

**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 GRANTING BNSF RAILWAY
COMPANY LEAVE TO FILE AMICUS
BRIEF

On May 4, 2016, BNSF Railway Company (BNSF) filed a motion for leave to file an accompanying amicus brief in support of Tesoro Savage LLC's (Tesoro Savage) EFSEC Application No. 2013-01. The parties City of Vancouver and Columbia Riverkeeper et al. have filed objections to the proposed amicus brief.

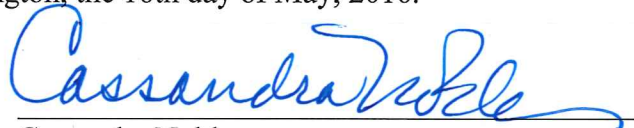
The issue BNSF addressed in the proposed amicus brief is the existence and extent of federal preemption of state authority as it pertains to rail operations in the State of Washington. This legal issue did not specifically arise in this adjudication until Tesoro-Savage and the Port of Vancouver filed dispositive motions that the other parties have now responded to throughout the last two months. As a national rail carrier, BNSF possesses an interest in this aspect of the outcome of these proceedings, as well as a unique familiarity with the legal doctrine of federal preemption and the factual settings within which it comes into play for railroads. BNSF's proposed amicus brief is directed solely at this issue.

The filing of BNSF's amicus brief will assist the Council in its deliberations on the issue of federal preemption in the context of rail operations associated with Tesoro Savage's proposed Vancouver Energy Distribution Terminal.

Order:

For the foregoing reasons, BNSF is granted leave to file its Amicus Brief in Support of Vancouver Energy's Motion to Dismiss and the Port of Vancouver's Motion for Partial Summary Judgment. No additional time is granted for further responses to the amicus brief as the issue of federal preemption has already been fully addressed by the other parties in their motion briefing.

DATED and effective at Olympia, Washington, the 16th day of May, 2016.



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

CERTIFICATE OF SERVICE

I, Kali Wraspir, am a citizen of the United States and a resident of the State of Washington. I am over 18 years of age and not a party to this action. My business address is 1300 S. Evergreen Park Drive S.W., Olympia, Washington 98504.

I HEREBY CERTIFY that on May 16, 2016 I served a copy of the ORDER GRANTING BNSF RAILWAY COMPANY LEAVE TO FILE AMICUS BRIEF on the following parties:

<u>Party</u>	<u>Method of Service</u>
Kelly J. Flint Tesoro Savage Petroleum Terminal, LLC 110 Columbia Boulevard, Suite 108 & 110 Vancouver, WA 98660 Email: kellyf@savageservices.com Phone: 801/944-6600 <i>Applicant</i>	<input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service <input checked="" type="checkbox"/> email
<u>Party</u>	<u>Method of Service</u>
Matthew D Wells, Counsel Tupper Mack Wells PLLC 2025 First Avenue, Suite 1100 Seattle WA, 98121 Email: wells@tmw-law.com Phone: 206-493-2300 <i>Counsel for BNSF Railway Company</i>	<input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service <input checked="" type="checkbox"/> email
<u>Party</u>	<u>Method of Service</u>
Jay Derr, Counsel Van Ness Feldman, LLP 719 Second Avenue, Suite 1150 Seattle, WA 98104-1728 Email: jpd@vnf.com Phone: 206/623-9372 Dale N. Johnson Email: dnj@vnf.com Tadas A. Kisieliuss Email: tak@vnf.com <i>Counsel for Tesoro Savage</i>	<input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service <input checked="" type="checkbox"/> email
<u>Party</u>	<u>Method of Service</u>
Matthew R. Kernutt, Assistant Attorney General Office of the Attorney General 1125 Washington Street SE PO Box 40100 Olympia, WA 98504-0100 Email: Matinkl@atg.wa.gov Phone: 360/586-0740 <i>Counsel for the Environment</i>	<input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service <input checked="" type="checkbox"/> email

