

**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 AMENDING PRE-HEARING  
ORDER ESTABLISHING PROCEDURES

On May 15, 2015, 11 parties filed a Stipulation on Prehearing Procedures and Joint Motion to Amend Prehearing Order. Following that, on May 18, 2015, the City of Spokane submitted a letter concurring with the Stipulation and Motion. No other responses to the Stipulation and Motion were filed. The parties' motion requested three modifications to the Pre-Hearing Order Establishing Procedures and Setting Deadlines for Submittals (Pre-Hearing Order). The parties requested (1) that pre-filed testimony be required rather than encouraged; (2) that pre-filed testimony be required of fact witnesses in addition to expert witnesses; and (3) that dispositive motions be allowed closer to the scheduled hearing on good cause shown.

Pre-Filed Testimony. The Energy Facility Site Evaluation Council (EFSEC) has traditionally allowed, and often required, pre-filed direct testimony for expert witnesses. The Pre-Hearing Order allowed the parties the flexibility to either pre-file direct testimony for their expert witnesses or present their experts' direct testimony live. The majority of parties, both proponents and opponents of the proposed project, have agreed that they wish to uniformly present pre-filed direct testimony for both fact and expert witnesses. There was no opposition to this request.

It is expected that the majority of the evidence in this adjudication will be elicited from scientific and expert witnesses whose testimony will be supplemented by exhibits presented as much as possible also in advance. In this way, the Council will be able to read both direct expert testimony and exhibits in advance of the hearing. As this is more efficient, and since there is agreement, it is appropriate to grant the parties' motion to require that all expert witness testimony be pre-filed.

For fact witnesses, it is not necessary or as practical, to require the pre-filing of direct testimony. The parties have been encouraged to reach stipulations of fact where there is no controversy, or where agreements can be accomplished. To the extent that such stipulations can be reached, it would make the process more efficient. If that is not possible due to controversy of any sort, it would benefit the Council to hear the witness's testimony in person. Therefore I find that requiring pre-filed testimony of fact witnesses will not serve the integrity or efficiency of the hearing in this adjudication.

Dispositive Motions. The Pre-Hearing Order requires parties to file dispositive motions by 60 days prior to the first day of the adjudication hearing. Responses to such motions must be filed 30 days after the dispositive motion was filed, and replies must be filed within 7 days after responses. If a party waits to file a dispositive motion until 60 days prior to the hearing, the Council would have three weeks to consider the motion, deliberate, and write a decision with findings and conclusions on the issue(s). At the same time the Council would be reading pre-filed testimony, considering any agreed and admitted exhibits, reading the pre-hearing briefing, and considering any other motions that may have been filed. Reducing the current schedule by allowing dispositive motions closer to the hearing would give the Council less than three weeks to issue a decision on dispositive motion(s) and accomplish all of its pre-hearing tasks.

Parties will be submitting their proposed preliminary lists of issues 45 days after the issuance of the Draft Environmental Impact Statement. As a result, all will be aware of the general nature of the contested matters and so should be able to begin early to prepare for dispositive motions well in advance of the scheduled hearing. Extending the time for filing dispositive motions is unnecessary and would unduly burden the Council in the crucial time leading up to the hearing.

For the foregoing reasons, the Council enters the following

#### ORDER

The parties' request to modify the Pre-Hearing Order Establishing Procedures and Setting Deadlines for Submittals is granted in part and denied in part. The parties' motion to allow dispositive motions within 60 days of the scheduled adjudication hearing upon a showing of good cause is DENIED. The parties request to require pre-filed testimony for fact witnesses is DENIED. Parties motion to require pre-filing of expert testimony is GRANTED.

All other provisions of the Pre-Hearing Order Establishing Procedures and Setting Deadlines for Submittals are unchanged and shall remain in effect and 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 28th day of May, 2015.

STATE OF WASHINGTON ENERGY SITE EVALUATION COUNCIL

/s/

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Cassandra Noble  
Administrative Law Judge

*EFSEC ADJUSTICATION NO.15-001  
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Tesoro Savage, LLC  
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