

LAW OFFICES OF J. RICHARD ARAMBURU PLLC

705 Second Avenue, Suite 1300
Seattle, WA 98104-1797
Telephone 206.625.9515
Facsimile 206.682.1376

www.aramburulaw.com
www.aramburu-eustis.com

August 2, 2023

Sonia Bumpus
EFSEC Director
621 Woodland Square Loop SE
PO Box 43172
Olympia, WA 98503-3172
Delivery Via Email: sonia.bumpus@efsec.wa.gov

RE: Horse Heaven Hills
Proposed Wind Project by Scout Clean Energy

Dear Ms. Bumpus:

As you are aware, this office represents Tri-Cities C.A.R.E.S, (TCC) a community organization concerned with the impact of the proposed Horse Heaven Wind Project (proposed by Scout Clean Energy (SCE)) currently before the EFSEC. TCC has been granted intervenor status during the adjudication.

On July 21, 2023, the deposition of Dave Kobus, SCE's project manager, was taken and a transcript of that testimony has been prepared. EFSEC staff was mentioned during the deposition and we have two questions concerning staff positions on matters before the Council.

First, at pages 93-98 of the deposition, Mr. Kobus responds to questions concerning alternatives under WAC 463-60-296, which provides that: *"The application shall include an analysis of alternatives for site, route and other major elements of the proposal."* This section is discussed in the above-cited pages of the deposition. At page 94, Mr. Kobus confirmed that the project, as presented in the Updated Application for Site Certification (Redline) ("UASCR"), did not include "an alternate site layout with fewer turbines." Page 94, lines 16-20. When asked why no alternatives were presented, Mr. Kobus said:

But it was EFSEC's choice as to how they were going to evaluate alternatives, and they chose the no alternative, and then the two turbine options for the proposed alternative. That was an EFSEC decision. We didn't – couldn't influence that.

Deposition at page 94, lines 21-25 to page 95, lines 1-5. When asked who told him the foregoing, he said "EFSEC staff. So the official is Sonia Bumpus." Deposition at page

August 2, 2023

Page 2

95, lines 9-12. Mr. Kobus confirmed that: "She's the one that made the decision." At page 98 of the deposition Mr. Kobus further states: "What EFSEC told us is that they determined that the only alternatives that need to be evaluated are the no alternative and the proposal, with the exception that the proposal would be the two turbine option alternatives." Lines 11-15.

Will you please confirm or deny that Mr. Kobus has correctly stated his communications with EFSEC staff and that you told him that no alternatives with fewer turbines, other than those presented by the applicant, need be considered in the application?

Second, at pages 121 to 131, Mr. Kobus answers several questions concerning the water supply for the project and permits that may be required by the Benton County Fire Marshall. At page 130, lines 14-25, Mr. Kobus confirms that a permit for the proposed lithium-ion battery complex included in the proposal will be required from the Benton County Fire Marshal, but that no commitment for such a permit has been given. On page 131, lines 1-13, Mr. Kobus cites to recently added text to the UASC(R) (shown in red) that: "If necessary, the applicant would obtain these permits (from the Benton County Fire Marshall) in coordination with EFSEC." Lines 3-5. At lines 7-8, Mr. Kobus says that:

A. Yes. EFSEC has preemptive authority to issue the permits themselves.

Q. So if you can't get it from the Benton County fire marshal, you're going to ask EFSEC to issue the permit?

A. Absolutely. It's a benefit of going to EFSEC, it's a one-stop shop.

With respect to the above statements, has EFSEC been asked to preempt authority of local Benton County officials regarding the issuance of local permits, including those identified at pages 2-123, 2-125, and 2-127 of the UASCR? Please also indicate whether EFSEC believes it has the authority to preempt these local requirements.

Thank you for your prompt response to these inquiries. Should we receive no response, we will assume that Mr. Kobus' deposition correctly states the position of EFSEC staff.

Should you have any questions, please contact the undersigned.

Sincerely yours

J. Richard Aramburu

JRA:cc

cc: Parties of Record

Jonathan C Thompson, EFSEC staff counsel, jonathan.thompson@atg.wa.gov