



March 9, 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 Issues in Dispute for Adjudication Proceeding**

Dear ALJ Torem:

This submittal responds to your January 24, 2023, letter encouraging the parties to start discussions as to a list of disputed issues in advance of the pre-hearing conference scheduled for March 10, 2023.

On March 8, 2023, the parties (including proposed intervenors) held a call to start those discussions. The parties engaged in a preliminary discussion about general categories of issues that each party may seek to raise in the adjudicative proceeding. The general categories identified by parties so far are: (1) compliance with RCW Chapter 43.21C; (2) impacts to the environment; (3) compliance with Benton County Code; and (4) compliance with RCW Chapter 80.50. However, parties indicated that they would appreciate guidance at the March 10 pre-hearing conference on several items before they formally identify their list of disputed issues. Those items include: (1) the level of specificity at which the issues should be framed; (2) how the issues list will be utilized as the adjudicative proceeding moves forward; (3) whether failure to identify an issue for inclusion on the disputed issue list would subsequently preclude a party from presenting evidence or argument on that issue.<sup>1</sup>

The parties also discussed the interplay between the issues list and the presentation of testimony. Specifically, the parties would appreciate any clarity you could provide at the pre-hearing conference on whether the proponent of a specific issue will be expected to present direct testimony as to that issue. Tri-Cities C.A.R.E.S. notes that its intervention motion is not yet decided, including whether the limitations on their participation requested by Applicant will be adopted as conditions of intervention.

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<sup>1</sup> On the call, Benton County indicated that it intends to submit a preliminary list of issues in advance of the March 10 pre-hearing conference for discussion purposes only (reserving all rights to further clarify, revise, or add issues pending clarification of the foregoing).

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As Applicant shared with the parties on the pre-hearing call, Applicant will be prepared to address any issues encompassed within its application or the relevant criteria for approval of the same, to the extent those issues are identified as disputed in this proceeding. However, to ensure fairness and efficiency in the adjudication process, Applicant's view is that it is important that: (1) the disputed issue list be established at the outset of the adjudication proceeding; (2) the issues be identified with sufficient specificity to provide fair notice of the issues actually in dispute so as to allow the parties to reasonably develop testimony and evidence on the same; and (3) the issues be framed neutrally for the Council's resolution. Applicant hopes that the March 10, 2023, pre-hearing conference will result in—or, if necessary, begin a further defined process for—establishing a fixed list of issues that will frame the scope of the adjudicative proceeding for the ALJ and the parties going forward.

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

Sincerely,



Crystal S. Chase and Timothy L. McMahan

CC: E. Schimelpfenig, Stoel Rives LLP  
AAG Sarah Reyneveld, attorney for Counsel for the Environment  
K. Harper, A. Foster, M. 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