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

9 In the Matter of:
10 Application No. 2013-01

11 TESORO SAVAGE, LLC

12 VANCOUVER ENERGY DISTRIBUTION
13 TERMINAL

CASE NO. 15-001

**PRE-HEARING BRIEF OF THE
DEPARTMENT OF NATURAL
RESOURCES**

14 The Department of Natural Resources (DNR), by and through its attorneys,
15 ROBERT W. FERGUSON, Attorney General, and TERENCE A. PRUIT, Assistant Attorney
16 General, files its pre-hearing brief addressing Issues 16, 62, and 63 identified in the February 3,
17 2016, Pre-Hearing Order. As fully explained below, the evidence will show that Vancouver
18 Energy's proposal to build a crude oil transloading facility presents a significant additional risk
19 of wildfire associated with the transportation of crude oil by rail which state fire response
20 resources are not prepared to meet.

21 In the event that EFSEC recommends certification of the Proposal, the draft site
22 certification agreement should contain conditions to address wildfire risk, including the
23 provision of additional training and resources for state and local firefighters to combat
24 additional wildfires associated with the Proposal identified below. DNR respectfully submits,
25 however, that EFSEC should deny the application for the Proposal because the evidence, as
26 presented through the expert testimony of the parties as a whole, shows EFSEC cannot meet its

1 statutory obligation to provide assurance that safeguards associated with the Proposal are
2 adequate for public welfare and protection and to ensure the Proposal, if sited, will produce
3 minimal adverse effects on the environment.

4 I. INTRODUCTION

5 Vancouver Energy asks EFSEC to recommend approval of its application to locate a
6 crude oil transloading facility along the Columbia River at the Port of Vancouver (the
7 Proposal). The evidence at hearing will show that once completed the facility would receive
8 on average 360,000 barrels of crude oil every day, 365 days a year, making it one of, if not the,
9 largest such facility in the United States. All of the crude oil received by the facility would be
10 transported through Washington by rail. To deliver that volume of crude oil would require
11 four to five trains per day each carrying up to 120 fully loaded tank cars over 435 miles of
12 track within the state.

13 As explained in the pre-filed direct testimony of DNR's Wildfire Division Manager
14 Robert Johnson, the Proposal would create an increased risk of wildfire ignition along every
15 mile of track used, both from heat and sparks created by increased daily rail traffic and from
16 catastrophic accidents. Day-to-day operation of the BNSF rail line in Washington has been
17 associated with a number for wildfires in the recent past. BNSF operations or track
18 maintenance in Washington State were associated with four unrelated wildfire ignitions in
19 2008, two in 2014, and one in 2015. In 2003, a westbound BNSF train derailed near the
20 Columbia River and ignited two fires that grew to 800 acres. In 2007, westbound trains on the
21 BNSF line ignited multiple wildfires including several that grew into a 365-acre fire southwest
22 of Spokane which caused significant property damage. State-funded response costs related to
23 the 2007 fire alone reached nearly half a million dollars.

24 The state firefighting forces are not equipped to respond to the wildfire risk from
25 catastrophic explosion and increased daily rail operation associated with the Proposal. DNR
26 maintains Washington State's largest on-call fire department, which protects over 13 million

1 acres of land and assists local fire districts across the state. Mr. Johnson's testimony shows
2 how even in the absence of the Proposal, wildfires in recent years have strained the state's
3 wildfire suppression resources. The 2014 and 2015 fire seasons were the worst and second
4 worst in state history. Fires in 2015 burned over 1 million acres of land, destroyed over
5 300 homes, and took the lives of three firefighters. The 2015 fire season tested the limits of
6 state fire suppression capability, requiring DNR to seek assistance from other states as response
7 needs far outpaced resources.

8 The Proposal threatens to add new dimensions to the wildfire risk. DNR staff and
9 seasonal firefighters who comprise DNR's firefighting force are typically only available for
10 deployment during the months of the fire season. As the proposed facility would operate year
11 round, the increased wildfire risk associated with day-to-day rail operation and the volatility of
12 crude oil transported would not be limited to the months when state wildfire suppression
13 resources are available. In addition, response to a crude oil fire requires specialized training,
14 materials, and equipment that DNR wildland firefighters do not possess. As Mr. Johnson points
15 out in his pre-filed direct testimony, survey results show that, like DNR, "even the most
16 metropolitan, best-equipped departments consider themselves ill prepared to respond to a
17 crude-by-rail [incident] with related explosion and/or fire incident."