Party	Method of Service
<p>David F. Bartz, Jr. Schwabe, Williamson & Wyatt, P.C. 1211 SW Fifth Avenue, Suite 1900 Portland, OR 97204-3795</p> <p>Email: dbartz@schwabe.com Phone: 503/905-1427</p> <p>Alicia L. ("Lisa") Lowe Email: alowe@schwabe.com Phone: 360/905-1427</p> <p>Connie Sue Martin Email: csmartin@schwabe.com Phone: 206/407-1556</p> <p><i>Attorneys for the Port of Vancouver</i></p>	<p><input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service</p> <p><input checked="" type="checkbox"/> email</p>
Party	Method of Service
<p>Taylor Hallvik, Deputy Prosecuting Attorney Christopher Horne, Chief Civil Deputy Clark County Board of Commissioners Civil Division PO Box 5000 Vancouver, WA 98666-5000</p> <p>Email: taylor.hallvik@clark.wa.gov Phone: 360/397-2478</p> <p><i>Counsel for Clark County Board of Commissioners</i></p>	<p><input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service</p> <p><input checked="" type="checkbox"/> email</p>
Party	Method of Service
<p>E. Bronson Potter, Vancouver City Attorney City of Vancouver PO Box 1995 Vancouver, WA 98668-1995</p> <p>Email: bronson.potter@cityofvancouver.us Phone: 360/487-8500</p> <p>Susan Drummond, Counsel for the City of Vancouver Law Office of Susan Elizabeth Drummond 5400 Carillon Pt. Bldg 5000 Kirkland, WA 98033-7357</p> <p>Email: susan@susandrummond.com Phone: 206/682.0767</p> <p>Karen L. Reed, Assistant City Attorney City of Vancouver PO Box 1995 Vancouver, WA 98668-1995</p> <p>Email: Karen.reed@cityofvancouver.us Tammy.zurn@cityofvancouver.us Phone: 360/487-8500</p> <p><i>Counsel for City of Vancouver</i></p>	<p><input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service</p> <p><input checked="" type="checkbox"/> email</p>

Party	Method of Service
<p>Robert W. Ferguson, Attorney General Terence A. Pruitt, Assistant Attorney General Natural Resources Division 1125 Washington Street SE PO Box 40100 Olympia, WA 98504-0100</p> <p>Email: terryp@atg.wa.gov & RESOlyEF@atg.wa.gov Phone: 360/586-0642</p> <p><i>Counsel for Washington State Department of Natural Resources</i></p>	<p><input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service</p> <p><input checked="" type="checkbox"/> email</p>
Party	Method of Service
<p>Kristen L. Boyles *Earthjustice 705 Second Avenue, Suite 203 Seattle, WA 98104</p> <p>Email: kboyles@earthjustice.org Phone: 206/343-7340</p> <p>Janette K. Brimmer Email: jbrimmer@earthjustice.org</p> <p>Anna Sewell Email: asewell@earthjustice.org</p> <p>Eudora Powell Email: epowell@earthjustice.org</p> <p>David Bricklin Bricklin & Newman, LLP 1424 Fourth Avenue, Suite 500 Seattle, WA 98101</p> <p>Email: bricklin@bnd-law.com Phone: 206/264-8600</p> <p>Bryan Telegin Email: telegin@bnd-law.com</p> <p>Peggy Cahill Email: cahill@bnd-law.com</p> <p>Anne Bricklin Email: miller@bnd-law.com</p> <p><i>*Counsel for Columbia Riverkeeper et al. Columbia Riverkeeper, Climate Solutions, ForestEthics, Friends of the Columbia Gorge, Fruit Valley Neighborhood Association, Sierra Club, Spokane Riverkeeper, and Washington Environmental Council</i></p>	<p><input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service</p> <p><input checked="" type="checkbox"/> email</p>


Party	Method of Service
<p>Linda R. Larson Marten Law, PLLC 1191 Second Avenue, Suite 2200 Seattle, WA 98101</p> <p>Email: llarson@martenlaw.com Phone: 206/292-2600</p> <p>Daniel Timmons Marten Law, PLLC 1001 SW Fifth Avenue, Suite 1500 Portland, OR 97217</p> <p>Email: dtimmons@martenlaw.com Phone: 503/243-2200</p> <p><i>Counsel for Columbia Waterfront LLC</i></p>	<p><input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service</p> <p><input checked="" type="checkbox"/> email</p>
Party	Method of Service
<p>Julie A. Carter Columbia River Inter-Tribal Fish Commission (CRITFC) 700 NE Multnomah Street, Suite 1200 Portland, OR 97213</p> <p>Email: carj@critfc.org Phone: 503/238-0667</p> <p>Robert C. Lothrop Email: lotr@critfc.org</p> <p><i>Counsel for CRITFC</i></p>	<p><input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service</p> <p><input checked="" type="checkbox"/> email</p>
Party	Method of Service
<p>Cager Clabaugh, International Longshore Warehouse Union Local 4 1205 Ingalls Road Vancouver, WA 98660</p> <p>Email: cagerclabaugh@aol.com Phone: 360/903-7678</p> <p>Jared Smith Email: mithared@yahoo.com Phone: 360/241-0314</p> <p><i>Representatives of International Longshore Warehouse Union Local 4</i></p>	<p><input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service</p> <p><input checked="" type="checkbox"/> email</p>
Party	Method of Service
<p>City of Spokane Office of the Mayor 7th Floor Municipal Building W. 808 Spokane Falls Blvd Spokane, WA 99201</p>	<p><input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service</p> <p><input checked="" type="checkbox"/> email</p>

