

**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 KARPINSKI
REPRESENTATION REQUEST

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2 On May 31, 2016, the City of Washougal filed a Motion to Admit John Karpinski as
3 Additional Hearing Representative for the City of Washougal, with supporting Declaration in
4 Support of Motion of Donald L. English, and a Declaration of John S. Karpinski, with
5 attachments.¹ On June 6, 2016, Tesoro Savage, LLC (Tesoro-Savage) filed a Motion to Strike
6 and an Alternate Motion to Limit Participation. On June 13, 2016, the City of Washougal
7 filed a Response to Motion to Strike and a Declaration of John Karpinski in Opposition to
8 Motion to Strike.

9 The City of Washougal (the City) asks that John S. Karpinski (Mr. Karpinski) be
10 admitted to practice before the Energy Facility Site Evaluation Council (EFSEC, the Council)
11 in the adjudication hearing scheduled to commence on June 27, 2016. Mr. Karpinski is a
12 member of the Washington State Bar, in inactive status. The City's request is that Mr.
13 Karpinski be allowed "...to attend the adjudication for the City of Washougal without the
14 expensive and duplicative attendance of the City attorney."² In his declaration, Mr. Karpinski
15 emphasizes his lengthy experience as a practicing attorney, detailed in his declaration and
16 attached resume, and he asserts that he would be using that legal skill and experience to
17 appear in a representative capacity for the City of Washougal. The City confirms that Mr.
18 Karpinski has been hired as a city employee for the sole purpose of representing the city in the
19 EFSEC adjudication hearing.

20 Tesoro-Savage moves to limit Mr. Karpinski's adjudication participation to legal
21 assistant work and asserts that he not be allowed to question or present witnesses or argument
22 on behalf of the city to the Council, which, it argues, are not the type of assistance that is
23 authorized by EFSEC's rule on appearance and practice before the Council.

¹ Unsigned motion paperwork had been previously filed, corrected with the filling of the signed motion.

² City of Washougal Response to Motion to Strike, page 1

1 WAC 463-30-100(c) provides that, upon permission of the presiding officer, a person
2 may appear before the Council in a representative capacity if they are "...an officer or
3 employee of a party or person seeking party status." Tesoro-Savage points out that, as an
4 inactive member of the Washington State Bar, Mr. Karpinski is not allowed to practice law
5 except in limited circumstances that do not apply in this instance. Washington State Bar
6 Association Bylaw 2a states that "[i]nactive members shall not practice law in Washington,
7 nor engage in employment or duties in the State of Washington that constitute the practice of
8 law." The Washington courts Rules of General Application define the practice of law as
9 follows:

10 The practice of law is the application of legal principles and judgment with
11 regard to the circumstances or objectives of another entity or person(s)
12 which require the knowledge and skill of a person trained in the law. This
13 includes but is not limited to:

14 (1) Giving advice or counsel to others as to their legal rights or the legal
15 rights or responsibilities of others for fees or other consideration.

16 (2) Selection, drafting, or completion of legal documents or agreements
17 which affect the legal rights of an entity or person(s).

18 (3) Representation of another entity or person(s) in a court, or in a formal
19 administrative adjudicative proceeding or other formal dispute
20 resolution process or in an administrative adjudicative proceeding in
21 which legal pleadings are filed or a record is established as the basis for
22 judicial review.

23 (4) Negotiation of legal rights or responsibilities on behalf of another entity
24 or person(s)

25 GR 24(a).

26 GR 24 provides an exception to one acting as a lay representative authorized by
27 administrative agencies or tribunals. GR24(b)(3).

28 City Attorney English asks that Mr. Karpinski be allowed to attend the
29 adjudication for the city to avoid expense and assures the Council that Mr. English
30 remains the City Attorney. Yet he describes Mr. Karpinski's role as duplicative of that of
31 the City attorney. Mr. English cites EFSEC's rule that allows city officers and employees
32 to appear before the Council and argues that if the City manager or planning director can
33 represent the city at the adjudication, then Mr. Karpinski should be allowed to. In
34 support of this argument, Mr. English emphasizes Mr. Karpinski's particular experience
35 and skill, especially his legal background, which is extensive. These are not the sort of
36 skills and experience that a city manager or planning director would have. Mr. Karpinski
37 was hired specifically for his legal skills.