18 A related concern is that the risk to train transportation along the rail corridor from
19 landslides has not been addressed. As noted in the pre-filed direct testimony of Timothy Walsh,
20 who served as Chief Hazards Geologist for the Washington Geological Survey for 28 years,
21 "[a] reliable derailment probability analysis is not possible without an adequate landslide
22 hazard analysis." A landslide hitting a train would create an obvious potential source of
23 derailment. Without hitting trains, however, landslides can also indirectly lead to derailments
24 by forcing trains to stop suddenly and by damaging tracks. The Columbia River Gorge, which
25 contains a significant part of the rail line associated with the Proposal, has been among the
26 most landslide-prone areas in the state in the recent past. As pointed out by Mr. Walsh, a

1 recent study by United States Geological Survey geologists, in the Western Columbia River
2 Gorge, “landslides are more numerous and complex than previously mapped.” While modern
3 aerial photography and lidar data exists and could aid assessment of the landslide potential, it
4 has not been used to help mitigate the risks of moving significant quantities of crude oil by rail
5 presented by the Proposal.

6 II. ARGUMENT

7 EFSEC was created, in significant part, to assure the citizens of the state that safeguards
8 associated with an energy facility proposal are “technically sufficient for their welfare and
9 protection” and to ensure “that the location and operation of such facilities will produce
10 minimal adverse effects on the environment.” RCW 80.50.010. These objectives stem from
11 the state’s recognition that for energy facilities “the selection of sites will have a significant
12 impact on the welfare of the population.” That recognition is particularly true here, where a
13 large swath of the state would be impacted. The certification of the Proposal would lead to the
14 transportation of significant quantities of crude oil through communities and over lands from
15 Spokane to Vancouver and all points along the rail lines in-between. Unless and until the
16 significant concerns associated with the transportation of crude oil by rail, including the
17 wildfire and landslide risks discussed above, are addressed, EFSEC will be unable to provide
18 assurance to the public that the safeguards associated with the Proposal are sufficient for public
19 welfare and protection or that the Proposal will have minimal adverse effects on the
20 environment.

21 In the event that EFSEC elects to recommend certification of the Proposal, EFSEC is
22 required to include conditions in the draft certification agreement “to protect state or local
23 governmental or community interests affected by the construction or operation of the energy
24 facility.” RCW 80.50.100(2). As explained in the pre-filed direct testimony of Timothy Walsh
25 and Robert Johnson, any site certification agreement for the facility should, at a minimum,
26 contain provisions to address impacts to state wildfire resources and landslide risk.

1 State firefighters are not prepared to address additional wildfires associated with
2 transportation with crude oil by rail as part of the Proposal. A critical component of
3 preparedness is the ability to address a crude oil fire associated with derailment. As the EFSEC
4 survey of fire districts for the Proposal shows, few, if any, fire agencies would have the training
5 and resources necessary to respond to a train derailment with resulting oil spill and fire.
6 Accordingly, any site certification agreement should include conditions to ensure adequate
7 training and resources for firefighting agencies all along the delivery route associated with the
8 Proposal. In his pre-filed direct testimony, Robert Johnson identifies several such conditions.
9 Mr. Johnson states specialized responders should be located at the proposed facility and along
10 the rail delivery route to the degree necessary to be able to implement an immediate and
11 effective response to a fire associated with a derailment and associated crude oil fire. To that
12 end, the project proponent should be required to ensure that qualified teams are available for an
13 immediate response for an incident anywhere along the rail delivery route, including the
14 facility itself. These staffing and training requirements need to be established within a
15 Department of Ecology-approved Spill Contingency Plan in place before the facility becomes
16 operational and oil is delivered.

17 Any site certification agreement should also address the impact that response to
18 additional fires associated with the Proposal will have on the ability of firefighting agencies to
19 respond to current emergency response calls, given the training needed to adequately prepare
20 for crude oil fires and the personnel required to respond to an oil fire incident. In addressing
21 staff levels, EFSEC should take into consideration the availability of state wildfire response
22 resources on a year-round basis and the potential impact to state firefighting resources, should
23 more rail-initiated fires start during fire season, when deployment to those starts would take
24 resources away from responding to other fires.

