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WASHINGTON STATE  
ENERGY FACILITY SITE EVALUATION COUNCIL  
Richard Hemstad Building  
1300 South Evergreen Park Drive Southwest, Conference Room 206  
Olympia, Washington  
Thursday, July 18, 2013  
1:30 P.M.

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TELEPHONIC SPECIAL MEETING  
Verbatim Transcript of Proceeding

REPORTED BY: SHELBY KAY K. FUKUSHIMA, CCR #2028  
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A P P E A R A N C E S

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Councilmembers Present:

Jim Luce, Chair, via telephone  
Andrew Hayes, Department of Natural Resources, via telephone  
Cullen Stephenson, Department of Ecology, via telephone  
Dennis Moss, Utilities and Transportation Commission

Assistant Attorney General:

Ann Essko, Assistant Attorney General

Staff in Attendance:

Stephen Posner, Interim EFSEC Manager, Compliance Manager  
Jim La Spina, Siting Specialist  
Tammy Talburt, Commerce Specialist 1

Guests in Attendance:

Thomas R. Wood, Stoel Rives  
David Corpron, Savage Services Corporation  
Irina Makarow, Berger Abam  
Mark Anderson, Department of Commerce  
Adam Torem, Utilities and Transportation Commission

1 OLYMPIA, WASHINGTON, JULY 18, 2013

2 1:30 P.M.

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4  
5 P R O C E E D I N G S

6  
7 CHAIR LUCE: I'll just call the Council to order.  
8 This is a special meeting. The date is -- help me out -- July  
9 19th?

10 MR. MOSS: July 18th.

11 CHAIR LUCE: 18th.

12 MR. La SPINA: Is there a volume on there?

13 CHAIR LUCE: The time is 1:30 p.m.

14 MR. La SPINA: We can hardly hear him.

15 CHAIR LUCE: Council -- (phone beeps) -- and in  
16 person at the Washington State Utilities and Transportation  
17 Commission in Olympia, Washington.

18 I am not able to be present today, so I'm going to  
19 ask the Clerk to call the roll, and then turn this chairmanship  
20 over to Acting Chair Dennis Moss.

21 MR. POSNER: Jim? Jim Luce?

22 CHAIR LUCE: Yes?

23 MR. POSNER: This is Stephen Posner.

24 Could you speak up more? I'm sorry. We have to ask  
25 you to yell if you have to. We're still having a little trouble

1 hearing you.

2 CHAIR LUCE: Okay. Can you hear me now?

3 MR. POSNER: That's better. Thank you.

4 CHAIR LUCE: All right.

5 THE CLERK: Department of Ecology?

6 MR. MOSS: And we've got that. Tammy can call the  
7 roll.

8 CHAIR LUCE: All right.

9 THE CLERK: Department of Ecology?

10 MR. STEPHENSON: Cullen Stephenson on the phone here.

11 THE CLERK: Fish and Wildlife?

12 Department of Natural Resources?

13 MR. HAYES: Andy Hayes is here on the phone.

14 THE CLERK: Utilities and Transportation?

15 MR. MOSS: This is Dennis Moss for the UTC.

16 THE CLERK: Chair?

17 CHAIR LUCE: Chair is present.

18 THE CLERK: There is a quorum.

19 CHAIR LUCE: All right. Dennis, I'm going to ask you  
20 to assume the chairmanship at this point in time and lead the  
21 Council in its discussion of this matter.

22 ACTING CHAIR MOSS: All right. Thanks very much.

23 I just want to start out by saying that our notice of  
24 today's special meeting allows for discussion of WAC 463-60-135  
25 as it relates to a potential application for site certification

1 of a project that's being called the "Tesoro Savage Petroleum  
2 Terminal" in the Port of Vancouver. The importance of our  
3 having this discussion, I think, is underscored by the  
4 thoughtful letter we received yesterday from Mr. Kelly Flint,  
5 who is Savage Services Corporation's senior VP and general  
6 counsel, his letter being in response to our notice.

