

**BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL**

In the Matter of the Application of:

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

DOCKET NO. EF-210011

PREHEARING CONFERENCE #3
(May 2, 2023 at 10:00 a.m.)

JUDGE TOREM'S AGENDA

Issued on April 28, 2023

1. Appearances / Roll Call:

Horse Heaven Wind Farm, LLC – Applicant

- Tim McMahan, Stoel Rives
- ***Crystal Chase, Stoel Rives***
- Emily Schimelpfenig, Stoel Rives

Benton County – Statutory Party of Right

- ***Kenneth Harper, Menke Jackson Beyer, LLP***
- Aziza Foster, Menke Jackson Beyer, LLP
- Ryan Brown, Benton County Prosecuting Attorney

Counsel for the Environment (CFE) – Statutory Party of Right

- ***Sarah Reyneveld, Assistant Attorney General***

The Confederated Tribes and Bands of the Yakama Nation (Yakama Nation)

- Ethan Jones
- ***Shona Voelckers***
- Jessica Houston

Tri-Cities C.A.R.E.S. (Community Action for Responsible Environmental Stewardship)

- ***J. Richard Aramburu***

ALSO Participating / Supporting PHC#3 – EFSEC Staff

- Jonathan Thompson, Assistant Attorney General
- Joan Owens
- Lisa Masengale
- Andrea Grantham
- Alex Shiley
- _____, Court Reporter

2. Venue for Adjudication – VIRTUAL

- Platform will be Microsoft Teams (w/option for call-in only)

3. Scheduling of Adjudication – Firm Hearing Dates + Suggested Daily Schedules

The Applicant's APPROVED Second Extension Request allows EFSEC to make its recommendation no later than July 8, 2023. EFSEC is working with the Applicant and its pending Third Extension Request which requests an extension through September 30, 2023. EFSEC Staff is considering whether that is a sufficient extension for completion of all reviews.

EFSEC Staff have reviewed all Council Members' availability (through September 30, 2023) and all parties' Notices of Unavailability submitted in March and April 2023. Based on these submissions and best matching of calendars of all concerned, EFSEC advises that it plans to conduct the adjudication on the following dates in August 2023:

- Thursday, August 10th & Friday, August 11th
- Monday, August 14th & Tuesday, August 15th
- Wednesday, August 16th – one morning session only (monthly Council Mtg in PM)
- Monday August 21st through Friday, August 25th

EFSEC will determine which topics will be addressed on each of these days based on the parties' pre-filed testimony in accordance with the Disputed Issues List and WAC 463-30-300.

The daily schedule for virtual hearing is anticipated to be split into an administration session each morning and 2 or 3 substantive evidentiary sessions of 90 to 120 minutes each, as follows:*

- | | | |
|---------------------------------|---------------------|-------------------------------|
| • Housekeeping / Administration | 8:30am to 9:00am | (30 minutes – only if needed) |
| • Evidence / Witness Exam #1 | 9:00 am to 11:00 am | (120 minutes) |
| • Lunch Break | 11:00 am to 12:15pm | (75 minutes) |
| • Evidence / Witness Exam #2 | 12:15pm to 1:45pm | (90 minutes) |
| • Evidence / Witness Exam #3 | 2:30pm to 4:15/30pm | (105 minutes – maybe 120?) |

* *This schedule does not indicate the various breaks that will be taken periodically within each session at the discretion of the Chair and presiding ALJ to ensure the court reporter, parties and witnesses are comfortable and can maintain attention and focus in the virtual hearing environment.*

4. Filing Milestones – Pre-Filed Testimony, Motions, and Briefing

- Timing for Pre-Filed Testimony – 3 Rounds of Responsive Testimony
 - May 24 (or May 31) – Initial Deadline for All Parties to File/Serve Direct
 - June 21 – Deadline for All Parties to File/Serve Response Testimony
 - July 12 – Deadline for All Parties to File/Serve Reply Testimony
 - August 2 – Deadline for Parties to File/Serve Prehearing Briefs / Cross Exhibits
 - August 8 – Final Prehearing Conference
 - September 22 – Deadline for Parties to File/Serve Posthearing Briefs

Parties are encouraged to file any procedural motions as soon as issues are known to them. Motions may not be entertained or ruled upon prior to the adjudication's evidentiary hearing sessions if not filed prior to July 21, 2023 or other such deadline as set by the presiding ALJ.

