

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)	PETITION FOR DECLARATORY
)	ORDER
KALAMA METHANOL)	
MANUFACTURING AND EXPORT)	
<u>FACILITY.</u>)	

1. Name and Address of Petitioning Party:

Columbia Riverkeeper
111 Third Street
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(541) 490 – 0487

2. Statutes at Issue:

RCW 80.50.020(12)(f)—definition of energy plant
RCW 80.50.020(11)—definition of energy facility
RCW 80.50.060(1)—energy facilities to which chapter applies

INTRODUCTION

3. The Washington legislature created the Energy Facility Site Evaluation Council (“the Council”) to balance growth in energy demands with public and environmental protection and to establish consistent state-wide procedures for selecting and approving energy facility sites. RCW 80.50.010. The legislature found that Washington citizens deserve a review process designed “to preserve and protect the quality of the environment; to enhance the public’s opportunity to enjoy the esthetic and recreational benefits of the air, water and land resources; to

promote air cleanliness; and to pursue beneficial changes in the environment.” RCW 80.50.010(2).

4. To effectuate these goals, petitioner Columbia Riverkeeper (“Riverkeeper”) requests a declaratory order stating that the Council, not Cowlitz County, has jurisdiction over Northwest Innovation Works’ (“NWIW”) proposal to build a natural gas-to-methanol refinery and export terminal at Kalama, Washington.

5. NWIW, a company controlled by the Chinese government, seeks to take advantage of Washington’s cheap natural gas, water, and electricity to manufacture methanol for export to China. NWIW’s proposal would include construction of a 90-acre methanol refinery at the Port of Kalama, a massive new dock and dredging in the lower Columbia River, and increased ship traffic through the Columbia River estuary. The methanol refinery would use gas extracted through hydraulic fracking, generate hazardous air pollutants, and consume millions of gallons of groundwater every day.

6. To supply NWIW’s methanol refinery with natural gas, Northwest Pipeline LLC proposes building a 3.1-mile pipeline through a pioneer cemetery and residential properties in Cowlitz County. Northwest Pipeline LLC has requested, and received, approval from the Federal Energy Regulatory Commission to seize private and public lands via eminent domain in order to construct the natural gas pipeline.

7. NWIW’s proposal falls under the statutory definition of “energy plants” over which the Council has jurisdiction. *See* RCW 80.50.020(12). Specifically, NWIW’s proposed methanol refinery is a facility “capable of processing more than twenty-five thousand barrels per day of petroleum or biofuel into refined products” *See* RCW 80.50.020(12)(f). Natural gas is a form of petroleum that, under NWIW’s proposal, would be refined into methanol. The

methanol refinery would receive more than 100,000 barrels per day of methane, the primary component in natural gas.

FACTUAL BACKGROUND

8. On April 9, 2014, NWIW and the Port of Kalama executed a lease for the construction and operation of the methanol refinery and export terminal. On October 31, 2014, the Port of Kalama and Cowlitz County issued a determination of significance under the State Environmental Policy Act for NWIW's proposal. On March 3, 2016, the Port of Kalama and Cowlitz County issued a draft Environmental Impact Statement ("Draft EIS")¹ describing the methanol refinery. A final Environmental Impact Statement is not expected to be published for several months.

9. NWIW has submitted applications or pre-application materials to Cowlitz County for land use and shorelines permits, to the Washington State Department of Ecology for permits under the Clean Water Act, and to the Southwest Clean Air Agency for a permit under the Clean Air Act. None of these agencies have made decisions about NWIW's applications or even published draft permits for public review.

REQUIREMENTS FOR A PETITION FOR A DECLARATORY ORDER: RCW 34.05.240(1); WAC 463-34-070

10. Pursuant to state law, any petition for a declaratory order must demonstrate that a controversy necessitating resolution exists; that the requested order will not be an advisory opinion; that the identified controversy adversely affects the petitioner; and that the harm to the petitioner from the existing controversy outweighs any adverse effects that would result from the requested order. RCW 34.05.240(1)(a)–(d).

¹ Available online at: <http://kalamamfgfacilitysepa.com/>.

A. Need for Resolution

11. The Council should formally and expeditiously resolve which Washington agencies have jurisdiction over NWIW's proposal. *See* RCW 34.05.240(1)(a). Because state and local regulatory decision-making processes have not begun in earnest, the Council has a window of opportunity to clarify the Council's jurisdiction and assert regulatory control over the permitting of NWIW's proposal.

