

July 7, 2016

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423

Re: STB Finance Docket No. 36036, *Valero Refining Company – California Petition for Declaratory Order*

Dear Ms. Brown:

I write on behalf of Tesoro-Savage Petroleum Terminal LLC, d/b/a Vancouver Energy (“Vancouver Energy”) in support of the Petition for Declaratory Order requested by the Valero Refining Company – California in the above-captioned proceeding. Vancouver Energy is currently engaged in a siting-approval process in Washington State for a proposed transloading facility that would receive crude oil by rail. Like Valero, Vancouver Energy believes that state and local permitting authorities would greatly benefit from input by the Board as to whether they may condition or deny approval of non-rail carrier facilities based on purported impacts of rail transportation leading to such facilities. Vancouver Energy supports Valero’s request for an order that the Interstate Commerce Commission Termination Act (“ICCTA”) preempts indirect regulation of rail carriers by state and local governments through permitting, licensing, and other approvals required for facilities receiving commodities by interstate rail.

In August 2013, Vancouver Energy requested approval from the State of Washington to site a crude oil transloading facility in Vancouver, Washington under the Energy Facilities - Site Location Act, chapter 80.50 of the Revised Code of Washington (“RCW”). The Washington State Energy Facility Site Evaluation Council (“EFSEC”) has since completed a draft environmental impact study (“DEIS”) of Vancouver Energy’s proposed facility under the State Environmental Policy Act, chapter 43.21C RCW. The DEIS evaluates potential impacts of transportation by rail carriers leading to Vancouver Energy’s proposed facility and proposes certain mitigation measures to control such rail operations. Additionally, EFSEC is currently conducting an administrative adjudication to review Vancouver Energy’s proposed facility and make a recommendation to the Governor regarding its approval. More than twenty issues being considered in the adjudication specifically address rail operations and rail safety along interstate rail lines leading to the proposed facility. Certain parties to the adjudication have also asked

EFSEC to deny the proposed facility, or in the alternative, to condition rail operations leading to the facility expressly based upon purported risks of transporting crude oil by rail.

The scope of preemption under the ICCTA remains in dispute in the Vancouver Energy adjudication. On June 6, 2016, EFSEC issued an order denying (without prejudice) a motion by Vancouver Energy to dismiss all issues from the adjudication that solely concern impacts from rail operations to the proposed facility. EFSEC explained in its order, “Once the Council has been able to consider all the relevant facts required to make its recommendation, it then will be the proper time for the Council to determine the extent of its authority as to any conditions relating to rail or vessel operations it deems necessary.”¹

An expedited ruling by the Board to address Valero’s Petition could provide greater clarity not only for the City of Benicia, but also for EFSEC concerning the scope of its authority to condition or deny transportation by rail carriers leading to these proposed facilities. Accordingly, Vancouver Energy respectfully requests that the Board initiate an expedited proceeding to consider Valero’s petition.

Respectfully submitted,



Jay P. Derr

cc:

James Brian MacDonald
Raymond Atkins, Sidley & Austin
Theodore K Kalick, Canadian National Railway Company
Rachel Koss, Adams Broadwell Joseph & Cardozo
Justin Marks, Nossaman L.L.P.
Jaclyn H. Prange, NRD Council
Kevin M. Sheys, Nossaman L.L.P.
Peter J. Shultz, CSX Transportation, Inc.

¹ *In re Application No. 2013-01, Tesoro Savage LLC - Vancouver Energy Distribution Terminal*, EFSEC Case No. 15-001, Order Denying Dispositive Motions at 5 (June 6, 2015), available at <http://www.efsec.wa.gov/Tesoro%20Savage/Adjudication/Orders/TESORO%20-%20Order%20Denying%20Dispositive%20Motions%20-%20ES.pdf>.