7 And I gather that the folks I'm seeing out here in  
8 the gallery are representative, perhaps, of Savage.

9 Perhaps Mr. Kelly is among them?

10 No. All right. We'll have an opportunity for you  
11 all to be heard, if you wish to, during today's discussion or as  
12 part of today's discussion, but let me start us off by making a  
13 few comments.

14 I'm going to turn in a moment to Mr. Kelly's letter,  
15 which gives us sort of a useful starting point, but, first, I  
16 want to emphasize there is not a definitive question pending  
17 before the Council today that requires final action. And I  
18 don't see us taking action today even though our notice allows  
19 for it. Rather, our purpose today is to have some discussion by  
20 the Councilmembers and by others in attendance who may wish to  
21 be heard that may provide useful guidance to Tesoro and Savage  
22 and EFSEC Staff as the process of preparing and perhaps filing  
23 an application moves forward.

24 And with that in mind, I move to the third paragraph  
25 of Mr. Kelly's letter, which states that his understanding or

1 the Company's understanding that the rationale offered is  
2 indeed -- for our meeting is indeed to discuss WAC 463-60-135,  
3 which is within the chapter of the Council's rules related to  
4 the content of applications.

5 The rule says in pertinent part (as read):

6 "Proposal -- Legal descriptions and ownership interests. (1)  
7 Principal facility. The application shall contain a legal  
8 description of the site to be certified and shall identify the  
9 applicants and all nonprivate ownership interest in such land."

10 Now, the letter goes on to say (as read): "We do not  
11 believe this section requires land control at the time of  
12 filing, and we understand the Council's practice has been to  
13 receive, process, and even approve energy facilities contingent  
14 on future land control."

15 And now I'm speaking for myself. As a member of the  
16 Council, I would say I agree with that statement in the letter.  
17 And this is substantiated by the references, which, I gather,  
18 are your -- the report on the Savage teamwork at some very high  
19 level research it says, and you refer to the Wallula Power  
20 Project in which the applicant, at the time of the application,  
21 had an option on the real estate. It was subject to the  
22 application.

23 In the Wild Horse project, there were various  
24 contingent ownership interest rights present, and the same thing  
25 with the Kittitas Valley Wind Project, all of which are

1 discussed in your supporting documents that you presented.

2           Again, I don't think there is any specific form of  
3 ownership interest that's required under the rule. I do want to  
4 say, though, that there are other factors that come into play in  
5 connection with this rule, which is one reason we thought it was  
6 important to discuss it, and that is EFSEC is required to  
7 process applications within a fairly brief period of time.  
8 There's some 60-day requirements once an application is filed.  
9 There's a 12-month requirement for the complete consideration  
10 and action on an application.

11           Now, oftentimes, I think it's fair to say in the  
12 history of EFSEC, that 12-month deadline has passed, and it has  
13 often been at the instance of the applicant that that has  
14 occurred. We would like to move away from that event, and we  
15 would like do be able to do things within the time allowed under  
16 the statute. And so in that sense, it is important, I think,  
17 that the applicant have moved as far along with getting in place  
18 all of the requisite rights that it needs in order to actually  
19 have a process -- a project be viable.

20           And, of course, if you have no ownership interest --  
21 that is to say no option, no contingent lease, nothing -- then  
22 that makes it a lot more iffy than if you do have one of those  
23 rights in place, or even better, perhaps, have a lease.

24           So I think it's important for the applicant to keep  
25 that in mind and for the Staff to keep that in mind as an

1 application is brought forward. Keep that discussion open. It  
2 is a relevant factor, as mentioned in the letter, that we are  
3 concerned about the expenditure of state resources. Yes. The  
4 applicant has to, under the law, pay for the time that we spend  
5 on processing an application, but resource expenditures go  
6 beyond just the payment. It's my time. It's the time of all  
7 the other Councilmembers. It's the time of the Staff. These  
8 are, in their own right, independent of how much we get paid by  
9 the state, important resources, and, of course, the applicant  
10 will be putting a lot of resources into it as well.

11 So we'd like to keep that process as efficient as we  
12 can and move these things along quickly. And I think you had  
13 some kind words for us in terms of your understanding that the  
14 siting council provides a rigorous, robust, fair, and  
15 criteria-based process. We certainly hope to do that, and we  
16 hope to do it expeditiously.

