

**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 DENYING RECONSIDERATION
AND SETTING DEADLINES FOR
ADDITIONAL SUBMITTALS

1 On June 15, 2016, the undersigned, Administrative Law Judge issued an Order Granting
2 the City of Vancouver's Motion for Additional Open Record Time. On the same day, Tesoro
3 Savage LLC (Tesoro-Savage) filed a Response to the City's original motion that was, in the
4 alternative, a Motion for Reconsideration. On June 17, 2016, the City of Vancouver (City)
5 filed Vancouver's Reply to Tesoro-Savage's Response and Motion for Reconsideration.

6 Tesoro-Savage argues that additional open record time is unwarranted because it
7 complied with the Energy Facility Site Evaluation Council's (EFSEC, the Council) rule
8 requiring it to file a complete application reflecting Tesoro-Savage's best available current
9 information and intentions. WAC 463-60-116(1). It further argues that the City had shown no
10 prejudice, and that Tesoro-Savage is not even required to serve opposing adjudication parties
11 with a copy of the amended application.

12 The City points out that Tesoro-Savage filed its amended application on the last possible
13 day, May 27, 2016, and further asserts that the amended application includes hundreds of
14 changes within thousands of pages of documents. The City argues that opponents have not
15 had sufficient opportunity to review all of the changes to determine their significance. So the
16 City requested that the record remain open until August 27, 2016 for responsive submittals.¹

17 EFSEC's rule addresses the need to file a complete application and requires time for the
18 Council to review it prior to the adjudication.

19 Amendments to a pending application must be presented to the council *at*
20 *least* thirty days prior to the commencement of the adjudicative hearing...

21 WAC 463-60-116(2) (Emphasis added.)

¹ The record has already been ordered to remain open for 21 days after the completion of testimony and closing arguments on July 29, 2016 for the filing of post-hearing briefs (till August 19, 2016).

1 While Tesoro Savage is correct, that other than amendments that include commitments
2 and stipulations, it is only required to present an amended application with all changes to the
3 Council. I also agree that Tesoro-Savage was not required to file an amended application 30
4 days prior to the January 28, 2015 commencement of this adjudication. However, the clear
5 intent of EFSEC's rule is to provide not only the Council, but also the adjudicating parties and
6 the interested public, a fair opportunity to review application changes, determine their
7 significance, and address those changes as they deem necessary in the course of the
8 adjudication.

9 In this case, there were extensive changes to Tesoro-Savage's application. I find it to be
10 in the spirit of EFSEC's rule to conclude that the intent is that enough time be provided for all
11 to accomplish an adequate job of analyzing the changes. Given the number and extent of
12 amendments to the application in this case, a modest opportunity for parties to submit written
13 testimony is reasonable. In fairness, I also find it appropriate to provide Tesoro-Savage with
14 time to respond to any additional written testimony.

15 **ORDER**

16 Tesoro-Savage's Motion for Reconsideration of the Order Granting Additional Open
17 Record Time is **DENIED**, except that written testimony from opponents shall be filed by
18 **August 22, 2016**. Tesoro-Savage may file responsive written testimony by **August 26, 2016**.
19 Post-hearing briefs will be due on **August 31, 2016** at which time the entire record will be
20 closed.

21 DATED and effective at Olympia, Washington, the 20th day of June, 2016.

Cassandra Noble
Administrative Law Judge
State of Washington Energy Facility
Site Evaluation Council