S. Evergreen Park Drive SW PO Box 47250 Olympia, WA 98504-7250 Email: <a href="mailto:ddanner@utc.wa.gov">ddanner@utc.wa.gov</a> Phone: 360/664-1208	<input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service  <input checked="" type="checkbox"/> email
<u>Party</u>	<u>Method of Service</u>
Department of Transportation 310 Maple Park Avenue SE PO Box 47300 Olympia, WA 98504-7300 Email:	<input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service  <input 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 15<sup>th</sup> day of June, 2016, at Olympia, Washington.

  
 Kara Denny, Legal Assistant II