

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 and)
IMPERIUM TERMINAL SERVICES.)

EFSEC Special Meeting Regarding
Declaratory Order
EFSEC Chairman Bill Lynch Presiding

10:00 a.m. - 11:08 a.m.
November 21, 2014
1300 East Evergreen Park Drive SW.
Room 139
Olympia, Washington

Mary M. Paradise, CSR 2469

1 A P P E A R A N C E S

2 BILL LYNCH, EFSEC Chairman

3 EFSEC Council:

4 LILY B. SMITH, Department of Natural Resources

5 DENNIS MOSS, Utilities & Transportation

6 Department

7 CULLEN STEPHENSON, Department of Ecology

8 LIZ GREEN TAYLOR, Department of Commerce

9 JOSEPH STOHR, Department of Fish & Wildlife

10

11 Washington State Building Code Council:

12 ANN C. ESSKO

13 Assistant Attorney General

14 Washington State Attorney General's Office

15 Government Operations Division

16 7141 Cleanwater Drive SW

17 Olympia, Washington 98504-0108

18

19 EFSEC Staff:

20 Tammy Mastro

21 Kali Wraspir

22 Jim L. Laspina

23 Sonia Bumpus

24 Stephen Posner

25 Joan Aitken

1 Olympia, Washington, November 21, 2014

2 10:00 a.m.

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5 P R O C E E D I N G S

6
7 (The following proceedings were digitally
8 recorded and transcribed subsequently by Mary M.
9 Paradise, court reporter.)
10

11 CHAIRMAN LYNCH: We're going to go ahead
12 and get started. Sorry for interrupting. We're
13 going to go ahead and get started now. It is five
14 minutes after 10:00. It is Friday, November 21st,
15 2014, and we are in a special session to consider a
16 declaratory -- a petition for declaratory order
17 that was filed with counsel from Earthjustice.

18 At this point in time, we'll be going into
19 executive session pursuant to RCW 42.30 110(1)(i)
20 to discuss potential agency litigation, and we will
21 be back at 10:35. Thank you.

22 (The above recorded proceedings concluded
23 at 10:10 a.m.)
24
25

1 (The following proceedings were reported
2 in front of Mary M. Paradise, court reporter.)
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4 CHAIRMAN LYNCH: This is Bill Lynch. We
5 are in the special meeting regarding the petition
6 for declaratory order that was filed with counsel
7 from the Earthjustice on behalf of the Quinault
8 Indian Nation regarding the Westway Terminal and
9 Imperium Terminal, and we immediately went into
10 executive session.

11 It is a little bit after 10:35. We need a
12 little bit more time in our executive session, so
13 we will be coming back in 15 minutes. Thank you.

14 (A short recess was then taken.)

15 CHAIRMAN LYNCH: We are back. This is the
16 special meeting of the Energy Facility Site
17 Evaluation Council, Friday, November 21st. It is a
18 little bit before 11:00 AM, and just for those of
19 you who are just joining us now, the council
20 convened at a little bit after 10:00 o'clock this
21 morning, and for the purpose of discussing the
22 petition for declaratory order that was filed by
23 Earthjustice on behalf of -- on behalf of the
24 Quinault Indian Nation.

25 The petition for declaratory order is in

1 respect to the Westway Terminal and Imperium
2 Terminal in Grays Harbor, and the council almost
3 immediately went into executive session. We
4 extended our executive session, and now we're back,
5 and we went into executive session pursuant to RCW
6 42.30 110(1)(i), which is to discuss potential
7 agency litigation, as allowed under that section.

8 And I neglected to have our staff call the
9 roll at the commencement of the special meeting, so
10 if staff could please call the roll at this time.

11 MS. MASTRO: Department of Commerce.

12 MS. GREEN TAYLOR: Liz Green Taylor here.

13 MS. MASTRO: Department of Ecology.

14 MR. STEPHENSON: ^{Cullen}~~Colin~~ Stephenson here.

15 MS. MASTRO: Fish and Wildlife.

16 MR. STOHR: Joe Stohr here.

17 MS. MASTRO: Department of Natural
18 Resources.

19 MS. SMITH: Lily Smith here.

20 MS. MASTRO: Utilities and transportation
21 Commission.

22 MR. MOSS: Dennis Moss is here.

23 MS. MASTRO: Chair, there is a quorum.

24 CHAIRMAN LYNCH: Thank you. And under RCW
25 34.05 240, which is a section under the

1 Administrative Procedure Act pertaining to
2 declaratory orders, under sub 5 of that section, it
3 sets forth a number of options for an agency to
4 pursue, once a declaratory order has been filed,
5 and it states that within -- under sub 5, within 30
6 days after receipt of a petition for a declaratory
7 order, an agency, in writing, shall do one of the
8 following, and it lists four different options.

