



May 4, 2023

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VIA EMAIL

Adam Torem
Administrative Law Judge
Energy Facility Site Evaluation Council
PO Box 43172
Olympia, WA 98504-3172

**Re: *In re Application of Scout Clean Energy, LLC, for Horse Heaven Wind Farm, LLC*
("Applicant") - Input on Issues of Discovery and Disputed Issues, and Objection to
Additional Site Visit**

Dear Judge Torem:

This submittal responds to your request during the third pre-hearing conference on May 2nd, 2023, for input from the parties to the upcoming adjudicative proceeding on discovery procedures and disputed issue considerations. In addition, Applicant objects to the request for an additional site visit made by T.C. Cares during the May 2nd conference.

With respect to discovery, under RCW 34.05.446 and WAC 463-30-190, the presiding Administrative Law Judge ("ALJ") "may decide whether to permit" specific discovery procedures.¹ Applicant will comply with the discovery deadlines discussed during the May 2nd conference and the discovery procedures as set forth in the forthcoming discovery order. Applicant believes that a period as long as 30 days is not necessary here. Instead, as discussed at the conference, 10-14 days should allow sufficient time to respond to discrete requests for interrogatories and documents. In the event a motion to compel is needed, we believe such motions can be resolved in an expeditious manner that still affords the parties their due process rights. In the event of an impasse, the ALJ is generally in a position to rapidly respond to issues where the informal process breaks down.

¹ In fact, "pre-filed testimony is the usual discovery tool relied upon by EFSEC and [] more formal discovery measures found in civil litigation [a]re not the norm." See *Kittitas Valley Wind Power*, Council Order No. 790, Prehearing Order No. 8 (Mar. 12, 2004); see also *Whistling Ridge Energy Project*, Council Order No. 848, Prehearing Order No. 4 (June 29, 2010) (explaining parties had waived formal discovery in favor of informal discovery subject to the "rule of reason"). Consistent with such practice, for example, in the *Kittitas Valley Wind Power* adjudication, Your Honor "strongly encourage[d]" the parties to "cooperate in exchanging information and prevent the need for resort to more formal tools for procuring access to documents and witnesses" like depositions. *Id.* Formal discovery was available only by specific written request and was conditioned on a showing that informal discovery had been previously attempted and refused. *Id.*; see also *Vancouver Energy Distribution Terminal*, Case No. 15-001, First Pre-Hearing Order (May 5, 2015) (permitting formal discovery only after a written motion showing good cause).

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As to the disputed issue list, Applicant appreciates the work done by Your Honor and EFSEC staff for compiling the information provided by the parties into a workable list of topics to be considered during the adjudication. Applicant does not have any concerns with the existing disputed issue list.

Finally, during the May 2nd conference, T.C. Cares requested an additional site tour of the project site. Applicant objects to hosting another tour of the project site. Members of the Council and the general public (including members of T.C. Cares) were provided ample notice and were able to tour the proposed site on November 1, 2022. EFSEC, Special Meeting Notice, *Horse Heaven Wind, High Top and Ostrea, and Wautoma Solar Project Tours* (last updated Nov. 1, 2022), <https://www.efsec.wa.gov/council-information/council-meetings/archived-meeting-agenda-and-minutes>. Requiring another site tour is unnecessary, is unsupported by any legal authority, would further delay these proceedings, and has not been identified by the Siting Council, as the Council has already toured the site with members of the public. Further, hosting yet another site visit places an undue financial and administrative burden on Applicant, who would bear the costs of facilitating another tour.

Applicant thanks Your Honor for the opportunity to present its views on these issues.

Sincerely,



Timothy L. McMahan

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