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WASHINGTON STATE
ENERGY FACILITY SITE EVALUATION COUNCIL
Richard Hemstad Building
1300 South Evergreen Park Drive Southwest
Conference Room 206
Olympia, Washington
Wednesday, January 7, 2015
2:04 p.m.

SPECIAL COUNCIL MEETING
Verbatim Transcript of Proceedings

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

2 CHAIRMAN:

3 BILL LYNCH

4 DEPARTMENT OF COMMERCE:

5 LIZ GREEN TAYLOR

7 DEPARTMENT OF ECOLOGY:

8 CULLEN STEPHENSON

9 FISH AND WILDLIFE:

10 JOE STOHR

11

12 NATURAL RESOURCES:

13 DAN SIEMANN

14

15 UTILITIES AND TRANSPORTATION COMMISSION:

16 DENNIS MOSS

17 ATTORNEY GENERAL'S OFFICE:

18 ANN C. ESSKO

19 EFSEC STAFF:

20 CASSANDRA NOBLE, Administrative Law Judge
21 KALI WRASPIR
22 TAMMY MASTRO
23 STEPHEN POSNER
24 SONIA BUMPUS
25 JIM LASPINA

24 * * * * *

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1 Olympia, Washington

2 2:04 p.m.

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

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7 CHAIRMAN LYNCH: Good afternoon. This is
8 January 7th, and it's the special meeting of the Washington
9 State Energy Facility Site Evaluation Council. It's a
10 little bit after 2:00, and could we please have the staff
11 call the roll?

12 MS. MASTRO: Department of Commerce?

13 MS. GREEN TAYLOR: Liz Green Taylor, here.

14 MS. MASTRO: Department of Ecology?

15 MR. STEPHENSON: Cullen Stephenson, here.

16 MS. MASTRO: Fish and Wildlife?

17 MR. STOHR: Joe Stohr's here.

18 MS. MASTRO: Natural Resources?

19 MR. SIEMANN: Dan Siemann, 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.

25 And is there anybody on the phone who would

1 care to identify themselves for purposes of our record,
2 though you're not required to?

3 (No response.)

4 CHAIRMAN LYNCH: Okay. Let's go ahead and
5 proceed.

6 The purpose of this special meeting today is
7 it's a follow-up on the special meeting we had on
8 November 21st, and it was in response to a petition for a
9 declaratory order that was filed by Earthjustice on behalf
10 of the Quinault Indian Nation regarding the Westway
11 Terminal and the Imperium Terminal, those proposed projects
12 in Grays Harbor County.

13 And what I'd like to do now is go into
14 executive session pursuant to RCW.42.30.110, Sub 1, Sub I,
15 which allows an agency to go into executive session to
16 discuss potential agency litigation.

17 And we will come back out at 3:00, so for
18 right now, we are temporarily adjourned.

19 (Meeting temporarily adjourned from 2:06 p.m. to
20 3:05 p.m.)

21 CHAIRMAN LYNCH: Good afternoon. This is
22 Bill Lynch, the Chair of EFSEC, calling the Council back
23 into order.

24 We have just concluded our executive session
25 regarding the Westway Terminal Company and Imperium

1 Terminal Services proposed projects, and we discussed the
2 petition for declaratory order in those facilities.

3 We're now in public meeting, and what I would
4 like to recommend to my colleagues is that, given the
5 briefing that we've received on behalf of the parties, that
6 first of all, that we find that the requirements of
7 34.05.240, Sub 7, have been met, both by Westway Terminal
8 Company and Imperium Terminal Services such that the
9 Council will not issue a declaratory order as requested.

10 There has been quite a bit of discussion
11 about the jurisdiction of the Council, and the Council
12 takes its jurisdiction very seriously, but given the time
13 frame of where we are in these proposals, potential
14 litigation, available resources, the Council believes that,
15 rather than express an opinion itself regarding its
16 jurisdiction through an adjudication, which we think is the
17 appropriate mechanism to resolve the jurisdictional issues
18 through some sort of trial or an adjudication, we are not
19 going to express an opinion on that and we will leave it up
20 to parties if they want to pursue this to take an action
21 elsewhere, such as in Superior Court.

