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April 17, 2015

Via E-mail efsec@utc.wa.gov and U. S. Mail

Energy Facility Site Evaluation Council
Attn: Chairman William H. Lynch
P.O. Box 43172
Olympia, WA 98504-3172

Re: Vancouver Energy DEIS Public Comment Period
Application No. 2013-0; Docket: EF-131590

Dear Chairman Lynch and Councilmembers:

On behalf of Vancouver Energy, I am responding to the City of Vancouver's letter requesting a 120-day public comment period on the draft Environmental Impact Statement (DEIS) for the proposed Vancouver Energy Terminal. The City's request violates EFSEC's regulations adopted pursuant to the State Environmental Policy Act (SEPA). The City ignores this fact and offers no legal authority for its request. Furthermore, the City provides incorrect, if not misleading, statements as to why EFSEC should triple the timeframe allowed for public comment on the Vancouver Energy Terminal DEIS. The Council should reject the City's request for a 120-day public comment period and, as has been indicated by EFSEC staff in the past, stay with the public comment period authorized by law.

The Council's SEPA regulations establish a clear 30-day timeframe for public comment upon issuance of a DEIS. *See* WAC 463-47-100(1);¹ WAC 197-11-455(6) ("Any person or agency shall have thirty days from the date of issue in which to review and comment upon the DEIS"). The Council may extend the public comment period upon request, before the end of the comment period, but only by "up to fifteen days." WAC 197-11-455(7). The Council's SEPA regulations dictate a maximum public comment period of 45 days for the DEIS, including the optional extension.

The longer public comment periods on other projects identified in the City's letter were instituted under regulations inapplicable to DEIS issuance for the Vancouver Energy project. First, the Whistling Ridge Energy Project DEIS required environmental review under both SEPA and the National Environmental Policy Act (NEPA). In accordance with EFSEC's SEPA regulations, EFSEC coordinated SEPA review with Bonneville Power Administration's NEPA

¹WAC 463-47-100(1): "The council shall give public notice when issuing ... a draft EIS under WAC 197-11-455."

review, and the agencies jointly issued one DEIS for the Whistling Ridge Energy Project. *See* WAC 463-47-150. Accordingly, issuance of the Whistling Ridge DEIS required compliance with NEPA regulations that establish a minimum floor of 45-days for public comment and allow agency discretion for extending the public comment period. 40 C.F.R. § 1506.10. NEPA regulations that established the DEIS public comment period for Whistling Ridge do not apply to the SEPA DEIS for the Vancouver Energy Terminal.

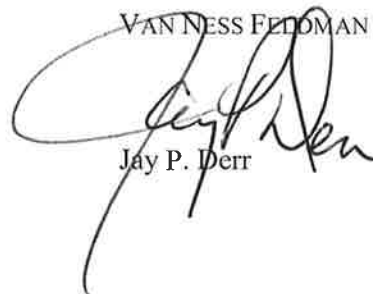
Second, the public comment periods that the City references for the Gateway Pacific Terminal at Cherry Point and Millennium Bulk Terminal in Longview are for their respective EIS scoping processes not DEIS comment periods and, therefore, are not relevant. The SEPA regulations governing scoping provide for potentially longer scoping comment periods. WAC 197-11-410. The scoping comment period for the Vancouver Energy Terminal ran from early October to late December, 2013, and EFSEC did not issue a scoping decision based on those comments until early April, 2014. Moreover, like Whistling Ridge, both coal terminal projects are also being conducted under coordinated SEPA and NEPA review by state and federal agencies; and, unlike the Vancouver Energy Terminal project, the NEPA DEIS comment period regulations govern those projects.

The practical implications of the mandated maximum SEPA public comment period are not dire, as the City implies. Vancouver Energy has posted its preliminary DEIS submittal on its public website in August and September, 2014. Additionally, EFSEC has received and responded to public records requests to review the preliminary DEIS. By the time EFSEC issues the DEIS (currently scheduled for July 2015), the public will have had at least nine months to review the preliminary DEIS for the Vancouver Energy Terminal project and identify impact issues they deemed important for SEPA review. Thirty days (45 days maximum, if an extension is requested and granted) should be sufficient time for the public to review changes and additions set forth in the DEIS and finalize their comments accordingly.

The Council does not have the legal authority to provide for a DEIS public comment period in excess of the maximum specified in the regulations. For that reason, we ask that Council honor those legal schedule limitations and reject all requests for additional time beyond the maximum provided by law.

Respectfully submitted,

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