



October 11, 2019

Elisabeth Perez
Director, Office for Community Technology
City of Portland
111 SW Columbia St., Suite 600
Portland, OR 97201

RE: Zenith’s Request to Install Additional Pipes Under NW Front Avenue

Dear Director Perez,

On September 9, 2019, Zenith Energy Terminals Holdings LLC (Zenith) submitted a formal request to the Office for Community Technology (OCT) to install three new pipes under NW Front Avenue. On behalf of our tens of thousands of members and supporters, the undersigned organizations urge OCT to deny this request for the reasons set forth below. Pursuant to Section 2.1(C) of Zenith’s franchise agreement, OCT has broad discretion to deny Zenith’s request; that provision provides no constraints on what OCT can evaluate in its consideration of a request. We strongly urge OCT to consider the binding City policies that an approval would violate and the significant risk to public health and the environment these new pipes would create. At the very least, OCT should forward Zenith’s request to amend the franchise agreement to City Council.

1) OCT Should Deny Zenith’s Expansion Request

Pursuant to Section 2.1(C) of Zenith’s franchise agreement, OCT should deny Zenith’s request to install three new pipes under NW Front Avenue. Zenith’s request conflicts with the City’s policy and interests and should be denied. Although Zenith vehemently claims that the new pipes will not carry fossil fuels, the new pipes will free up Zenith’s existing pipes to be used solely for fossil fuels—effectively allowing Zenith to expand its fossil fuels operation. This expansion is contrary to the City’s interests and existing policy, and OCT should deny Zenith’s request.

OCT should deny Zenith’s request because it would effectively increase the amount of heavy crude oil passing through and stored in the City, in conflict with binding City policy. Resolution No.

37168—which is still in effect—provides that “the City Council will actively oppose expansion of infrastructure whose primary purpose is transporting or storing fossil fuels in or through Portland or adjacent waterways”¹ Consistency with Resolution No. 37168 was a material consideration the City Council relied upon when agreeing to the franchise agreement and, therefore, OCT needs to take the policy into account when evaluating Zenith’s current request.² Zenith already moves bio/renewable fuels³ through its existing pipes, so allowing Zenith to build additional pipes dedicated to bio/renewable fuels would free up the existing pipe system to handle even more heavy crude. This could also lead to an expansion in the volume of oil train traffic through Portland, contravening Resolution No. 37164, also binding city policy.⁴ Zenith’s existing pipes can continue to be used for both bio/renewable fuels and fossil fuels.⁵ OCT should deny Zenith’s request because the new pipeline infrastructure would likely result in an increase in the amount of heavy crude handled at the facility, contrary to binding City policy.

With respect to Methylene Diphenyl Diisocyanate (MDI), the hazardous characteristics of that material are so great we urge OCT to deny Zenith’s request to build a dedicated pipe to handle it. MDI is not a material we want passing through Portland, to a facility built on a seismic liquefaction zone, where numerous other materials are stored, some of which are highly flammable. According to the U.S. Environmental Protection Agency, “[d]iisocyanates are well known dermal and inhalation sensitizers in the workplace and have been documented to cause asthma, lung damage, and in severe cases, fatal reactions”⁶ Additionally, MDI reacts with water. Even very small quantities of water can cause a reaction, generating CO₂ which rapidly increases the pressure inside closed containers.⁷ MDI is also denser than water, so any spill that occurs during transport or transfer would result in it initially sinking to the bottom of the river.⁸ Zenith’s facility is located on a stretch of the Willamette River that is part of the Portland Harbor Superfund Site; any spills occurring at the facility could greatly complicate the Superfund clean-up at this location and immediately down river. Additionally, although MDI itself is

¹ BCP-ENN-10.02, Resolution No. 37168 (Nov. 12, 2015) *available at* <https://www.portlandoregon.gov/citycode/article/557499>

² See Ordinance #188554 at Section 1(10) (“LCPOH and the City have reached final agreement on terms and conditions of a 20-year franchise consistent with . . . the City policy adopted in Resolution No. 37168 regarding fossil fuel infrastructure”).