B. Actual Controversy

12. There is an actual controversy regarding this jurisdictional issue, not just a theoretical dispute. *See* RCW 34.05.240(1)(b). When NWIW initially proposed constructing methanol refineries in Washington, Council Chair Bill Lynch and staff believed that such projects fell within the Council's jurisdiction. *See* Exhibit 1. NWIW and the Port of Kalama² believe that the Council lacks jurisdiction over NWIW's proposal. *See* Exhibits 2, 3, 4, 5, and 6. This fundamental dispute has real consequences for the parties because this jurisdictional question determines the standards and process for permitting the methanol refinery and terminal. If the Council assumes jurisdiction over NWIW's proposal, the permitting standards and process will be substantively different from, and more inclusive of public participation than, Cowlitz County's permitting processes.

C. Uncertainty Adversely Affects Petitioner

13. The Council's failure to assert jurisdiction over the proposed Kalama methanol refinery injures Riverkeeper and its members in several ways. *See* RCW 34.05.240(1)(c). First, construction and operation of the refinery, pipeline, and export terminal will adversely impact the Columbia River ecosystem that Riverkeeper and its members use, enjoy, and work to protect.

² The Port of Kalama has asserted that it is a lead SEPA agency; the Port of Kalama would not be a lead SEPA agency if the Council has jurisdiction over NWIW's project. *See* WAC 197-11-938(1).

Second, construction and operation of the methanol refinery and export terminal will increase deep-draft vessel traffic with attendant increases in pollution, delays, and safety hazards that will impact fishing and recreational access on the Columbia River. Third, operation of this project will result in significant increases in Washington State's natural gas consumption and contribution to global emissions of greenhouse gases. The proposal's many impacts will harm Riverkeeper and its members' commercial, recreational, conservation, aesthetic, spiritual, and other interests.

D. No Adverse Effects From the Requested Order

14. The adverse effect of the jurisdictional uncertainty on Riverkeeper "outweighs any adverse effects on others or on the general public that may likely arise from the order requested," RCW 34.05.240(1)(d), because there would be no adverse effects if the Council asserts jurisdiction. On the contrary, everyone benefits from a clear order by the Council. If the Council asserts jurisdiction, the result will be a thorough, transparent review process followed by a decision about NWIW's proposal made by the proper authority.

15. A declaratory order from the Council on jurisdiction could prevent future litigation and delay. There are two avenues to receive a formal opinion on jurisdiction over NWIW's methanol refinery. If the Council does not act on this petition, Riverkeeper or others would be left to challenge—for lack of jurisdiction—local and state permits issued for the methanol refinery over the coming years. It would be more efficient to resolve jurisdictional questions before various permitting processes have substantially begun, much less concluded.

16. Besides avoiding confusion and delay, the public would substantially benefit from the Council reviewing NWIW's proposal. First, with Council jurisdiction, the level of review will reflect the level of impact—state-wide review for a project impacting the entire state. Second, there will be greater transparency and opportunity for public input during the review, a

necessary component of a permitting process with such significant consequences for Washingtonians. RCW 80.50.090. Another important effect of the Council jurisdiction would be the appointment of an assistant attorney general as a counsel for the environment. RCW 80.50.080. It is crucial that the environment have a representative during the consideration of this unprecedented proposal in Washington. Finally, under the Council's jurisdiction, the final decision would be made by the Governor, a more appropriate decision maker on this major public issue. RCW 80.50.100. It is in the public's best interest, as well as Riverkeeper's, to have a robust state-wide review and debate about the largest proposed methanol refinery in the nation, and the first ever in Washington.

THE KALAMA METHANOL MANUFACTURING FACILITY FALLS UNDER EFSEC JURISDICTION PURSUANT TO RCW 80.50.020(12)(F).

17. The State of Washington, through the passage of RCW 80.50, assigned jurisdiction over the permitting of certain "energy facilities" to the Council. RCW 80.50.060(1). The term "energy facilities" includes "energy plants," RCW 80.50.020(11), and "energy plants" include:

"Facilities capable of processing more than twenty-five thousand barrels per day of petroleum or biofuel into refined products"

RCW 80.50.020(12)(f). NWIW's proposed methanol refinery meets this definition and therefore falls within the Council's jurisdiction.

E. Natural gas is "petroleum" for purposes of Council jurisdiction.

18. The natural gas that NWIW's facility would receive is "petroleum" for the purposes of RCW 80.50.020(12)(f). According to the American Association of Petroleum Geologists, "petroleum" is a:

"mixture of gaseous, liquid, and solid hydrocarbons that occurs naturally beneath the

earth's surface [that] can be separated into fractions *including natural gas . . .*”³ (emphasis added). Accordingly, natural gas—like crude oil—is part of “petroleum” as that term is used in RCW 80.50.020(12)(f). Such considerations led Council Chair Bill Lynch and Council Manager Stephen Posner to conclude: “Natural gas is a form of petroleum, which under [NWIW’s] proposal would be refined into methanol.” Exhibit 1.

