

BEFORE THE STATE OF WASHINGTON  
ENERGY FACILITY SITE EVALUATION COUNCIL

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In the Matter of the Petition of )  
 )  
QUINAULT INDIAN NATION )  
 )  
For a Declaratory Order Re: )  
Jurisdiction Over )  
 )  
WESTWAY TERMINAL COMPANY and )  
IMPERIUM TERMINAL SERVICES. )

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EFSEC Special Meeting Regarding  
Declaratory Order  
EFSEC Chairman Bill Lynch Presiding  
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10:00 a.m. - 11:08 a.m.

November 21, 2014

1300 East Evergreen Park Drive SW.

Room 139

Olympia, Washington

Mary M. Paradise, CSR 2469

A P P E A R A N C E S

BILL LYNCH, EFSEC Chairman

EFSEC Council:

LILY B. SMITH, Department of Natural Resources

DENNIS MOSS, Utilities & Transportation

Department

CULLEN STEPHENSON, Department of Ecology

LIZ GREEN TAYLOR, Department of Commerce

JOSEPH STOHR, Department of Fish & Wildlife

~~Washington State Building Code Council:~~

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Olympia, Washington, November 21, 2014

10:00 a.m.

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P R O C E E D I N G S

(The following proceedings were digitally recorded and transcribed subsequently by Mary M. Paradise, court reporter.)

CHAIRMAN LYNCH: We're going to go ahead and get started. Sorry for interrupting. We're going to go ahead and get started now. It is five minutes after 10:00. It is Friday, November 21st, 2014, and we are in a special session to consider a declaratory -- a petition for declaratory order that was filed with counsel from Earthjustice.

At this point in time, we'll be going into executive session pursuant to RCW 42.30 110(1)(i) to discuss potential agency litigation, and we will be back at 10:35. Thank you.

(The above recorded proceedings concluded at 10:10 a.m.)

1           (The following proceedings were reported  
2 in front of Mary M. Paradise, court reporter.)  
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4           CHAIRMAN LYNCH: This is Bill Lynch. We  
5 are in the special meeting regarding the petition  
6 for declaratory order that was filed with counsel  
7 from the Earthjustice on behalf of the Quinault  
8 Indian Nation regarding the Westway Terminal and  
9 Imperium Terminal, and we immediately went into  
10 executive session.

11           It is a little bit after 10:35. We need a  
12 little bit more time in our executive session, so  
13 we will be coming back in 15 minutes. Thank you.

14           (A short recess was then taken.)

15           CHAIRMAN LYNCH: We are back. This is the  
16 special meeting of the Energy Facility Site  
17 Evaluation Council, Friday, November 21st. It is a  
18 little bit before 11:00 AM, and just for those of  
19 you who are just joining us now, the council  
20 convened at a little bit after 10:00 o'clock this  
21 morning, and for the purpose of discussing the  
22 petition for declaratory order that was filed by  
23 Earthjustice on behalf of -- on behalf of the  
24 Quinault Indian Nation.

25           The petition for declaratory order is in

1 respect to the Westway Terminal and Imperium  
2 Terminal in Grays Harbor, and the council almost  
3 immediately went into executive session. We  
4 extended our executive session, and now we're back,  
5 and we went into executive session pursuant to RCW  
6 42.30 110(1)(i), which is to discuss potential  
7 agency litigation, as allowed under that section.

8 And I neglected to have our staff call the  
9 roll at the commencement of the special meeting, so  
10 if staff could please call the roll at this time.

11 MS. MASTRO: Department of Commerce.

12 MS. GREEN TAYLOR: Liz Green Taylor here.

13 MS. MASTRO: Department of Ecology.

14 MR. STEPHENSON: <sup>Cullen</sup>~~Colin~~ Stephenson here.

15 MS. MASTRO: Fish and Wildlife.

16 MR. STOHR: Joe Stohr here.

17 MS. MASTRO: Department of Natural  
18 Resources.

19 MS. SMITH: Lily Smith here.

20 MS. MASTRO: Utilities and transportation  
21 Commission.

22 MR. MOSS: Dennis Moss is here.

23 MS. MASTRO: Chair, there is a quorum.

24 CHAIRMAN LYNCH: Thank you. And under RCW  
25 34.05 240, which is a section under the

1 Administrative Procedure Act pertaining to  
2 declaratory orders, under sub 5 of that section, it  
3 sets forth a number of options for an agency to  
4 pursue, once a declaratory order has been filed,  
5 and it states that within -- under sub 5, within 30  
6 days after receipt of a petition for a declaratory  
7 order, an agency, in writing, shall do one of the  
8 following, and it lists four different options.

9 And I the thing that makes the most sense  
10 for the council to do is to pursue option B, which  
11 is to set the matter for specified proceedings to  
12 be held no more than 90 days after receipt of the  
13 petition. And how I envision this happening is  
14 that we would have an early deadline to have people  
15 file, if they have any objections to the council  
16 issuing a declaratory order, because under sub 7 of  
17 that same RCW 34.05 240, it states that an agency  
18 may not enter a declaratory order that would  
19 substantially prejudice the rights of a person who  
20 would be a necessary party and who does not consent  
21 in writing to the determination of the matter by a  
22 declaratory order proceeding.

