

1 BEFORE THE STATE OF WASHINGTON
2 ENERGY FACILITY SITING EVALUATION COUNCIL

3 In the Matter of the Application of:
4 Scout Clean Energy, LLC, for Horse Heaven
5 Wind Farm, LLC,
6 Applicant.

DOCKET NO. EF-210011
SCOUT CLEAN ENERGY, LLC'S
MOTION TO STRIKE REBUTTAL
AND REPLY TESTIMONY OF TRI-
CITIES C.A.R.E.S. WITNESSES RICK
DUNN, PAUL KRUPIN, DAVID
SHARP, AND RICHARD SIMON

8 **I. INTRODUCTION**

9 Scout Clean Energy, LLC, for Horse Heaven Wind Farm, LLC ("Applicant" or
10 "Scout"), respectfully moves to strike rebuttal and reply testimony filed by Intervenor Tri-
11 Cities C.A.R.E.S. ("TCC") in the above-captioned proceeding.¹ In the Order Granting
12 Applicant's Motion to Strike TCC Testimony of Rick Dunn, Paul Krupin, David Sharp, and
13 (In Part) Richard Simon ("Order Striking TCC Testimony"), the Administrative Law Judge
14 ("ALJ") held that direct testimony from TCC witnesses Rick Dunn, Paul Krupin, David
15 Sharp, and Richard Simon would be stricken on the grounds that it (1) discussed topics
16 expressly outside the scope of this adjudication; (2) is not germane to the Energy Facility
17 Siting Evaluation Council's ("Council") siting decisions; (3) is improperly related to the
18 sufficiency of the information in the ASC; and (4) is outside the scope of the witnesses'
19 expert backgrounds and qualifications.

20 The same fatal flaws flow into and apply with equal force to rebuttal and reply
21 testimony filed by these TCC witnesses. Accordingly, based on the reasoning in the Order
22 Striking TCC Testimony, Applicant requests the following rebuttal and reply testimony filed
23 by TCC also be stricken:

- 24 - EXH-5211_R through EXH-5212_R: Pre-filed Reply Testimony of Rick Dunn;

25 _____
26 ¹ Applicant files this motion with the understanding that the Order Striking TCC Testimony
authorizes this motion as timely, notwithstanding the deadline set in the Second Prehearing
Conference Order. *Compare* Second Prehearing Conference Order at 3, *with* Order Striking
TCC Testimony at 2-5.

- 1 - EXH-5304_R: Pre-filed Rebuttal Testimony of Paul Krupin;
- 2 - EXH-5305_R through EXH-5306_R: Pre-filed Reply Testimony of Paul Krupin;
- 3 - EXH-5403_R: Pre-filed Rebuttal Testimony of David Sharp;
- 4 - EXH-5404_R through EXH-5414_R: Pre-filed Reply Testimony of David Sharp; and
- 5 - Portions of EXH-5503_R: Pre-filed Reply Testimony of Richard Simon.²

6 First, the pre-filed reply testimony of Rick Dunn is outside the scope of the Second
7 Prehearing Order’s disputed issues list because it discusses state energy policy and whether
8 the project can cost-effectively balance carbon dioxide reductions, grid reliability, and land
9 use impacts. Second, the pre-filed testimony of Paul Krupin discusses visual impacts and fire
10 hazards, both of which are outside the scope of Mr. Krupin’s expertise. Order Striking TCC
11 Testimony at 3-4. Third, David Sharp also testifies about visual impacts, about which the
12 Order Striking TCC Testimony disqualifies him from testifying. *Id.* In addition, the
13 remainder of David Sharp’s testimony discusses BPA interconnectivity and economic
14 viability, both of which are not at issue in this adjudication. *Id.* at 2-4; *see also* Second
15 Prehearing Conference Order at 2-3. Finally, the portions of Richard Simon’s testimony that
16 address wind resource potential, economic viability, clean energy policy, and BPA
17 interconnectivity should be stricken because the Order Striking TCC Testimony excludes
18 these topics from the adjudicative proceedings.

