



March 1, 2023

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VIA EMAIL AND U.S. MAIL

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 Procedural Considerations for Adjudication Proceeding**

Dear ALJ Torem:

This submittal responds to your January 24, 2023 letter request for input from the parties to the upcoming adjudicative proceeding on scheduling and procedural considerations.

The parties and proposed intervenors held an initial call on February 28, 2023 to discuss scheduling. They anticipate holding a follow up conference to discuss a potential list of disputed issues prior to the March 10 pre-hearing conference.

The parties and proposed intervenors (collectively, the "parties") provide the following proposals for procedures to be utilized in the upcoming adjudication proceeding:

Testimony

One overarching issue raised by some of the parties concerns the format for the live portion of the adjudication. The December 15, 2022 Order Commencing Agency Adjudication identifies that the Council will schedule and conduct a virtual hearing, and the Applicant recalls that the decision to conduct a virtual hearing was made by the Council some months ago. The majority of the other parties are requesting an in-person or a hybrid hearing. The parties would appreciate guidance from you on this issue at the March 10 pre-hearing conference.

The parties propose the following procedures for testimony:

- Submission of pre-filed written witness testimony for direct, reply, and rebuttal testimony, with supplemental live testimony (provided it is within the scope of pre-filed written testimony), and live cross-examination of any witness who has submitted written testimony.

- Submission of written testimony on the following timeline: ALJ to set deadline for submittal of direct testimony by the applicant or other parties supporting the application, as well as any other party submitting original, direct testimony. Reply testimony from other parties/intervenors due 28 days after submittal of direct testimony; rebuttal testimony due 21 days after submittal of reply testimony. This process may merit further refinement on March 10.
- Parties to exchange names of direct witnesses and the issues that they will cover 14 days before submission of direct testimony.
- Written testimony to include a copy of that witness's resume or CV, or equivalent summary of their qualifications.
- Parties to submit a joint proposed order of presentation for live cross-examination (with estimated duration for each witness) to the ALJ no later than three business days prior to the date scheduled for commencement of the live portion of the adjudicative proceeding.

Concerning live testimony, the Yakama Nation is requesting the ability to bring direct oral testimony by Yakama Nation members during the hearing. This direct oral testimony would be limited to cultural resource impacts of the proposed project. This request, along with Yakama Nation's request for an in-person hearing, is based upon the sensitivity of the information that may be shared. Further, the Yakama Nation expressed concern about public information, either in writing or recorded, concerning culturally sensitive matters. It is unclear to the Applicant how this proposal could proceed in a fashion that meets the Yakama Nation's concerns but also addresses the requirement of RCW 34.05.449(4) for recording of the hearing, as well as the due process needs of parties to seek answers to questions raised by the Yakama Nation and to conduct discrete cross examination. We trust that you can help facilitate a solution to this issue.

The parties would also appreciate your guidance at the March 10 pre-hearing conference as to (1) any preferred order of presentation for the "live" portion of the adjudicative proceeding, and (2) any preferred procedures regarding pre-qualification of witnesses.

Exhibits

- Numerically sequenced exhibits shall be electronically filed and served as separate PDFs (or other format) contemporaneous with the filing of the written pre-filed testimony that they accompany. There was discussion of employing WUTC exhibit protocols, which can be discussed at the PHC.
- Use of unique prefixes for each party (*e.g.*, A0001, A0002, etc. for Applicant; CE0001, etc. for Counsel for the Environment; BC0001, etc. for Benton County; YN0001, etc. for Yakama Nation). Exhibits identified by page number in bottom-right hand corner of each exhibit page (*e.g.*, A0001, Page 1 of 10)

- Parties to electronically file and serve any additional exhibits to be used for supplemental live testimony, cross-examination, and/or impeachment at the “live” portion of the adjudication proceeding no later than three business days prior to the date scheduled for commencement of the live portion of the adjudicative proceeding.

The parties would also appreciate guidance from you at the March 10 telephonic pre-hearing conference as to (1) any preference for and/or available mechanisms for filing documents that are large in size with EFSEC (*e.g.*, via an electronic “box” system or similar method), and (2) any preference for submission of ALJ and EFSEC copies of filed exhibits (*i.e.*, whether a hard copy is preferred, number of hard copies to submit, timing for submission of hard copies following electronic filing of exhibits).

Briefing

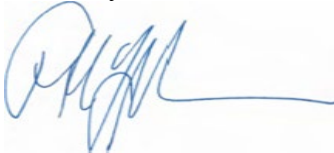
Parties to simultaneously submit an initial post-hearing brief following the “live” portion of the adjudicative proceeding, and subsequently simultaneously submit a responsive post-hearing brief, on dates to be set by the ALJ at the conclusion of testimony. Consideration should be given to prehearing briefs by the parties.

Confidentiality of Evidence

The parties also discussed that some parties will want to submit testimony and/or evidence without disclosing it publicly. The parties would appreciate guidance from you at the March 10 telephonic pre-hearing as to your preference for how to proceed with making any requests to close a portion of the hearing and/or for entry of an appropriate protective order consistent with RCW 34.05.449(5).

The parties look forward to discussing these matters in more depth and other issues at the upcoming telephonic pre-hearing conference scheduled for March 10, 2023.

Sincerely,



Crystal Chase and Timothy L. McMahan

CC: C. Chase and E. Schimelpfenig, Stoel Rives LLP
AAG Sarah Reyneveld, Attorney for Counsel for the Environment
Kenneth Harper, Menke Jackson Beyer, Attorneys for Benton County
J. Richard Aramburu, Counsel for Tri-Cities C.A.R.E.S
E. Jones, S. Voelckers, J. Houston, Counsel for Yakama Nation