

BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of:)	CASE NO. 15-001
Application No. 2013-01)	
TESORO SAVAGE, LLC)	CRK RESPONSE TO APPLICANT'S
)	PROCEDURAL OBJECTION
VANCOUVER ENERGY DISTRIBUTION)	
TERMINAL)	
_____)	

As invited by the Council, intervenors Columbia Riverkeeper *at el.* submit this response to applicant Tesoro-Savage's procedural objection, filed September 14, 2017. Intervenors neither oppose nor join Tesoro-Savage's objection, but reserve their right to address the issue at a later time should more information become available.

First, as Tesoro-Savage acknowledges, these objections are premature. Tesoro-Savage has presented no evidence of improper communications or influence in the current EFSEC process. Chair Lynch made unusual statements at the August 2017 EFSEC monthly meeting as he explained his resignation, but those vague statements do not themselves support claims of violation of the appearance of fairness doctrine, improper *ex parte* communications, or violation of EFSEC's deliberative duties and decision-making authority.

Frankly, neither Tesoro-Savage nor Intervenors know what Chair Lynch meant when he voiced his complaints at the end of the EFSEC meeting. Transcript at 26 (Exh. A to Applicant's Procedural Objection). Chair Lynch's resignation letter to Governor Inslee (Exh. B to Applicant's Procedural Objection) does not provide clarification. Several sentences were

redacted pursuant to RCW 5.60.060, presumably because they were related to attorney “advice given ... in the course of professional employment.” This suggests a disagreement between Chair Lynch and the Assistant Attorney General’s assigned to represent EFSEC. A conflict between a client and his lawyers cannot give rise to charges of bias, *ex parte* communications, or abrogation of decision-making authority; nor is it proper for any party to question the lawyers for a state decision-making agency about internal, privileged communications.

Any reference by Tesoro-Savage to the Counsel for the Environment statement opposing the project (Exh. C to Applicant’s Procedural Objections) is misplaced. The Counsel for the Environment is a statutorily appointed position in an EFSEC proceeding. RCW 80.50.080. The Council for the Environment is an “assistant attorney general or a special assistant attorney general who shall represent the public,” RCW 80.50.020(9); in this role, after hearing all the testimony during through the five-week adjudication in 2016, the Attorney General’s Counsel for the Environment recommended that Tesoro-Savage be rejected because it was not in the public interest. That recommendation and position cannot legitimately be the source of any bias or undue influence claims.

Second, Intervenors have raised their own objections to improper *ex parte* communications between Tesoro-Savage and EFSEC staff, complete with actual evidence of such communications. *See* Letter from Chair Lynch, EFSEC, responding to objections to *ex parte* communications (April 28, 2017); Denial of Motion to Strike (August 4, 2017). EFSEC denied that such communications between the Applicant and EFSEC staff were improper, yet those communications are far more likely to result in an objectionable outcome than the comments made by Chair Lynch.

Third, Intervenors, too, are troubled by Chair Lynch’s remarks accompanying his

resignation. The multi-prong EFSEC process for Tesoro-Savage has been long and complicated, and as it draws to conclusion, comments that denigrate that process are of great concern. While no party, we feel sure, wants to go through these proceedings again, Intervenors preserve their right to either oppose or join these procedural objections at later date should evidence arise to support or rebut allegations of bias, undue influence, improper *ex parte* communications, or violations of EFSEC decision-making authority. RCW 80.50.140(2).

Respectfully submitted this 26th day of September, 2017.



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