19 II. ARGUMENT

20 As noted in the Order Striking TCC Testimony, the Second Prehearing Conference
21 Order is clear on which issues are disputed and which are not. Pursuant to the Order Striking
22 TCC Testimony and the Second Prehearing Conference Order, and for the reasons below,

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² Rick Dunn, Paul Krupin, David Sharp, and Richard Simon are together referred to herein as the “Witnesses.”

1 Applicant respectfully requests that the above-referenced pre-filed rebuttal and reply
2 testimony of the Witnesses be stricken.

3 **A. Rick Dunn’s Pre-Filed Rebuttal and Reply Testimony Should Be Stricken**
4 **Because Policy and Need Issues Are Outside the Scope of This Adjudication.**

5 The pre-filed reply testimony of Rick Dunn covers the same topics as his direct
6 testimony. His testimony discusses state policy including criticisms of Washington’s Clean
7 Energy Transformation Act and Climate Commitment Act, project need, and whether the
8 project can cost-effectively balance carbon dioxide reductions, grid reliability, and land use
9 impacts. EXH-5211_R. Finally, Rick Dunn attaches a PowerPoint from the Washington
10 State Department of Commerce, Senate Environment, Energy, and Technology Work
11 Session to his testimony, which he uses as evidence that this wind farm should be located
12 elsewhere. EXH-5212_R. The ALJ struck testimony of the same subject matter in the Order
13 Striking TCC Testimony. For those same reasons, Rick Dunn’s reply testimony should be
14 stricken.

15 **B. EXH-5305_R and EXH-5306_R Should Be Stricken Because the Issues**
16 **Addressed Are Outside the Scope of Mr. Krupin’s Expertise in Biology and**
17 **Hydrology.**

18 The pre-filed reply testimony of Paul Krupin should be stricken because it discusses
19 visual impacts. EXH-5304, filed June 12, 2023, was stricken in the Order Striking TCC
20 Testimony. Order Striking TCC Testimony at 7. However, that exhibit was revised and
21 resubmitted when TCC submitted its rebuttal testimony on July 5, 2023. The July 5th
22 testimony is not materially different than the June 12th testimony and should be stricken on
23 the same grounds.

24 EXH-5305_R and EXH-5306_R are focused on evaluating the visual impacts of the
25 project and responding to the expert testimony of Brynn Guthrie, a visual expert. The ALJ
26 determined in the Order Striking TCC Testimony that “Mr. Krupin does not have sufficient

1 qualifications to present evidence regarding visual impacts of the project.” Order Striking
2 TCC Testimony at 3.

3 For the same reason, the portion of Paul Krupin’s testimony that addresses fire
4 hazards should also be stricken. EXH-5305_R at 15-37. In the Order Striking TCC
5 Testimony, the ALJ notes that though Mr. Krupin has a background in science, including
6 environmental biology and hydrology, Mr. Krupin demonstrates no evidence of “training or
7 education sufficient to make him an expert in the area of visual impacts” or “air quality
8 analysis.” Order Striking TCC Testimony at 3. Just as Mr. Krupin’s general background in
9 environmental biology and hydrology does not support qualifying Mr. Krupin as an expert in
10 visual issues, it also does not qualify him as having any expertise in fire hazards. As noted in
11 the Order Striking TCC Testimony, allowing Mr. Krupin to present lay opinion testimony on
12 topics on which he has no expertise, like fire hazards, and then asking the Council to “reduce
13 the weight of this evidence in comparison to other qualified expert witnesses” is not tenable.
14 Order Striking TCC Testimony at 3.

15 **C. David Sharp’s Pre-Filed Rebuttal and Reply Testimony on Visual Impacts,
16 Economic Viability, and BPA Interconnectivity Is Both Outside the Scope of
This Adjudication and His Expertise.**

17 The rebuttal and reply testimony of David Sharp should be stricken because it is both
18 outside the scope of this adjudication and outside the scope of his expertise. Mr. Sharp’s
19 rebuttal testimony, EXH-5403_R, focuses exclusively on responding to Brynn Guthrie’s
20 expert visual testimony. As the ALJ found in the Order Striking TCC Testimony, Mr. Sharp
21 is not an expert in visual impacts. Order Striking TCC Testimony at 4.