17 So with all that said, that's sort of my discussion  
18 of this point. I just think it's important for you to be  
19 mindful of this as you go forward and bring your application to  
20 the Council.

21 So with that, let me turn to other Councilmembers and  
22 see if they have comments, and then we'll turn to anyone here  
23 who wishes to -- in the room who wishes to speak or who's on the  
24 phone.

25 So, Chair Luce, did you have anything you wish to



1 say?

2 CHAIR LUCE: I would echo exactly what you said,  
3 Dennis, and I would add that there are other situations where we  
4 have not had an option exercisable upon our site certificate  
5 being issued or approved by the Governor. One of those was in  
6 the Sumas situation where there was no property interest of any  
7 sort in the transmission -- in the facility that would have been  
8 providing the interconnection for transmission. And as a result  
9 of that -- or partly as a result of that, the project was  
10 unwilling -- unable to go forward. So I would agree that the  
11 property interest is what the statute -- strike that -- what the  
12 Washington Administrative Code calls for.

13 And the property interest can vary for the property  
14 which can be, as stated by the vice president's letter, an  
15 option exercisable upon the issuance of the site certificate  
16 agreement, or it could be, hypothetically, an option with a  
17 condition subsequent that the Governor, assuming that we  
18 recommended to the Governor, not knowing that, approve the  
19 facility.

20 But an option -- a property interest does seem to be  
21 warranted in this case, and we'll look forward to determining  
22 what that might be when and if an application is presented. And  
23 I will stop there.

24 ACTING CHAIR MOSS: All right. Thank you very much.

25 Andy Hayes, do you have anything to add?

1 MR. HAYES: Yeah. Thank you, Chair. I think I'd  
2 just like to say, number one: Chair, I appreciate your  
3 comments. They're spot on and very helpful in providing the  
4 right context for this discussion.

5 You know, I'm not clear at all from reading the WAC  
6 that there's any requirement whatsoever for applicants to have  
7 ownership interest. I understand that the WAC -- and haven't  
8 been told otherwise, based on others' interpretations -- to read  
9 that a legal description of the site to be certified shall be  
10 included. That includes the applicants and nonprivate ownership  
11 interests in such land.

12 So I understand it to be more of a disclosure  
13 requirement and not a specific ownership requirement per se.  
14 And, obviously, I think moving forward, you know, if we were to  
15 talk, discuss the siting of this after the process had come to  
16 fruition, you know, that that might be a different issue. But  
17 at the moment, I don't see any reason why we couldn't accept an  
18 application given the way this WAC is constructed.

19 ACTING CHAIR MOSS: Thank you.

20 Mr. Stephenson, do you have anything for us?

21 MR. STEPHENSON: Thank you, Chair, just two quick  
22 comments. One, the applicant has agreed in their letter that  
23 they have the promise to pay for the full cost of staffing, and  
24 so I take them at their word on that.

25 And then the second part, I think you correctly

1 stated the WAC saying that it is contingent on future land  
2 control, and we should make sure that that is the contingency.  
3 And if they get the future land control, I think this  
4 application seems to be proper.

5 ACTING CHAIR MOSS: Okay. Thank you. And I'll just  
6 make one more comment in the wake of those I heard, and I'll  
7 turn to the Company, and that is I want to sort of emphasize the  
8 point that Jim Luce made. He referred to the Sumas project as  
9 an example of a project that went forward without all the  
10 requisite pieces in place. We spent a lot of time, effort, and  
11 money on that. I was on the Council at the time. We spent, as  
12 I recall, several years at that process and had a lot of  
13 interaction with our friends to the north in Canada and so  
14 forth.

15 At the end of the day, even though there was a site  
16 certificate granted and accepted by the applicant, they couldn't  
17 get transmission. And so all that time, effort, and money was  
18 essentially wasted.

