

**BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL**

In the Matter of:
Application No. 2013-01

TESORO SAVAGE, LLC

VANCOUVER ENERGY DISTRIBUTION
TERMINAL

CASE NO. 15-001

ORDER ON OBJECTIONS AND
SETTING PRE-HEARING CONFERENCE

Procedural Setting:

On February 9, 2016, the City of Washougal filed an Objection to Order Clarifying EFSEC's Process, Modifying Dispositive Motion Deadline, Summarizing Preliminary Issues, and Setting Hearing Dates. On February 12, 2016, Tesoro Savage, LLC (Tesoro/Savage) filed Applicant's Objection to Prehearing Order Seeking Clarification of Issues. No responses were filed to either objection.

Discussion:

The City of Washougal's request that its three areas of concern as stated in its Intervenor City of Washougal's Preliminary Prehearing Order Disclosures, be listed and called out as location-specific preliminary issues, as opposed to issues of more general focus. Although listing the City of Washougal's issues as location-specific is appropriate, the original listing is worded as a list of subjects, and not as a list of adjudication legal issues to be resolved by the Council in its findings and conclusions. Therefore the City of Washougal should re-word its issues as such, and they will be added to the list of preliminary issues for the benefit of the parties' preparations and discovery efforts.

Tesoro/Savage objects to the inclusion of any factual matters asserted in the preliminary issues and states that any such facts must be proven if they are to serve as the basis for a legal issue. Tesoro/Savage is correct on that point, and it is well-taken. Any facts presented in the adjudication are subject to adequate proof. Nevertheless, the Council's re-framed list of preliminary issues is intended to clarify the nature of the adjudication to the parties, rather than a final statement of the parties' issues. As the parties are able to conduct discovery and make choices about the matters most pertinent to the adjudication, they will be able to write their own final issues in more precise language, without the assumption of unproven facts. In its articulation of a rationale for the requirement of proof and its careful re-writing of several preliminary issues, Tesoro/Savage has now informed the other parties about how it believes they should articulate their final issues and they are sufficiently advised. Therefore re-writing the preliminary issues in an order is unnecessary.

Similarly, with regard to Tesoro/Savage's objection to preliminary issues that raise land use consistency matters, the parties are informed and on notice of Tesoro/Savage's position and argument regarding the raising of land use-related issues. It is premature to resolve such matters in the abstract at this time. If a specific legal argument related to a purported land use issue needs to be resolved by the Council, it should be done in the context of the adjudication hearing or in a pre-hearing motion after the submission of the parties' final issues and after the matter has been fully briefed and argued.

Tesoro/Savage's request for a conference with the parties and the Administrative Law Judge is a helpful one. A conference will serve all parties in their adjudication preparation and give the parties the opportunity to ask procedural questions. For the convenience of the parties, it will be a telephonic conference, but parties should also be free to attend in person. For clarity and future reference about what is established in the conference, it will be on the record.

Order:

The City of Washougal shall file and serve on all parties a revised and appropriately worded list of its preliminary City of Washougal-specific issues by **March 7, 2016**.

Tesoro/Savage's request for a re-writing of the preliminary issues list to reflect its concerns about assumed facts is denied as it is unnecessary.

Resolution of Tesoro/Savage's objection to preliminary issues raising land use consistency is reserved, but it may be raised before the Council at a later time after full briefing and argument.

A telephonic pre-hearing conference with the parties is set for **March 11, 2016 at 11:00 a.m. PST**. Parties will receive the call-in specifics from EFSEC staff via email prior to the scheduled conference. Parties are also free to attend the conference in person at the Utilities and Transportation Commission, Room 206, 1300 S. Evergreen Park Drive SW, Olympia WA 98504.

Notice to Parties: Unless modified, this prehearing order shall control all further proceedings in this matter. In accordance with WAC 463-30-270(3), any objections to this order must be filed with EFSEC and served on all other parties within ten days after the date of mailing of this order.

DATED and effective at Olympia, Washington this 29th day of February, 2016.

STATE OF WASHINGTON ENERGY SITE EVALUATION COUNCIL

_____/s/_____
Cassandra Noble
Administrative Law Judge

*EFSEC ADJUDICATION NO.15-001
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