9 And I the thing that makes the most sense
10 for the council to do is to pursue option B, which
11 is to set the matter for specified proceedings to
12 be held no more than 90 days after receipt of the
13 petition. And how I envision this happening is
14 that we would have an early deadline to have people
15 file, if they have any objections to the council
16 issuing a declaratory order, because under sub 7 of
17 that same RCW 34.05 240, it states that an agency
18 may not enter a declaratory order that would
19 substantially prejudice the rights of a person who
20 would be a necessary party and who does not consent
21 in writing to the determination of the matter by a
22 declaratory order proceeding.

23 So my thoughts are is that we would
24 establish a schedule, first of all, for filing
25 objections to the declaratory order. Objections

1 would be filed by December 12th, and by that -- and
2 as part of the request for us not to make a
3 determination on this matter, we would expect the
4 person filing this to also state why they
5 constitute a necessary party to this proceeding.

6 Any response to that would be -- have to
7 be filed and served by December 17th, and a reply
8 would be due December 22nd.

9 Assuming that no objections have been
10 filed to ESFEC issuing a declaratory order, we
11 would establish a schedule for briefing for this
12 particular issue with oral argument being held
13 February 2nd before the council. So I would
14 imagine setting a deadline in early January for the
15 initial brief, assuming that it would be
16 Earthjustice filing the initial brief, saying why
17 they -- why the council should act and why we do
18 have jurisdiction over this issue. Ten days would
19 be -- would be provided for a response, and five
20 days for a reply.

21 So we -- so we'd be essentially handling
22 this as a -- a motion for summary judgment. And so
23 what we will be doing later today is be issuing a
24 press release and also providing a mailer that
25 sends out the schedule so that people who weren't

1 able to attend the hearing or listen in on the
2 hearing would have a sense of how to -- how the
3 council intends to proceed.

4 And at this point in time, I would like to
5 open it up to other council members to see if they
6 have any comments on this proposal.

7 MS. GREEN TAYLOR: Chair?

8 CHAIRMAN LYNCH: Yes, Ms. Green Taylor

9 MS. GREEN TAYLOR: I'm very much in favor
10 of the proposal to exercise option 5(b). I think
11 there are sufficient questions raised in the
12 petition that we are not able to examine in detail
13 without further testimony, and so I -- I definitely
14 would like to hear more from the interested
15 parties.

16 CHAIRMAN LYNCH: Thank you.

17 MR. MOSS: Chairman Lynch, I would like to
18 acknowledge for the record that due to unfortunate
19 circumstances, I was unable to join the council
20 until late, in its executive session today, and did
21 not hear the full discussion during that session.
22 So it's my -- I just want to alert you that it
23 would be my intention to abstain from any vote on
24 any motion that's made in this matter.

25 CHAIRMAN LYNCH: Thank you, Mr. Moss. Any

1 other comments? Yes, Ms. Smith.

2 MS. SMITH: Chair, I'm curious whether an
3 objector would need to demonstrate that they were a
4 just and necessary party, or also, a necessary
5 party that would have rights that would be
6 substantially prejudiced under the statute.

7 CHAIRMAN LYNCH: Correct. You're exactly
8 right. They would have to meet the requirements of
9 -- of subsection 7. I was trying to shorthand it a
10 little bit, but you are correct in your
11 observation.

12 MS. SMITH: Thank you. I understand.

13 CHAIRMAN LYNCH: Any other comments?
14 Well, at this point in time, I would entertain a
15 motion that the council proceed pursuant to RCW
16 34.05 240(5)(b), which is that we would be setting
17 this matter for specified proceedings to be held no
18 more than 90 days after receipt of the petition.

19 MR. STEPHENSON: I will so move.

20 CHAIRMAN LYNCH: It's been moved that we
21 pursue 34.05 240(5)(b). Do I have a second?

22 MS. GREEN TAYLOR: I'll second that
23 motion.

24 CHAIRMAN LYNCH: It's been moved and
25 seconded that we address the petition for

1 declaratory order pursuant to 34.05 240(5)(b). All
2 those in favor say aye.

3 MS. SMITH: Aye.

4 MR. STEPHENSON: Aye.

5 MS. GREEN TAYLOR: Aye.

6 MR. STOHR: Aye.

7 CHAIRMAN LYNCH: Opposed?

8 UNIDENTIFIED VOICE: Opposed.

9 CHAIRMAN LYNCH: And abstaining?

10 MR. MOSS: I'll abstain.

11 CHAIRMAN LYNCH: The motion passes, and we
12 will be developing a schedule for public disbursal
13 a little bit later.

14 Do we have any further business in front
15 of us today? Hearing none, we are adjourned.
16 Thank you.

17 (The proceedings concluded at 11:08 a.m.)

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C E R T I F I C A T E

STATE OF WASHINGTON
COUNTY OF KING

I, Mary M. Paradise, a Certified Shorthand Reporter in and for the State of Washington, do hereby certify that the foregoing transcript of the proceedings of the EFSEC Special Meeting is true and accurate to the best of my knowledge, skill and ability.

IN WITNESS WHEREOF, I have hereunto set my hand this 25th day of November, 2014.

MARY M. PARADISE, CSR