³ See Letter from W. Grady Reamer, Vice President of Operations, Zenith Energy Terminals Holdings, LLC, to Mayor Ted Wheeler and Commissioner Jo Ann Hardesty, (July 26, 2019) (“[a]t the beginning of 2019, about 5 percent of our terminal’s storage capacity was in bio/renewable fuels. We project that by the end of this year we will be at 10 percent . . .”).

⁴ BCP-ENN-10.01, Resolution No. 37164 (Nov. 4, 2015), *available at* <https://www.portlandoregon.gov/citycode/article/557466> (resolving that “the City of Portland opposes oil-by-rail transportation through and within the City . . .” and that this “[p]olicy opposing all project proposals that would increase the amount of crude oil being transported by rail through the City . . . is binding City policy”).

⁵ Zenith initially claimed “these products” cannot share pipes because of the risk of contamination. *See id.* In response to a City Attorney pointing out that they can, in fact, share pipes, Zenith’s attorney clarified that its only the MDI that must have its own dedicated pipe. *See* E-mail exchange between Robert Taylor, City Attorney, and Allison Reynolds, Stoel Rives (July 31, 2010).

⁶ EPA Methylene Diphenyl Diisocyanate (MDI) and Related Compounds Action Plan [RIN 2070-ZA15](April 2011) *available at* <https://www.epa.gov/sites/production/files/2015-09/documents/mdi.pdf>

⁷ BASF, MDI Handbook, North America (2019) at 12, *available at* https://polyurethanes.basf.us/files/pdf/2019-MDI-Handbook_final.pdf

⁸ *See id.* at 6.

relatively non-flammable, it is not advisable to store it next to highly flammable materials.⁹ From a health and safety standpoint, it is an extremely bad idea to bring a highly hazardous product that reacts with water, by ship, into a city known for its rainy winters and then to store it in tanks next to highly flammable fossil fuel products in an area of the city that is likely to be completely destroyed in the not unlikely event of a major earthquake. The City of Portland has repeatedly recognized the enormous risks to the Critical Energy Infrastructure (CEI) hub from a major seismic event. In 2012, a study conducted by the Oregon Department of Geology and Mineral Industries found major seismic vulnerabilities to exist in the CEI Hub, specifically with respect to risk of soil liquefaction and lateral spreading.¹⁰ OCT should not facilitate Zenith's handling of MDI in such a high-risk area of the City; we strongly urge OCT to deny Zenith's request to build a new, dedicated pipe to transport it under NW Front Avenue.

Also troubling is Zenith's failure to clearly identified which specific MDI product it intends to handle at its facility. The City requested that Zenith provide it with "the exact specifications for the 'liquid intermediate' product that Zenith has identified for transport in one of the new pipes."¹¹ In response, Zenith indicated that the product will be "MDI-100," which is solid in form and has the appearance of a "crystalline solid at room temperature."¹² The engineering report, however, indicates that the pipes are designed to handle "polymeric MDI," which is a different product.¹³ If the product Zenith intends to handle is, in fact, MDI-100 as the narrative request indicates, and is solid in form, why does the company need a pipe to transport it? Does Zenith plan to heat the pipes in order to transport the MDI in liquid form? If the answer is yes, that is critical information that should have been included in Zenith's request. This inconsistency in Zenith's request, particularly where the City requested the *exact* specifications for the product Zenith intends to handle, is a glaring error for which OCT should deny the request. Such an egregious error in any other building permit application would almost certainly be grounds for the application to be denied.

If approved, Zenith's request would allow it to expand its fossil fuel operations contrary to binding City policy. It will also facilitate the introduction of an extremely hazardous material, the specifications of which are uncertain, to an area of the City that is already at high risk of catastrophic damage should we experience a major seismic event. For these reasons, OCT should deny Zenith's request to build additional pipes under NW Front Avenue.