22 And also, that the other part of that, that
23 we've heard from Earthjustice, is they -- as part of their
24 briefing, they requested or seemed to request that the
25 Council engage in rule-making, and we believe that there's

1 some merit to this proposal, but that the -- that
2 Earthjustice actually used the statutory procedure that's
3 outlined for formally requesting that we engage in
4 rule-making, and there are some -- a number of requirements
5 that are set forth in that statute, and we think that is a
6 better way to handle that particular process.

7 And so at this point in time, I will open it up
8 to -- that is -- those are my thoughts. I'd like to open
9 it up to other Councilmembers if they'd like to add to the
10 discussion.

11 MR. MOSS: Well, Chair Lynch, I would simply
12 observe that the statute concerning declaratory judgment
13 actions is fairly clear in stating various criteria that --
14 as to which there has historically been a fairly low
15 threshold, I think.

16 Clearly, the Imperium facility and the
17 Westway Terminal facility are interested parties, necessary
18 parties, in fact, and it appears that their interest may be
19 substantially impacted were we to go forward with a
20 declaratory order action.

21 Therefore, the statute would prohibit us from
22 doing so. We don't really have a whole lot of
23 discretion ~~distribution~~, if any, in the matter, nor do we seem to have
24 any other appropriate vehicle, process-wise, to go forward
25 with a decision on jurisdiction and adjudication to make

1 that decision, so I, essentially, am in agreement with what
2 you said.

3 CHAIRMAN LYNCH: Thank you, Councilmember
4 Moss.

5 Any other comments by the Council?

6 And I just found the WAC, the provision, the
7 rule in the Washington Administrative Code regarding
8 petitioning an agency for the adoption of an agency rule,
9 and in particular, that would be WAC 82-05-020, which sets
10 forth the criteria about what must -- what information must
11 be included in a petition.

12 So at this point in time, I would entertain a
13 motion that would have the Council issue an order which
14 would dismiss the declaratory -- the petition for the
15 declaratory order, and then we would circulate that to the
16 Councilmembers for editing, and also it would direct the --
17 Earthjustice to use the WAC 82-05-020 process for
18 petitioning for the adoption of an agency rule.

19 MR. MOSS: Chair Lynch, I would move that the
20 Council move to -- or adopt a motion to -- is the right
21 word reject the petition, or deny the petition for
22 declaratory order?

23 CHAIRMAN LYNCH: Yes.

24 MR. MOSS: And should the rule-making be by
25 separate motion or a part of the same motion, do you think?

1 CHAIRMAN LYNCH: Well, I think that it's
2 going to be in the same decision, so it can be part of the
3 same motion.

4 MR. MOSS: All right. And further, that the
5 order -- the staff be directed to prepare an appropriate
6 order, so denying the petition and also outlining the
7 process by which a petition for rule-making can be properly
8 brought before the Council under the statutes you've cited.

9 CHAIRMAN LYNCH: Do we have a second to the
10 motion?

11 MR. STOHR: I'll second that.

12 CHAIRMAN LYNCH: Councilmember Stohr has
13 seconded the motion. All those in favor say, "Aye."

14 COUNCILMEMBERS: Aye.

15 CHAIRMAN LYNCH: Opposed?

16 (No response.)

17 CHAIRMAN LYNCH: Motion carries.

18 And I would anticipate having the decision to
19 the Councilmembers for circulation -- I always do this to
20 myself. I say a deadline that ends up being too quick --
21 by the end of the month.

22 And say no further business in front of the
23 Council, we're adjourned. Thank you.

24 (The meeting was adjourned at 3:12 p.m.)

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C E R T I F I C A T E

STATE OF WASHINGTON
COUNTY OF KING

I, Ryan Ziegler, a Certified Shorthand Reporter in
and for the State of Washington, do hereby certify that the
foregoing transcript of the special hearing of the
Washington State Energy Facility Site Evaluation Council on
January 7, 2015, is true and accurate to the best of my
knowledge, skill, and ability.

IN WITNESS WHEREOF, I have hereunto set my hand
and seal this January 13, 2015.

RYAN ZIEGLER, RPR, CCR