19 We see that in other contexts as well. I won't say  
20 it's -- I won't call it a waste, because it's still pending.  
21 But my other job is as an administrative law judge at the  
22 Utilities Commission, and I presided -- or co-presided, I should  
23 say, in a case some years ago in which three applicants came  
24 forward seeking to put a ferry service on Lake Union. And we  
25 had long hearings and went forward with that, and the issue

1 there was the right to dockage; to use the docks at either end  
2 of the proposed routes. Those rights were not in place. There  
3 were no options or anything else, and we went ahead and granted  
4 certificates of public convenience and necessity -- and this was  
5 years ago -- and there is still no service because nobody has  
6 the right to dock the boats.

7 So that, I think, just emphasizes the importance of  
8 having everything lined up, as I've stated at the beginning.  
9 And I think that's in the Company's best interest as well, and  
10 that's, I think, acknowledged in the letter as well where you  
11 state a preference for having the rights in place prior to  
12 application. But I'm just asking that you be mindful of that,  
13 and I think that is consistent with the comments I have heard  
14 from my colleagues.

15 So with all that said...

16 CHAIR LUCE: I would like to add just one more thing,  
17 Dennis.

18 ACTING CHAIR MOSS: Sure.

19 CHAIR LUCE: In the letter from the vice president,  
20 it is acknowledged that the applicant had options which were  
21 exercisable upon the issuance of the site certificate, and that  
22 is a reasonable property interest. And I'll defer to Legal in  
23 terms of actually looking at the option, but I think that WAC  
24 is, yeah, rather clear when it says that the site, to be  
25 certified, shall identify the applicant's ownership interest in

1 such land. And you also mentioned, appropriately so, that once  
2 we have accepted an application, the 12-month clock begins to  
3 run and within 60 days, we have to have a public meeting at the  
4 site.

5 So I just want to emphasize from my perspective,  
6 there needs to be some form of an applicant ownership interest.  
7 And I would defer to Legal to -- and Staff to examine the  
8 document when and if it is presented to determine whether such  
9 ownership interest, in fact, exists. If it does not exist, if  
10 there is only an expectation of a property interest, then I  
11 would have reservations regarding processing such an application  
12 until an ownership interest was demonstrated.

13 ACTING CHAIR MOSS: Okay. Anybody else?

14 All right. Now --

15 CHAIR LUCE: And I guess I would like to hear how  
16 Andy and Cullen feel about that.

17 MR. STEPHENSON: This is Cullen. I think the more  
18 certainty we have, I think the happier everyone will be. It  
19 feels to me and it looks to me from reading the WAC that they  
20 are not required to demonstrate, but it puts them at risk of the  
21 12-month time, and that's on them.

22 CHAIR LUCE: Okay. All right. I won't get into that  
23 any further.

24 ACTING CHAIR MOSS: Andy, anything?

25 MR. HAYES: Well, I mean, I understand your -- I

1 guess I read -- you know, without the benefit of any contrary  
2 example, you know, I read the language to be requesting  
3 identification, not the demonstration of. So in other words, I  
4 read that to -- I don't necessarily read that as a requirement  
5 that the applicant have ownership interest, just that they are  
6 identified in the application having it or not.

7 But, again, that's the benefit of having been a part  
8 of previous applications and understanding that approach had  
9 been taken that required such demonstration of ownership, so...

10 ACTING CHAIR MOSS: And I think just one -- perhaps  
11 this time a final word. I think it's important for us to be  
12 mindful that we have in the past, and I think we'll probably  
13 continue to treat the sections of the WAC that are of concern  
14 here as guidelines. They don't impose strict requirements in  
15 that sense, and I think it is certainly something that can be  
16 left as an open question as to what the nature of the  
17 demonstration of ownership interest needs to be. But it's a  
18 subject that should be discussed fully. And the company has  
19 been transparent and open with Staff, and I think that will  
20 continue.

21 Did the company representatives wish to say something  
22 today?

23 MR. WOOD: Sure.

24 ACTING CHAIR MOSS: You're welcome, and please  
25 identify yourself for the record.

1 MR. WOOD: Good afternoon. Tom Wood of Stoel Rives,  
2 counsel for Savage Services Corporation.

3 And you hear from the letter that was submitted  
4 yesterday what the Company's position is, and you've had some  
5 very thoughtful discussion in terms of that just now. Our  
6 interpretation of the rules, our read of the rules, is that  
7 there's not a requirement that we show a definitive interest at  
8 this point.

