

BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of the Petition of)	
)	DOCKET NO. _____
COLUMBIA RIVERKEEPER)	
)	
For a Declaratory Order Re: Jurisdiction Over)	RESPONSE TO OBJECTIONS
)	
KALAMA METHANOL)	
MANUFACTURING AND EXPORT)	
<u>FACILITY.</u>)	

INTRODUCTION

Northwest Innovation Works, Kalama LLC (“NWIW”) and the Port of Kalama (“Port”) object to the Energy Facility Site Evaluation Council (“Council”) determining—in a formal, transparent public hearing—whether the Council has jurisdiction over a methanol refinery that would consume roughly one third of the natural gas used in Washington. NWIW and the Port want to avoid the Council’s scrutiny, but the Council should deny their objections. NWIW and the Port have no legal “rights,” as that term is used in RCW 34.05.240(7), to have their applications evaluated by decision-makers other than those mandated by Washington law.

ARGUMENT

Riverkeeper’s requested order could not prejudice NWIW and the Port’s legal rights. Implicit in the objections is the incorrect and unsupported assumption that, by the mere passage of time, NWIW and the Port have acquired legal rights to evade the review procedures mandated by RCW 80.50 *et seq.* NWIW and the Port do not make this argument explicitly. Instead, they ignore the word “rights” in RCW 34.05.240(7) and recite a list of reasons why the Council’s order might inconvenience them. But the plain text of RCW 34.05.240(7) requires more than mere inconvenience—it requires “substantial prejudice” to legally protected “rights.” NWIW and

the Port did not acquire rights to a watered-down permitting process because Riverkeeper waited to reiterate what the Council's Chair told Governor Inslee's staff in November 2013: the Council has jurisdiction over the methanol refinery. *See* Exhibit 1 to Riverkeeper's Petition for Declaratory Order. Accordingly, NWIW and the Port have no legal "rights" under RCW 34.05.240(7) that would be threatened by the order, and the Council should deny the objections.

Riverkeeper reserves its responses on timeliness and the merits for the upcoming briefing and oral argument on the substance of Riverkeeper's petition.

CONCLUSION

For the reasons stated above and in Riverkeeper's Petition for Declaratory Order, Riverkeeper asks the Council to find that considering this petition would not substantially prejudice the rights of NWIW or the Port.

Respectfully submitted this 9th day of August, 2016.



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CERTIFICATE OF SERVICE

I, Miles B. Johnson, declare under penalty of perjury of the laws of the State of Washington, that I am counsel for Petitioner Columbia Riverkeeper and that on August 9, 2016, I caused the foregoing Response to Objections to be served on the following in the manner indicated:

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