23 So my thoughts are is that we would  
24 establish a schedule, first of all, for filing  
25 objections to the declaratory order. Objections

1 would be filed by December 12th, and by that -- and  
2 as part of the request for us not to make a  
3 determination on this matter, we would expect the  
4 person filing this to also state why they  
5 constitute a necessary party to this proceeding.

6 Any response to that would be -- have to  
7 be filed and served by December 17th, and a reply  
8 would be due December 22nd.

9 Assuming that no objections have been  
10 filed to ESFEC issuing a declaratory order, we  
11 would establish a schedule for briefing for this  
12 particular issue with oral argument being held  
13 February 2nd before the council. So I would  
14 imagine setting a deadline in early January for the  
15 initial brief, assuming that it would be  
16 Earthjustice filing the initial brief, saying why  
17 they -- why the council should act and why we do  
18 have jurisdiction over this issue. Ten days would  
19 be -- would be provided for a response, and five  
20 days for a reply.

21 So we -- so we'd be essentially handling  
22 this as a -- a motion for summary judgment. And so  
23 what we will be doing later today is be issuing a  
24 press release and also providing a mailer that  
25 sends out the schedule so that people who weren't

1     able to attend the hearing or listen in on the  
2     hearing would have a sense of how to -- how the  
3     council intends to proceed.

4             And at this point in time, I would like to  
5     open it up to other council members to see if they  
6     have any comments on this proposal.

7             MS. GREEN TAYLOR: Chair?

8             CHAIRMAN LYNCH: Yes, Ms. Green Taylor

9             MS. GREEN TAYLOR: I'm very much in favor  
10    of the proposal to exercise option 5(b). I think  
11    there are sufficient questions raised in the  
12    petition that we are not able to examine in detail  
13    without further testimony, and so I -- I definitely  
14    would like to hear more from the interested  
15    parties.

16            CHAIRMAN LYNCH: Thank you.

17            MR. MOSS: Chairman Lynch, I would like to  
18    acknowledge for the record that due to unfortunate  
19    circumstances, I was unable to join the council  
20    until late, in its executive session today, and did  
21    not hear the full discussion during that session.  
22    So it's my -- I just want to alert you that it  
23    would be my intention to abstain from any vote on  
24    any motion that's made in this matter.

25            CHAIRMAN LYNCH: Thank you, Mr. Moss. Any

1 other comments? Yes, Ms. Smith.

2 MS. SMITH: Chair, I'm curious whether an  
3 objector would need to demonstrate that they were a  
4 just and necessary party, or also, a necessary  
5 party that would have rights that would be  
6 substantially prejudiced under the statute.

7 CHAIRMAN LYNCH: Correct. You're exactly  
8 right. They would have to meet the requirements of  
9 -- of subsection 7. I was trying to shorthand it a  
10 little bit, but you are correct in your  
11 observation.

12 MS. SMITH: Thank you. I understand.

13 CHAIRMAN LYNCH: Any other comments?  
14 Well, at this point in time, I would entertain a  
15 motion that the council proceed pursuant to RCW  
16 34.05 240(5)(b), which is that we would be setting  
17 this matter for specified proceedings to be held no  
18 more than 90 days after receipt of the petition.

19 MR. STEPHENSON: I will so move.

20 CHAIRMAN LYNCH: It's been moved that we  
21 pursue 34.05 240(5)(b). Do I have a second?

22 MS. GREEN TAYLOR: I'll second that  
23 motion.

24 CHAIRMAN LYNCH: It's been moved and  
25 seconded that we address the petition for

1 declaratory order pursuant to 34.05 240(5)(b). All  
2 those in favor say aye.

3 MS. SMITH: Aye.

4 MR. STEPHENSON: Aye.

5 MS. GREEN TAYLOR: Aye.

6 MR. STOHR: Aye.

7 CHAIRMAN LYNCH: Opposed?

8 UNIDENTIFIED VOICE: Opposed.

9 CHAIRMAN LYNCH: And abstaining?

10 MR. MOSS: I'll abstain.

11 CHAIRMAN LYNCH: The motion passes, and we  
12 will be developing a schedule for public disbursal  
13 a little bit later.

14 Do we have any further business in front  
15 of us today? Hearing none, we are adjourned.  
16 Thank you.

17 (The proceedings concluded at 11:08 a.m.)  
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C E R T I F I C A T E

STATE OF WASHINGTON

COUNTY OF KING

I, Mary M. Paradise, a Certified Shorthand Reporter in and for the State of Washington, do hereby certify that the foregoing transcript of the proceedings of the EFSEC Special Meeting is true and accurate to the best of my knowledge, skill and ability.

IN WITNESS WHEREOF, I have hereunto set my hand this 25th day of November, 2014.

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MARY M. PARADISE, CSR