9 And as we said in the letter, the Company's  
10 obligation -- and it's already stepped up to that obligation --  
11 is to pay for the financial costs of the work, and we proceed at  
12 risk.

13 That all being said, I want to also emphasize the  
14 point that you made, I guess, Acting Chair Moss, that we deeply  
15 respect the resources and the time and the personal commitment  
16 of EFSEC and Staff in going through any process like this, and  
17 we don't want to give any impression of feeling like we take  
18 that lightly. That is a valuable resource for all people, and  
19 people are very giving in terms of that resource.

20 We feel like we wouldn't want to squander that. All  
21 efforts are being made to secure the site, and that's a process  
22 that is proceeding in parallel. And that the company would not  
23 proceed on the project if they did not think they had a  
24 realistic opportunity and a fairly advanced level of discussion  
25 and meeting of the minds with the Port, because that would be

1 wasteful of your time and it would also, obviously, be wasteful  
2 of Savage's time and resources.

3 ACTING CHAIR MOSS: Absolutely.

4 MR. WOOD: Yeah.

5 ACTING CHAIR MOSS: Thank you. I appreciate your  
6 comments.

7 MR. CORPRON: My name is David Corpron, and I work  
8 for Savage Services Corporation.

9 On the lease, currently, next Tuesday, is when the  
10 Port is looking to take up the lease question. We have a  
11 defined boundary of what the lease property is, and the Port  
12 will be reviewing that so it's not a gray area per se. It is  
13 defined, and it is on the docket.

14 ACTING CHAIR MOSS: Great. Wow. That sounds like we  
15 may have action sooner rather than later. All right. Very  
16 good.

17 Is anyone else in the room who wishes to be heard?

18 No? All right.

19 Anyone on the phone?

20 Staff?

21 CHAIR LUCE: Dennis, I have one question for the  
22 representatives of Savage Tesoro, and that is, is there a letter  
23 of intent or other document that has been executed between the  
24 Port and Savage Tesoro regarding the property in discussion?

25 MR. CORPRON: This is Dave Corpron. Once again,



1 Chairman Luce, not to my knowledge. I know that we had received  
2 the RFI for the initial bid on when the Port sent this out to  
3 the public to try and get applicants into the Port for this  
4 facility. And we did receive that and get a sole -- Savage and  
5 Tesoro are the sole companies working on that right now. Other  
6 than that, I'm not aware of anything.

7 MR. WOOD: And if I might add something?

8 Chair Luce, this is Tom Wood. In the normal process  
9 if I was building, let's say, a thermal power plant, I would  
10 typically, as developer, come to a site, execute an LOI with the  
11 site owner, who may never have heard of me before and never have  
12 had any thoughts of siting that thermal plant or wind farm on  
13 their particular property, and that's the case where I typically  
14 think of the utilization of an LOI.

15 This is a very different process, whereas my  
16 colleague expressed, it was the Port who was looking to other  
17 parties to bring them in. So it's not necessarily a situation  
18 where one would expect to have an LOI in place, as opposed to  
19 you would establish an exclusive relationship, and then you  
20 would go through the process they're going through now with  
21 negotiating a contract. So it's just a different process for  
22 this particular energy facility.

23 ACTING CHAIR MOSS: Sure. Okay. Very good. "LOI"  
24 being letter of intent, I take it?

25 MR. WOOD: Letter of intent. Sorry. I shouldn't

1 descend into acronym land.

2 ACTING CHAIR MOSS: That's all right. That's all  
3 right. We're not an acronym-free zone, but it's often helpful  
4 to the record to have it memorialized.

5 Does the Staff have any remarks it would like to  
6 make?

7 MR. POSNER: None at this time.

8 ACTING CHAIR MOSS: All right. Thank you.

9 Well, we appreciate your hard efforts on this as  
10 well.

11 Anything from Council?

12 MS. ESSKO: No.

13 ACTING CHAIR MOSS: All right. Well, if there's  
14 nothing further -- apparently, there is not -- we'll be off the  
15 record. Thank you all for being here today.

16 (Whereupon, the meeting was adjourned at 1:50 p.m.)

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