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## 1 BEFORE THE STATE OF WASHINGTON ENERGY FACILITY SITING EVALUATION COUNCIL 2 In the Matter of the Application of: DOCKET NO. EF-210011 3 APPLICANT'S LIMITED OBJECTION Scout Clean Energy, LLC, for Horse Heaven TO TRI-CITIES C.A.R.E.S.' PETITION Wind Farm, LLC, 5 TO INTERVENE Applicant. 6 LIMITED OBJECTION 7 On February 3, 2023, Tri-City C.A.R.E.S. ("TCC") filed its Petition to Intervene, 8 seeking "full rights of a party" in the adjudicative proceeding. Petition at 4. Applicant Scout Clean Energy, LLC ("Scout" or "Applicant") submits this limited objection to TCC's 10 Petition to Intervene. This objection is timely filed pursuant to the Order Commencing 11 Adjudication dated December 15, 2022. 12 APPLICABLE LEGAL STANDARDS 13 Pursuant to WAC 463-30-091, "intervention shall be allowed \* \* \* in the discretion 14 of the council, to any person having an interest in the subject matter and whose ability to 15 protect such interest may be otherwise impaired or impeded." "In exercising discretion with regard to intervention, the council shall consider whether intervention by the petitioner would unduly delay the proceeding or prejudice the rights of the existing parties." WAC 463-30-18

22 DISCUSSION

Applicant submits these limited objections to TCC's participation in the adjudicative proceeding. First, based on the "Major Issues with the Horse Heaven Wind Project" linked within the Petition to Intervene, it appears that TCC seeks to present a number of issues that are of limited or no relevance to the issues to be decided, or that are not presented so as to allow for focused and efficient adjudicative proceedings. As a few examples, with Issue No. 1,

091. In allowing intervention, "[i]ntervenor status may also be conditioned upon allowance

of other parties to act as lead parties, where appropriate" and the "council reserves the right

to prescribe other limitations and conditions, where appropriate." WAC 463-30-091.

- 1 TCC argues that the Project is "[i]n the wrong place" because "[n]ormally [such projects are]
- 2 located in isolated, much less populated areas." With Issue No. 2 ("[t]oo many/too tall wind
- 3 turbines") TCC simply takes issue with the number and size of the wind turbine generators,
- 4 untethered from any statutory or regulatory criteria to be considered by the Council.
- 5 Additional issues suffer from those same deficiencies. See Issue No. 8 ("Why Here? Why Us?)
- 6 and No. 11 ("Too Many Unknowns"). Additionally, TCC appears to seek to interject some
- 7 sort of argument as to the impropriety of the Council's jurisdiction over these proceedings, see
- 8 Issue 10 ("Lack of Local Control. Applicant bypassed local elected officials. Gov. Inslee
- 9 makes the sole decision"). Any such argument is plainly irrelevant, as it is undisputed that the
- 10 Application here is subject to Council review and approval pursuant to RCW chapter 80.50.
- 11 See, e.g., Order Commencing Adjudication at 1; EFSEC Order No. 883 at 1-2.
- Should TCC be allowed to present such ill-defined and irrelevant issues, its
- 13 participation would certainly "unduly delay the proceeding" and/or "prejudice the rights of"
- 14 Applicant to have an orderly and efficient adjudicative proceeding. WAC 463-30-091.
- 15 However, the Applicant understands that the list of issues is not determined at the
- 16 intervention stage, but rather will be developed at a subsequent pre-hearing conference. (See
- 17 Order Commencing Adjudication at 3.) Accordingly, the Applicant requests that, if the
- 18 Council grants TCC's Petition to Intervene, the order granting intervention reserve the right
- 19 to prescribe limitations and conditions on TCC's participation in the adjudicative proceeding,
- 20 including to limit TCC's participation to one or more of the disputed issues that the ALJ
- 21 identifies are to be resolved in this adjudicative proceeding and/or to exclude from the
- 22 adjudication issues that TCC seeks to present. See WAC 463-30-091.
- Additionally, although TCC's Petition to Intervene is somewhat unclear on this point,
- 24 it appears that TCC purports to protect interests associated with land use "review under local

