



January 16, 2015

Via Email Followed by Mail

Energy Site Evaluation Council
c/o Chairman William Lynch
P.O. Box 43172
Olympia, WA 98504-3172

Re: Tesoro-Savage Vancouver Energy Terminal: DEIS and Adjudication Schedule
Application No. 2013-01

Dear Council Members and Chairman Lynch:

On behalf of Columbia Riverkeeper, Friends of the Columbia Gorge, Washington Environmental Council, Sierra Club, ForestEthics, Climate Solutions, and Spokane Riverkeeper, I write to express our opposition and deep concerns with any attempt to rush the adjudicative and environmental review process for the proposed Tesoro-Savage project. On December 17, 2014, attorneys for Tesoro-Savage requested that the Council and staff “establish a specific schedule for the remaining steps of the EFSEC review process.” While we have no opposition to reasonable schedule clarity, we are very opposed to beginning the adjudicative process early in an effort to appease project proponents.

At the December 2014 Council meeting, EFSEC staff estimated that the draft environmental impact statement (DEIS) would be completed and published for public review and comment in May 2015. The Council has repeatedly stated that the adjudication process would begin after publication of the DEIS. Yet the agenda for the upcoming January 2015 Council meeting suggests that the Council may reconsider this position and commence the adjudication process prior to the DEIS release.

Such a step would be a mistake, for both procedural and substantive reasons. From a process standpoint, beginning the adjudicative process before the DEIS is available would make it very difficult for parties to decide whether to intervene, as the review of their particular areas of concern would be unknown. It would also be difficult for parties to identify issues of concern, identify and find experts for areas of incomplete or missing analysis, or agree to uncontested facts, as encouraged by WAC 463-30-250. A pre-hearing conference (WAC 463-30-270) held prior to DEIS issuance would be unable to fully identify issues, focus discovery, or identify witnesses. And if, as has been suggested, these hurdles could be overcome by allowing a second round of interventions and identification of contested issues after DEIS issuance, then the whole point of the proposal to begin the adjudication early would be lost, as it would take more time to engage in duplicative efforts and tasks. Patience now will make later proceedings more efficient.

On the substantive side of the balance, a primary purpose behind SEPA review is to ensure that the Council's recommendation is made with full awareness of its potential environmental and public health consequences. *See Norway Hill Pres. & Prot. Ass'n v. King Cnty. Council*, 87 Wn.2d 267, 279 (1976). Beginning an adjudicative review before even the draft environmental analysis is released would stand in the way of such full awareness. The need to fully understand environmental and public health consequences lies behind EFSEC's regulations, which require EFSEC's hearings to include consideration of the environmental impacts of a proposal, and which require a copy of the Environmental Impact Statement to be made available at the adjudication. WAC 463-47-020 (explicitly incorporating WAC 197-11-535(1) and (4)).

In late summer 2014, Tesoro-Savage asked for only a six-month extension of the Council's review period, even though it was quite clear that more time would be needed for complete review. Tesoro-Savage's current tone is one of entitlement, as if a second extension is an unexpected burden. To the contrary, Tesoro-Savage must recognize that the many issues raised by its proposed project, as well as the public controversy surrounding the proposal, deserve and demand a thorough, complete, careful, and fully informed process. The Council is best served by receiving comments on the DEIS prior to beginning any stage of the adjudication.

We appreciate the Council's time and consideration of our position.

Sincerely,



Kristen L. Boyles
Earthjustice
705 Second Avenue, Suite 203
Seattle, WA 98104
(206) 343-7340 | Phone
kboyles@earthjustice.org

*Attorney for Columbia Riverkeeper, Friends of the
Columbia Gorge, Washington Environmental
Council, Sierra Club, ForestEthics, Climate
Solutions, and Spokane Riverkeeper*

cc: *Via Email*
Linda Larson
Ann Essko
Jay Derr
Bronson Potter
Matthew Kernutt