

**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 DENYING MOTION TO
CONTINUE ADJUDICATION UNTIL
AFTER FINAL ENVIRONMENTAL
IMPACT STATEMENT IS ISSUED

1 On May 31, 2016, the City of Vancouver (City) and Columbia Riverkeeper, *et al.*
2 (Riverkeeper) filed a Motion for Issuance of Final EIS Prior to Commencement of Hearing by
3 City of Vancouver and Columbia Riverkeeper, *et al.*, and a copy of the City of Vancouver's
4 January 22, 2016 comments on the Energy Facility Site Evaluation Council's (EFSEC)
5 Tesoro Savage Vancouver Energy Project Draft Environmental Impact Statement. The City
6 filed a Supplemental Declaration of E. Bronson Potter on June 10, 2016. On June 7, 2016,
7 Tesoro Savage, LLC (Tesoro-Savage) filed an Applicant's Response to Motion for Issuance
8 of Final EIS Prior to Commencement of Hearing by City of Vancouver and Columbia
9 Riverkeeper, *et al.* The Port of Vancouver joined in Tesoro-Savage's Response on June 7,
10 2016. The City and Riverkeeper filed their Reply on June 13, 2016.

11 The City and Riverkeeper argue that the Washington State Environmental Policy Act
12 (SEPA), RCW 43.21C.010. *et seq.*, requires that EFSEC have before it, a complete and
13 adequate EIS to inform its decision making, prior to taking any action on Tesoro-Savage's
14 application for site certification. The City presents a copy of its extensive critique of the Draft
15 Environmental Impact Statement (DEIS) in the Tesoro-Savage application, asserting that the
16 environmental studies are inadequate and that numerous changes and additions are necessary.
17 Therefore, they ask that EFSEC's adjudication process be postponed until the issuance of the
18 FEIS.

19 EFSEC's adjudication process is separate from its environmental review. The
20 adjudication is not an appeal of EFSEC's SEPA process or products. SEPA provides that
21 agencies may have either an administrative, internal appeal process or no administrative
22 environmental appeal. EFSEC's statutes and rules do not provide for an administrative appeal
23 of its SEPA process, decisions, products, and ultimate recommendation. Furthermore, its
24 decisions and recommendation on a proposal are not final decisions from which an appeal
25 may be taken. This statutory scheme and lack of appellate authority is reflected in EFSEC's
26 rules.

1 EFSEC's SEPA rule provides that the Council may initiate the adjudicative proceeding
2 required by RCW 80.50.090, prior to the completion of even its draft EIS (DEIS). WAC 463-
3 47-060(2). This rule illustrates the fact that EFSEC's statutory scheme consists of four
4 separate, independent processes. It is also consistent with the fact that EFSEC lacks the
5 authority to hold an internal appeal of its SEPA determinations, EISs, or related studies, or of
6 its recommendation to the governor.

7 EFSEC cannot conduct an adjudication that simply challenges the adequacy of its own
8 FEIS or DEIS as that would constitute an internal SEPA appeal. EFSEC's adjudication is a
9 separate, distinct process that will produce findings and conclusions based solely on the
10 evidence presented by the adjudication parties, and not on EFSEC's separate environmental
11 studies. After the Council issues its adjudication findings and conclusions, it will proceed to
12 consideration of the information derived from its other processes, the land use hearing, the
13 FEIS, any other additional independent studies it undertakes, and produce a comprehensive
14 recommendation to the governor.

15 This adjudication is not an appeal of EFSEC's environmental review products, including
16 the DEIS and the FEIS. The only result of waiting until the issuance of the FEIS in this
17 application review process would be needless delay. EFSEC has a statutory duty to expedite
18 the processing of applications. RCW 80.50.075. Therefore it is not appropriate to postpone
19 the adjudication until issuance of the FEIS.

20 **ORDER**

21 The Motion for Issuance of Final EIS Prior to Commencement of Hearing by the City of
22 Vancouver and Columbia Riverkeeper, *et al.* is DENIED.

23 DATED and effective at Olympia, Washington, the 21st day of June, 2016.



Cassandra Noble
Administrative Law Judge
State of Washington Energy Facility
Site Evaluation Council