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March 9, 2023

VIA EMAIL AND U.S. MAIL

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

**Re: *In re Application of Scout Clean Energy, LLC, for Horse Heaven Wind Farm, LLC*
(the “Application”) – statement of disputed issues**

Dear Judge Torem:

This submittal is a joint statement of Benton County and Yakama Nation in response to your January 24, 2023, letter requesting input from the parties in order to facilitate your establishment of an agreed list of disputed issues at the March 10, 2023, pre-hearing conference.

Benton County and Yakama Nation submit this generalized list of issues to help guide the upcoming discussion of disputed issues. We submit this list solely for discussion purposes. In doing so we want to clearly state that our clients reserve and do not waive their refinement, further development, or modification of this list of issues. As expressed by several participants in counsel’s discussion of March 8, 2023, the County and Yakama Nation are uncertain how these issues may be used in the adjudicative process and will be interested in your further comments on that subject. The below subjects are by no means drafted as precise allegations of error or a limitation of issues or concepts that may spring from these issues.

Subject to the above disclaimers, the County and Yakama Nation believe that the below issues are likely to be focal points of the County and Yakama Nation in the adjudicative proceedings:

For Benton County:

- Whether the application frustrates and impedes the County’s implementation of state law regarding protection of natural resource lands;
- Whether the impacts of conversion and disruption of agricultural lands of long term commercial significance have been properly disclosed and analyzed;

- Whether the impacts of conversion and disruption of agricultural lands of long term commercial significance can be appropriately mitigated;
- Whether the application is likely to have cumulative impacts arising from the conversion and disruption of agricultural lands of long term commercial significance; and
- Whether the scale, location, and elements of the application will have a significant impact on the welfare of the residents of the County and the greater region, the location, growth, and preservation of industry and agriculture, and the use of natural resources.

For Yakama Nation:

- Whether the Project will create probable, significant, adverse impacts to Yakama Nation's sacred and sensitive Traditional Cultural properties;
- Whether the Project will create probable significant adverse environmental impacts to wildlife species, wildlife habitat, and vegetation;
- Whether the cumulative impacts of the Project are impermissibly inconsistent with EFSEC's policies and goals set forth by the Washington Legislature;
- Whether the Project will cause irreparable harm to, and prevent use of, Traditional Cultural Properties located on adjacent Federal lands; and
- Whether the Project' potential archeological and cultural resource impacts have been fully evaluated, consistent with professional archeological standards.

For Benton County & Yakama Nation Jointly:

- Whether the application is consistent with the Growth Management Act;
- Whether the application is consistent the State Environmental Policy Act, and whether any final EIS for the application is adequate;
- Whether SEPA's substantive and procedural requirements are or will be satisfied in the course of the application's review;
- Whether the application complies with Benton County land use regulations, including Benton County's comprehensive plan, conditional use permit criteria and standards for a variance; and
- Whether and to what extent EFSEC may or should preempt other laws and planning documents.

Lastly, we have identified the following threshold procedural matter to address during the prehearing conference:

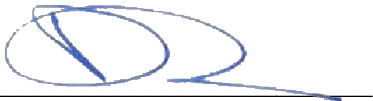
Can EFSEC proceed with the adjudication, which commits to a particular course of action and limits the choice of reasonable alternatives, prior to completing appropriate consideration of environmental information, in violation of WAC 197-11-050 and WAC 197-11-070?

We anticipate that the other parties will have additional perspectives on this threshold procedural issue and respectfully request an opportunity to fully brief the issue before a ruling is made.

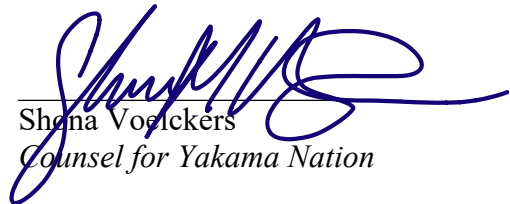
As noted above, these are general issues we believe to be in dispute and are provided solely as discussion points for the March 10, 2023, pre-hearing conference. Benton County and the Yakama Nation reserve the right to provide additional, and more specific, issues during the pre-hearing conference and thereafter as may be appropriate.

Thank you for your consideration of the issues identified in this letter.

Sincerely,



Kenneth W. Harper
Counsel for Benton County



Shona Voelckers
Counsel for Yakama Nation

CC: C. Chase, T. McMahan, E. Schimelpfenig, Stoel Rives LLP, Counsel for Applicant
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