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BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITING EVALUATION COUNCIL

In the Matter of the Application of:

Scout Clean Energy, LLC, for
Horse Heaven Wind Farm, LLC,
Applicant.

DOCKET NO. EF-210011

RESPONSE TO APPLICANT'S
LIMITED OBJECTION TO
TRI-CITIES C.A.R.E.S.'
PETITION TO INTERVENE

I. INTRODUCTION.

The Applicant Scout Clean Energy, LLC, for Horse Heaven Wind Farm, LLC, (herein "Scout") has filed a limited objection to the verified petition of Tri-Cities C.A.R.E.S. (TCC) to intervene in these proceedings. The limited objection does not raise standing or similar jurisdictional issues, but questions the issues that TCC might raise during the hearing and objects to TCC's participation in proceedings regarding land use consistency.

TCC requests that the Council deny the objection and grant it full rights of a party in these proceedings.

II. DISCUSSION.

Scout's objection does not suggest that TCC as a community organization should not be allowed to intervene, but requests indefinite limitations be placed on its participation. These requested limitations should be denied.

2.1 Limitation of Issues.

Scout says that certain issues raised by TCC are "of limited or no relevance to the issues to be decided." Objection page 1, lines 24-26. TCC is not aware that the issues "to be decided" have been set by order or otherwise. However, EFSEC rules make clear that Scout is not the sole arbiter of issues to be presented to the Council.

1 Consistent with the 2022 amendments to RCW 80.50.090(4), parties are
2 obligated to raise issues in advance of the adjudication as follows:

3 (4) Prior to the issuance of a council recommendation to the governor under
4 RCW 80.50.100 a public hearing, conducted as an adjudicative proceeding
under chapter 34.05 RCW, the administrative procedure act, shall be held.

5 (a) At such public hearing any person shall be entitled to be heard in
6 support of or in opposition to the application for certification by raising
7 one or more specific issues, provided that the person has raised the issue
or issues in writing with specificity during the application review process
or during the public comment period that will be held prior to the start of
the adjudicative hearing.

8 TCC has raised a number of specific issues to assure that it may be heard on those
9 matters during the adjudication. See February 2, 2023 Petition to Intervene and the
10 TCC comment on the DEIS at Comment #1579.

11 With regard to the issues raised by TCC, frankly we don't understand the
12 objection. Scout complains that: "TCC simply takes issue with the number and size of
13 the wind turbine generators, untethered from any statutory or regulatory criteria to be
14 considered by the Council." But Scout does not cite or otherwise identify what
15 "statutory or regulatory criteria" it thinks should apply by reference to the EFSEC
16 statute or regulations. We are aware that the Council has previously considered
17 objections to the number and size of wind turbines, and in some cases has modified the
18 project to take account of public interest and environmental issues relating to such
19 turbines. Thus in Council Order No. 868, Whistling Ridge Final Adjudicative Order
20 (October 6, 2011), this council ordered that two wind turbine tower strings (and a part of
21 a third), be denied. See page 42. Though the applicant may be concerned that the
22 adjudication for its Horse Heaven project may be met with the same limitation, it cannot
23 preemptively remove issues presented by TCC or any other party from consideration.

24 The upcoming pre-hearing conference, and possible motion practice, will allow
25 all parties to request rulings on legal issues; there is no basis to make preliminary
26 decisions at this time.

1 2.2 Review of Land Use Issues.

2 The applicant recognizes that there will be consideration of land use and
3 conditional use proceedings as a part of the adjudication process. As local residents,
4 TCC members will want to be heard on these important issues along with other
5 members of the public.

6 Scout contends that Benton County should “act as lead party to any remaining
7 analysis of conditional use criteria, with TCC’s participation *limited or disallowed.*”
8 Objection at page 3, lines 12-15 (Emphasis supplied). Once again, Scout offers no
9 authority for this proposition, nor does any exist.

10 Benton County has specific provisions for review of conditional use permit
11 applications. These include an open record public hearing pursuant to Benton County
12 Code (BCC) 11.50.050(b). There is provision for publication of a legal newspaper
13 notice of the hearing and mailed notice to property owners within 300 feet “of any
14 portion of the applicable parcel.” BCC 11.50.050(b). There is the notice of a
15 conditional use permit application and opportunity for comments on a permit application
16 under BCC 17.10.100. In sum, Benton County codes invite, and rely upon, public
17 comment and input as a part of its hearing process, but there have been no hearings or
18 meetings to date. This process is consistent with the recognition of the Local Project
19 Review statute, especially RCW 36.70B.120, that provide for public comment as an
20 essential part of land use review; Benton County does not, and would not, make
21 important land use decisions without full opportunity for public input.

22 Scout’s request that the public and “TCC’s participation (be) limited or
23 disallowed” is wholly unjustified and inconsistent with the rights of public participation in
24 land use matters. We understand that Scout may not want to hear what TCC and other
25 members of the public have to say on land use issues, but excluding the public from
26 that process is not allowed. Public involvement with open and fair hearings has been a
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1 hallmark of Washington planning laws for more than 50 years. As stated in *Smith v*
2 *Skagit County*, 75 Wn 2d 715, 741 (1969):

3 The right to be heard implies a reasonable hope of being heeded. The right to
4 be heard in a public hearing contemplates that, although the legislative body
5 may, in finally deciding the matter, draw upon all kinds and sources of
6 information including the opinions of experts, the hearing must be conducted as
7 to be free from bias and prejudice; it must not only be open-minded and fair, but
8 must have the appearance of being so. The word hearing in a statute shows a
9 manifest purpose to afford due process of law. *Shields v. Utah Idaho Cent. R.R.*,
10 305 U.S. 177, 83 L.Ed. 111, 59 S.Ct. 160 (1938).

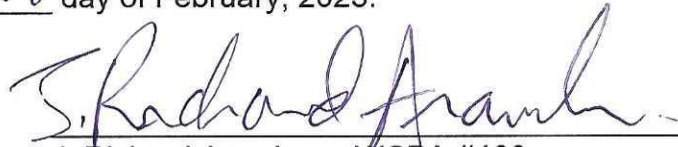
11 See also *Chrobuck v Snohomish County*, 78 Wn 2d 858, 869 (1971).

12 Washington land use law does not permit the silencing of public comment, even
13 if it raises concerns about a project.

14 **3. CONCLUSION.**

15 The objection of the applicant Scout should be denied. TCC should be entitled
16 to participate in the adjudication as a full party. Questions concerning hearing issues
17 can be decided during the prehearing conference or through motion practice.

18 Respectfully submitted this 24th day of February, 2023.

19 

20 J. Richard Aramburu, WSBA #466
21 Attorney for Tri-Cities C.A.R.E.S.