

January 16, 2015

Via email 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 Adjudication Schedule
Application No. 2013-0; Docket: EF-131590

Dear Chairman Lynch and Councilmembers:

On behalf of Vancouver Energy, I am responding to requests by both Marten Law, on behalf of Columbia Waterfront LLC, and Earth Justice, on behalf of various other interested parties, to delay commencing the adjudication on Vancouver Energy's application for Site Certification. Contrary to the opinion stated in both letters, the State Environmental Policy Act (SEPA), and the EFSEC statute and regulations do not require the Council to delay the preliminary notice and intervention steps until issuance of the draft environmental impact statement (DEIS). In fact, the Council's own SEPA rules expressly permit initiation of the adjudication prior to completion of the DEIS. WAC 463-47-060. Marten Law and Earth Justice Counsel ignore this EFSEC rule that directly addresses the issue and instead imply that the regulations somehow prohibit commencement at this time.

Additionally, EFSEC has a long history of commencing adjudications prior to issuance of the DEIS that further demonstrates that overlapping the adjudication and SEPA review processes promotes timely review required under RCW 80.50.010 without sacrificing opportunities for public participation. The Council has commenced adjudication long before issuance of the DEIS in the past three out of five applications before EFSEC.¹ Third parties in each of these proceedings effectively intervened, participated in prehearing conferences, and identified legal issues relevant to the adjudication prior to issuance of the DEIS. Completion of the DEIS is not necessary to determine many of the procedural and substantive issues to be addressed in the adjudication.

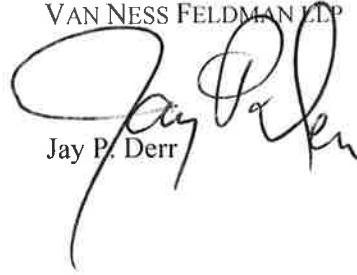
As we recently communicated to the Council, Vancouver Energy shares the Council's goal of completing thorough environmental review with opportunity for public input. Commencing the preliminary notice and intervention steps in the adjudication does not depend on completion of the DEIS nor interfere with the SEPA review process. Vancouver Energy requests that you avoid unnecessary delays by commencing with adjudication of Vancouver Energy's Site Certification application as soon as possible. There is much that needs to be accomplished during the adjudication phase of EFSEC review.

¹ These applications include *Whistling Ridge Wind* (adjudication commenced June 25, 2009, DEIS published May 21, 2010); *Kittitas Valley Wind* (adjudication commenced May 16, 2003, DEIS published December 12, 2003), and *BP Cherry Point Cogeneration* (adjudication commenced September 18, 2002, DEIS published September 5, 2003).

Some of this can be effectively initiated at this stage, prior to issuance of the DEIS without compromising a thorough and complete review. To date, the parties' ongoing active engagement in this project certainly indicates that they are not still evaluating whether to participate or not, and nothing in the DEIS is likely to change their minds in that regard. The Council should reject these requests.

Respectfully submitted,

VAN NESS FELDMAN LLP

A handwritten signature in black ink, appearing to read "Jay P. Derr", is written over the typed name and firm name.

Jay P. Derr

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