25 Rapid response is critical to combating oil fires associated with derailments. DOT
26 regulations require that tank cars be manufactured to withstand an oil pool fire for at least

1 100 minutes without failure. 49 C.F.R. § 179. Given the critical first 100-minute window for
2 an adequate response to a derailment with a crude oil fire, any site certification agreement
3 should ensure the necessary foam, water, and other resources are available to provide adequate
4 response to a fire associated with a derailment at every point in the rail corridor.

5 As noted by Timothy Walsh, adequate assessment of the derailment probability is not
6 possible without an adequate analysis of landslide risk, particularly in the Columbia River
7 Gorge. Accordingly, any site certification agreement should require the applicant to use
8 available lidar and aerial photography to adequately identify the landslide risk.

9 Finally, DNR notes that the pre-filed direct testimonies of Timothy Walsh and
10 Robert Johnson address only a few of the many concerns that have been raised about the
11 transportation of the large volumes of crude oil by rail that the Proposal would require. The
12 City of Vancouver's expert, Robert Blackburn, for example, estimates that the maximum
13 foreseeable loss associated with a derailment and associated crude oil fire within the City of
14 Vancouver is in the range of \$5-6 billion. As noted by Mr. Blackburn, commercial insurance
15 is not available for such catastrophic losses, and even the largest railroad would be unable to
16 cover them. Counsel for the Environment's witness, James Holmes, provides a reasonable
17 estimate of the damages associated with a worst-case spill into the Columbia associated with a
18 derailment. Mr. Holmes estimates that damages would exceed \$84 million and that
19 ecosystems in the Columbia River would take nearly nine years to fully recover.¹ In addition,
20 as Mr. Blackburn notes, the 2013 crude-by-rail derailment disaster in Lac Mégantic, Quebec,
21 killed 47 people and destroyed the city's downtown. Given the loss of life that is foreseeable,
22 the dollar figures associated with a catastrophic derailment incident do not provide an adequate
23 measure of the true human cost of a worst-case disaster in involving shipment of crude by rail.

24
25 ¹ Mr. Holmes puts the damages associated with a worst-case spill from a vessel on the River considerably
26 higher: \$171.3 million.

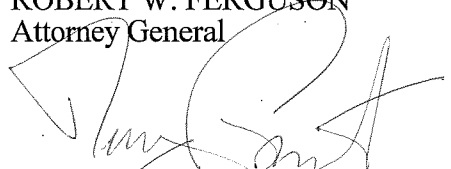
1 Because of the potential for tremendous catastrophic loss associated with shipment of
2 crude-by-rail, and the difficulty in adequately assessing the frequency at which disasters will
3 occur, EFSEC simply cannot provide adequate assurance in a draft site certification agreement
4 that the safeguards associated with the Proposal are “technically sufficient for [public] welfare
5 and protection” or ensure “that the location and operation of such facilities will produce
6 minimal adverse effects on the environment” as required RCW 80.50.010. Accordingly, DNR
7 respectfully submits that the evidence as whole compels the conclusion that the application for
8 site certification for the Proposal should be denied.

9 **III. CONCLUSION**

10 For the reasons set forth above, DNR respectfully submits that in the event EFSEC
11 recommends approval of the Proposal, the draft site certification agreement should contain the
12 conditions discussed in the pre-filed direct testimony of its expert witnesses, Timothy Walsh
13 and Robert Johnson. Based on the evidence as a whole, however, DNR asserts that EFSEC
14 cannot meet its obligations to assure the public that the Proposal contains adequate safeguards
15 for public welfare and protection and to ensure the Proposal will have minimal adverse
16 environmental consequences. Accordingly, EFSEC should deny the application to certify the
17 Proposal.

18 DATED this 20th day of June, 2016.

19 ROBERT W. FERGUSON
20 Attorney General

21 
22 _____
23 TERENCE A. PRUIT, WSBA #34156
24 Assistant Attorney General
25 Natural Resources Division
26 *Attorneys for Washington State Department of
Natural Resources*

CERTIFICATE OF SERVICE

I certify that I caused a copy of the foregoing document to be served on all parties or their counsel of record on June 20, 2016, as follows:

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21 I certify under penalty of perjury, under the laws of the state of Washington, that the
22 foregoing is true and correct.

23 DATED this 20th day of June, 2016, at Olympia, Washington.

24 

25 KIM L. KESSLER
26 Legal Assistant
Natural Resources Division