22 David Sharp also submitted extensive reply testimony. See EXH-5404_R through
23 EXH-5414_R. This testimony contains discussion of BPA interconnectivity, economic
24 viability, and visual impacts. Based on the Order Striking TCC Testimony, the testimony
25 regarding BPA interconnectivity and economic viability should be stricken because it is
26 outside the scope of these proceedings. See Order Striking TCC Testimony at 4. And again,

1 the reply testimony about visual impacts should be stricken because the Order Striking TCC
2 Testimony finds that David Sharp is not an expert in visual impacts. *Id.*

3 **D. Portions of Richard Simon’s Pre-Filed Reply Testimony on Economic Viability,
4 Clean Energy Policy, and Wind Resource Potential Is Outside the Scope of This
Adjudication.**

5 Richard Simon submitted reply testimony discussing wind resource potential, visual
6 impacts, economic viability, clean energy policy, and fire hazards. EXH-5503_R. Mr.
7 Simon reasserts his arguments about wind resource potential, economic viability, clean
8 energy policy, and BPA interconnectivity, and addresses out-of-scope content from Mr.
9 Sharp’s testimony. See EXH-5503_R at 2 (lines 6-23), 3 (lines 22-26), 4 (lines 10-17), 5
10 (lines 12-15), and 6 (lines 5-17). These issues are expressly excluded from this adjudication
11 by the Second Prehearing Conference Order and by the Order Striking TCC Testimony. *See*
12 Second Prehearing Conference Order at 2-3; Order Striking TCC Testimony at 4. Like Mr.
13 Simon’s initial testimony, there are portions of this reply testimony that the ALJ has
14 specified are part of the adjudication, including discussion of impacts on existing wind
15 facilities and the size of the facility. Based on the Order Striking TCC Testimony, Applicant
16 respectfully requests that the Council strike the above-specified reply testimony of Richard
17 Simon.

18 **III. CONCLUSION**

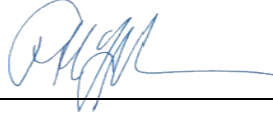
19 Consistent with the Order Striking TCC Testimony, we respectfully request that the
20 Council strike the following exhibits:

- 21 - EXH-5211_R through EXH-5212_R: Pre-filed Reply Testimony of Rick Dunn;
- 22 - EXH-5304_R: Pre-filed Rebuttal Testimony of Paul Krupin;
- 23 - EXH-5305_R through EXH-5306_R: Pre-filed Reply Testimony of Paul Krupin;
- 24 - EXH-5403_R: Pre-filed Rebuttal Testimony of David Sharp;
- 25 - EXH-5404_R through EXH-5414_R: Pre-filed Reply Testimony of David Sharp; and
- 26 - In part, EXH-5503_R: Pre-filed Reply Testimony of Richard Simon.

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DATED: August 1, 2023.

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1 **CERTIFICATE OF FILING AND SERVICE**

2 I hereby certify that on August 1, 2023, I filed the foregoing **SCOUT CLEAN**
3 **ENERGY, LLC’S MOTION TO STRIKE REBUTTAL AND REPLY TESTIMONY**
4 **OF TRI-CITIES C.A.R.E.S. WITNESSES RICK DUNN, PAUL KRUPIN, DAVID**
5 **SHARP, AND RICHARD SIMON**, dated August 1, 2023, with the Washington Energy
6 Facility Site Evaluation Council through electronic filing via email to
7 adjudication@efsec.wa.gov.

8 I hereby certify that I have this day served the foregoing document upon all parties
9 of record in this proceeding by electronic mail at the email addresses listed on the attached
10 Service List.

11
12 DATED: August 1, 2023.

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