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Applicant offers these examples for illustrative purposes only. Applicant expressly preserves (and does not waive) its right to object to inclusion of any of the issues listed on TCC's attachment for resolution in the adjudicative proceeding.

| I  | regulations and procedures." (Petition to Intervene at 3; see also Issue No. 10.) However,       |  |  |
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| 2  | pursuant to its May 17, 2022, EFSEC has already determined that the Horse Heaven Wind            |  |  |
| 3  | Farm is "in compliance with local land use plans and zoning regulations." EFSEC Order No.        |  |  |
| 4  | 883 ¶ 34. Accordingly, the remaining question for the land use phase of the adjudication         |  |  |
| 5  | process is for the Council "to consider any conditions which might be required for the           |  |  |
| 6  | construction, operation and maintenance of the Facility in the GMAAD, consistent with            |  |  |
| 7  | Benton County's conditional use criteria in effect at the time the application for site          |  |  |
| 8  | certification was filed with EFSEC." $Id.$ ¶ 35. And on that issue, Benton County is an          |  |  |
| 9  | existing party of right that will have the relevant expertise and interest in compliance with    |  |  |
| 10 | remaining applicable land use conditions. Any input on the part of TCC is purely duplicative     |  |  |
| 11 | and is likely to unduly delay the proceeding or prejudice the rights of the existing parties.    |  |  |
| 12 | Accordingly, Applicant requests that any order allowing intervention on behalf of TCC            |  |  |
| 13 | reflect that Benton County act as lead party as to any remaining analysis of conditional use     |  |  |
| 14 | criteria, with TCC's participation limited or disallowed.  |  |  |
| 15 | CONCLUSION   |  |  |
| 16 | For all of the foregoing reasons, Applicant requests that, if the Council grants TCC's           |  |  |
| 17 | Petition to Intervene, the Council (1) reserve the right to prescribe limitations and conditions |  |  |
| 18 | on TCC's ability to interject issues into the adjudicative proceeding, and (2) condition, limit, |  |  |
| 19 | or disallow TCC's participation on Benton County acting as a lead party as to any remaining      |  |  |
| 20 | analysis of conditional use criteria.  |  |  |
| 21 | DATED: February 17, 2023. STOEL RIVES LLP  |  |  |
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|    | () ADDITION ADDITION   |  |  |

| 1  | CERTIFICIAT  | TE OF FILING AND SERVICE                                 |  |
|----|--|--|--|
| 2  | I hereby certify that on February 17, 2023, I filed an original and one copy of the        |  |  |
| 3  | foregoing APPLICANT'S LIMITED OBJECTION TO TRI-CITIES C.A.R.E.S.'                          |  |  |
| 4  | PETITION TO INTERVENE with the Washington Energy Facility Site Evaluation                  |  |  |
| 5  | Council, through electronic filing via email to adjudication@efsec.wa.gov, together with   |  |  |
| 6  | mailing via U.S. Postal Service, Return receipt requested, with postage prepaid to the     |  |  |
| 7  | following address:   |  |  |
| 8  |  |  |  |
| 9  | ATTN: Horse Heaven Adjudication 621 Woodland Square Loop SE P.O. Box 43172                 |  |  |
| 10 | Olympia, WA 98504-3172   |  |  |
| 11 | I further certify that on Februa   | ry 17, 2023, I served a true and correct copy of the     |  |
| 12 | foregoing APPLICANT'S LIMITED OBJECTION TO TRI-CITIES C.A.R.E.S.'                          |  |  |
| 13 | PETITION TO INTERVENE by first-class U.S. mail on the following parties to the             |  |  |
| 14 | adjudicative proceeding at the addresses listed below (with a copy sent via email where an |  |  |
| 15 | email address is indicated)  |  |  |
| 16 | Service List Attached  |  |  |
| 17 |  |  |  |
| 18 | DATED: February 17, 2023.  | STOEL RIVES LLP  |  |
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| 23 | and Bands of the Tanama Nation  |
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| 26 |   |