F. NWIW will receive over 25,000 barrels of natural gas every day.

19. NWIW would receive and process a stunning volume of gas each day—roughly one third the amount of gas used on a daily basis in the entire state of Washington. The threshold for Council jurisdiction is 25,000 barrels of petroleum per day. RCW 80.50.020(12)(f). While natural gas is not typically measured in barrels, it is relatively simple to convert NWIW’s proposed natural gas consumption from dekatherms—as gas is commonly measured—into liquid volume in barrels. NWIW’s minimum projected daily use of 270,000 dekatherms of natural gas (see Draft EIS, p.7-3) equates to a liquid volume of 108,958 barrels of methane, the primary component in natural gas.⁴ This is well above the Council’s jurisdictional threshold of 25,000 barrels per day. *See* RCW 80.50.020(12)(f). NWIW should not be allowed to avoid Council review just because NWIW’s project involves a form of petroleum that is not customarily measured in barrels.⁵

³ American Association of Petroleum Geologists, “*What Is Petroleum?*” webpage (last viewed June 13, 2016) (<http://www.aapg.org/about/petroleum-geology/petroleum-through-time/what-is-petroleum>), citing the American Heritage Dictionary.

⁴ (270,000 dekatherms of natural gas / day) (1,000 cubic feet gas / dekatherm) (1 gallon of liquid methane / 59 cubic feet methane gas*) (1 barrel / 42 gallons) = 108,958 barrels methane / day
* *See* Natural Gas Processors Suppliers Association, *Engineering Data Book*, p.16-2 (1972) (because natural gas is a mixture of methane, ethane, propane, nitrogen, and carbon dioxide, the barrels of natural gas received by NWIW’s facility will differ, but still exceed 25,000 BPD).

⁵ This would be like excluding a large biofuel refinery from the Council’s jurisdiction because the feedstock was customarily measured in gallons or tons.

20. Viewed from a different angle, NWIW's proposed methanol refinery would consume almost twice as much potential energy as a crude oil refinery that triggered the Council's jurisdiction. Twenty-five thousand barrels of U.S. crude oil contains roughly 145 billion British thermal units ("Btu") of energy.⁶ By contrast, NWIW's daily gas consumption would contain, at the very least, 277.56 billion Btu of energy.⁷ If the Council's purpose is to make state-wide policy decisions about projects that entail significant energy consumption or production, NWIW's proposal warrants Council review.

G. NWIW would be "processing" natural gas into a "refined product[]."

21. NWIW's facility would process natural gas (a form of petroleum) into methanol, a refined product. *See* RCW 80.50.020(12)(f). As Council Chair Bill Lynch explained: when determining jurisdiction, the Council's "focus is on the process used," and the natural gas at issue "under [NWIW's] proposal would be refined into methanol." Exhibit 1. Accordingly, NWIW's process falls under the Council's jurisdiction.

22. Information in the draft EIS confirms that NWIW would engage in a process that is subject to the Council's jurisdiction under RCW 80.50.020(12)(f). The draft EIS explains that the natural gas would be processed into "synthesis gas" and then converted into "crude methanol." Draft EIS, p.2-8. The "crude methanol" would then be refined—via distillation—into "refined methanol." *Id.* Accordingly, the methanol is a "refined product[]" processed from natural gas, a form of petroleum. RCW 80.50.020(12)(f).

⁶ (25,000 barrels of U.S. crude) (5,800,000 Btu / 1 barrel U.S. crude)* = 145 billion Btu
* *See* U.S. Energy Information Administration, *Energy Units and Calculators Explained* (http://www.eia.gov/energyexplained/index.cfm?page=about_energy_units).

⁷ (270,000,000 million feet³ of natural gas) (1,028 Btu / 1 foot³ natural gas)* = 277.56 billion Btu
* *See* U.S. Energy Information Administration, *Energy Units and Calculators Explained* (http://www.eia.gov/energyexplained/index.cfm?page=about_energy_units).

H. The Council has jurisdiction, even if NWIW's methanol is made into plastic.

23. The Council has jurisdiction over NWIW's plant regardless of how the methanol would ultimately be used. NWIW has repeatedly asserted that its methanol would be used to create plastics, not burned as fuel. Even if NWIW could provide verifiable, binding support for this assertion, the Council would still have jurisdiction over NWIW's facility. In response to a direct inquiry, the Council's Chair Bill Lynch clearly indicated that the end use of the methanol would not impact the Council's jurisdiction. *See* Exhibit 1. Moreover, nothing in RCW 80.50.020(12)(f) indicates that the end use of a "refined product[]" has any bearing on the Council's authority.

CONCLUSION

24. For the reasons discussed above, petitioner Columbia Riverkeeper asks the Council to declare that the Council has jurisdiction over the proposed Kalama Methanol Manufacturing and Export Facility because the methanol refinery is an "energy plant" within the meaning of RCW 80.50.020(12)(f).

Respectfully submitted this 23rd day of June, 2016.



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