



City of Portland

# Office for Community Technology

▲ Broadband & Communications Policy

▲ Cable Regulation & Consumer Protection

▲ Utility Franchises, Licenses & Wireless

October 18, 2019

Dirk L. Kramer  
Project Manager  
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Portland, OR 97210

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*Via U.S. Certified Mail, Return Receipt Requested and  
Via Email: Dirk.Kramer@zenithterminals.com; Allison.Reynolds@stoel.com*

Dear Mr. Kramer and Ms. Reynolds:

On September 10, 2019,<sup>1</sup> the Office for Community Technology (OCT) received Mr. Kramer's emailed request on behalf of Zenith Energy Terminals Holdings LLC (Zenith) to install three additional pipes to its Pipeline System under NW Front Avenue for the stated purpose of placing "two pipes in biodiesel/renewables service and one pipe in MDI [methyl diphenyl isocyanate] service." Under Paragraph 2.1(C) of Zenith's Franchise Agreement with the City of Portland, Zenith may seek to add to its Pipeline System under NW Front Avenue by submitting its proposed changes to OCT. OCT must then respond within forty-five days with its approval, modifications or denial of Zenith's request.

OCT has completed its review of Zenith's request and denies the request for the following reasons.

In its request, Zenith acknowledged that "the proposed new pipes will be physically capable of transporting fossil fuels..."<sup>2</sup> However, in 2015 the City Council adopted binding City policy to oppose the expansion of infrastructure for transporting or storing fossil fuels in or through

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<sup>1</sup> Mr. Kramer's request was dated September 9, 2019, but emailed on September 10, 2019. Mr. Kramer acknowledged the discrepancy. "As you'll see from the date of the letter attached to my prior email, our intent was to transmit those materials to you yesterday. That didn't happen, and we understand that will extend the City's 45-day review period to October 25, 2019." See email exchange between Jennifer Li, OCT's Franchise Program Manager, and Dirk Kramer, Zenith (September 10, 2019).

<sup>2</sup> Page 5 of the September 6, 2019, letter from Ms. Allison Reynolds included as part of Zenith's request.

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Portland or adjacent waterways. Resolution No. 37168. In fact, Zenith's Franchise Agreement explicitly states that its terms and conditions are granted by the City consistent "with the City policy adopted in Resolution No. 37168 regarding fossil fuel infrastructure." Franchise Agreement, Section 1.10.

Zenith has proposed that OCT's approval of the pipes should contain the following condition limiting Zenith's use of the pipes:

Grantee is prohibited from utilizing the three new pipes under the NW Front Avenue right-of-way (the "new pipes") to transport fossil fuels. Grantee shall provide the City's Office for Community Technology by no later than January 30 of each year a report identifying all products transported through the new pipes during the prior calendar year. Grantee shall allow City inspectors access to the facility at all reasonable times to conduct inspections of the new pipes and the tanks connected to the new pipes for purposes of verifying that the new pipes are not being used to transport fossil fuels. City inspectors shall provide Zenith with the results of any such inspections within three business days.

OCT declines to accept Zenith's proposed condition. OCT is the City bureau tasked with monitoring franchise compliance, and OCT is not prepared or equipped to take on the monitoring and inspection responsibilities proposed by Zenith's condition. OCT has just ten full-time employees, with fewer than six full-time employees responsible for working on utility franchises throughout the entire City. None of the employees have the training or expertise to perform inspections of Zenith's pipes or the materials in those pipes. OCT does not perform periodic field inspections on any other franchisee's infrastructure, and OCT is not willing to depart from precedent and take on these additional unique responsibilities required by Zenith's proposed condition.

Further, OCT declines to accept a condition<sup>3</sup> whereby Zenith commits to annual reporting about the products in its pipes because Zenith has struggled to meet its existing Franchise Agreement commitments, including important reporting requirements. For example, Zenith is more than five months overdue on its May 15, 2019, payment of franchise fees for the 2018 calendar year. Zenith has also failed to file the written report calculating those fees required to be submitted with its payment. Paying franchise fees – and filing a report calculating those fees – are important terms under the Franchise Agreement. Zenith's failure to meet these existing contractual commitments makes OCT unwilling to rely on the additional commitments in Zenith's proposed condition. If OCT cannot rely on Zenith to make its franchise fee payment on time, and file the required report on time, then OCT also cannot rely on Zenith's promise in its proposed condition to file annual reports about the products transported in the pipes.

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<sup>3</sup> Even if OCT were inclined to accept the condition, OCT would in turn want the condition to be included as an express amendment to the Franchise Agreement to solidify the enforceability of the condition. Such an amendment to the Franchise Agreement would require approval by the City Council. However, since OCT is denying Zenith's request to add new pipes under Section 2.1(C), this issue is moot.

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Accordingly, OCT declines to accept Zenith's proposed condition and hereby denies Zenith's request to add new pipes under NW Front Avenue.

Best regards,



Elisabeth Perez  
Interim Director  
Office for Community Technology

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