<p>Nancy Isserlis, City Attorney Office of the City Attorney 5th Floor Municipal Building W. 808 Spokane Falls Blvd Spokane, WA 99201</p> <p>Email: nisserlis@spokanecity.org Phone: 509/625-6225</p> <p>Michael J. Piccolo, Assistant City Attorney Email: mpiccolo@spokanecity.org</p> <p><i>Counsel for City of Spokane</i></p>	
Party	Method of Service
<p>Brent H. Hall Confederated Tribes of the Umatilla Indian Reservation 46411 Timine Way Pendleton, OR 97801</p> <p>Email: Brenthall@ctuir.org Phone: 541/429-7407</p> <p><i>Attorney for Confederated Tribes of the Umatilla Indian Reservation</i></p>	<p><input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service</p> <p><input checked="" type="checkbox"/> email</p>
Party	Method of Service
<p>Joe Sexton Galanda Broadman PLLC 8606 35th Ave NE, Suite L1 P.O. Box 15146 Seattle, WA 98115</p> <p>Email: joe@galandabroadman.com Phone: 206/557-7509</p> <p>Amber Penn-Roco Galanda Broadman, PLLC 8606 35th Ave NE, Suite L1 P.O. Box 15146 Seattle, WA 98115</p> <p>Email: amber@galandabroadman.com Phone: 206/557-7509</p> <p><i>Attorney for The Confederated Tribes and Bands of the Yakama Nation</i></p>	<p><input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service</p> <p><input checked="" type="checkbox"/> email</p>
Party	Method of Service
<p>Donald L. English City Attorney, City of Washougal 12204 SE Mill Plain, Suite 200 Vancouver, WA 98684</p> <p>Email: english@elmbsv.com</p> <p>Scott Russon City Attorney, City of Washougal 12204 SE Mill Plain, Suite 200 Vancouver, WA 98684</p> <p>Email: russon@elmbsv.com</p> <p><i>Counsel City of Washougal</i></p>	<p><input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service</p> <p><input type="checkbox"/> email</p>

<u>Party</u>	<u>Method of Service</u>
Brian Bonlender, Director Department of Commerce 1011 Plum Street SE PO Box 42525 Olympia, WA 98504-2525 Email: brian.bonlender@commerce.wa.gov Phone: 360/725-4021	<input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service <input checked="" type="checkbox"/> email
<u>Party</u>	<u>Method of Service</u>
Maia D. Bellon, Director Department of Ecology 300 Desmond Drive PO Box 47600 Olympia, WA 98504-7600 Email: maia.bellon@ecy.wa.gov Phone: 360/902-1004	<input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service <input checked="" type="checkbox"/> email
<u>Party</u>	<u>Method of Service</u>
Jim Unsworth, Director Department of Fish and Wildlife 600 Capitol Way N. Olympia, WA 98501 Email: Jim.Unsworth@dfw.wa.gov Phone: 360/902-2200	<input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service <input checked="" type="checkbox"/> email
<u>Party</u>	<u>Method of Service</u>
David Danner, Chairman Utilities and Transportation Commission 1300 S. Evergreen Park Drive SW PO Box 47250 Olympia, WA 98504-7250 Email: ddanner@utc.wa.gov Phone: 360/664-1208	<input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service <input checked="" type="checkbox"/> email
<u>Party</u>	<u>Method of Service</u>
Department of Transportation 310 Maple Park Avenue SE PO Box 47300 Olympia, WA 98504-7300 Email:	<input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service <input type="checkbox"/> email

Hereby certify under penalty of perjury under the law of the state of Washington that the foregoing is true and correct.

DATED this 16th day of May, 2016, at Olympia, Washington.


 Kali Wraspir, Secretary Supervisor