⁹ See *id.* at 17.

¹⁰ See Yumei Wang et al., Or. Dept. of Geology and Mineral Indus., *Earthquake Risk Study for Oregon's Critical Energy Infrastructure Hub* (Aug. 2012) available at <https://www.oregongeology.org/earthquakes/CEI-Hub-report.pdf>; see also Richard Reed, *Oregon's energy hub on the Willamette River a catastrophic risk when a megaquake hits*, Oregon Live (Sept. 21, 2013), https://www.oregonlive.com/environment/2013/09/oregons_energy_hub_on_the_will.html

¹¹ Letter from Allison J. Reynolds, Stoel Rives, LLP, to Robert Taylor, Office of the City Attorney at 4 (Sept. 6, 2019).

¹² *Id.* at 5.

¹³ See JHI Engineering, Inc., Zenith Energy, Front Ave Casing Boring Piping Specifications at 3 (Aug. 30, 2019); See also Am. Chemistry Council, *Guidance for Working with MDI and Polymeric MDI: Things You Should Know*, available at <https://polyurethane.americanchemistry.com/Resources-and-Documents/11364.pdf>

2) OCT Lacks Authority to Grant Zenith's Request to Amend the Franchise Agreement.

OCT lacks authority to approve Zenith's request to build additional pipes under NW Front Avenue and restrict the use of those pipes. OCT's authority under Section 2.1(C) of the franchise agreement is limited to approving, modifying, or denying requested changes within the pipeline map submitted by Zenith. OCT does not have the authority to agree to additional contract terms. The language Zenith proposed¹⁴ to assure the City that the new pipes will not be used for fossil fuels amounts to a material change to the franchise agreement; only the City Council can renegotiate the terms of the franchise agreement.¹⁵ Any limiting language must be memorialized in the franchise agreement—not, as Zenith suggested, in a letter from OCT—to ensure such language is enforceable and would be considered during any future transfer of the franchise agreement. Because OCT does not have the authority to renegotiate the franchise agreement in this manner, OCT must deny Zenith's request. If, despite lacking legal authority, OCT intends to include conditions on the use of the proposed new pipes, such language should be much stronger and more enforceable than what Zenith proposed, especially since Zenith has a history of making misleading statements to City officials.¹⁶

For these reasons, OCT should deny Zenith's request to build additional pipes under NW Front Avenue. If Zenith opposes OCT's denial, Zenith may bring its proposal to the City Council, which has sole authority to renegotiate the terms of the franchise agreement.

Thank you for your consideration of these comments.

Sincerely,



Erin Saylor
Staff Attorney
Columbia Riverkeeper

On behalf of:

Columbia Riverkeeper, Center for Sustainable Economy, Climate Action Coalition, Friends of the Columbia River Gorge, Human Access Project, Northwest Environmental Defense Center, Oregon Conservancy Foundation, Portland Audubon, Portland Youth Climate Council, Sierra Club - Oregon Chapter, Stop Fracked Gas PDX, Stop Zenith Collaborative, Willamette Riverkeeper, 350 PDX

Cc: Mayor Ted Wheeler
Commissioner Jo Ann Hardesty
Robert Taylor, City Attorney

¹⁴ See Letter from Allison J. Reynolds, Stoel Rives, LLP, to Robert Taylor, Office of the City Attorney, (Sept. 6, 2019).

¹⁵ See Section 10 of Ordinance No. 188554 at 18 (Aug. 16, 2017).

¹⁶ See Mark Graves, *Portland mayor's staff left believing false information after briefing by oil terminal execs, notes indicate*, Oregon Live (Sept. 5, 2019),

<https://www.oregonlive.com/portland/2019/08/portland-oil-terminal-execs-gave-mayors-staff-false-information.html>