5. Disputed Issues List

After reviewing the Application for Site Certification, the Draft Environmental Impact Statement, RCW 80.50, WAC 463-30-300, and the parties' submissions regarding issues that may be in dispute during this adjudication, Judge Torem developed the below list of disputed issues. Judge Torem and EFSEC Staff consulted with Chair Drew to refine the below list of topics that the parties may choose to address and on which any party may present expert witness testimony. Subject to a short discussion for purposes of clarification and ensuring no omissions, all parties should expect the disputed issues list to be finalized at the 3rd pre-hearing conference.

Land Use Consistency – RCW 80.50.100(2) – limited to CUP / Variance Issues

- Benton County Zoning Code – Title 11 – Zoning – CUP/Variance Codes (*as of 2/8/21*)
 - BCC 11.50.040(d) – Conditional Use Criteria
 - BCC 11.50.030 – Standards for Variance
 - Setback Requirements (i.e., for solar arrays)
 - Possible Lot Line Adjustments (i.e., within solar array layouts)

Environmental / Physical Impacts

- Habitat, Vegetation and Wetlands
 - Habitat Fragmentation (Project layout issues / impact of east solar array)
- Wildlife
 - Bird and Bat Mortality
 - Threatened / Endangered Species (i.e., Ferruginous Hawk)
- Air Quality (?) – *Q for Tri-Cities CARES – is this focused on Construction? Batch plant?*
- Visual Aesthetics and Resources

Cultural / Historic / Archaeological Resource Impacts

- Protection of Yakama Nation's Traditional Cultural Properties/Places
 - Use and Access Issues within Project Boundary and on Adjacent Public Lands
- Archaeological Resources

Societal / Economic Impacts

- Agricultural Industry Interests (*only as can be differentiated from Land Use (above)*)
- Property Values / Housing / Local Economic Development
- Tourism / Recreation
- Local Concerns, Attitudes and Opinions**
 - Overall Scope and Scale of Horse Heaven Wind Project**

*** the issue category of “Local Concerns, Attitudes and Opinions” is to be differentiated from public comment that will be taken separately during the adjudication (in accordance with RCW 80.50.090(4). Any party wishing to present witness(es) on “Local Concerns, Attitudes and Opinions” should justify the witness’ significance as a representative of the local area and ability to speak for the community-at-large and understand they will be subject to cross-examination.*

Cumulative Impacts

- Additional Renewable Energy Projects in Benton County and Immediate Region

Site Restoration and Decommissioning

**** The Below Issues are NOT expected be taken up during Adjudication unless a party proponent makes a satisfactory offer of proof demonstrating its relevance under EFSEC’s governing RCWs and WACs ****

- Preemption – RCW 80.50.110 and WAC 463-28 (not applicable to this application)
- GMA – as applicable, covered via Land Use Consistency topic
- SEPA – Compliance with RCW 43.21C and WAC 197-11 (separate but parallel process)
- Proceeding with Adjudication prior to Issuance of FEIS
- Greenhouse gas emissions reductions analysis (outside scope of EFSEC / might be addressed as part of FEIS)

*** Hearing Briefs may choose to raise policy and legislative intent issues (i.e., RCW 80.50.010) as each party deems appropriate but within page limits prescribed by presiding officer. Any such arguments should ensure a firm basis in existing law (see CR 11 for guidance) or a good faith argument for extension/modification/reversal of existing law (or the establishment of new law). Submissions of evidence or arguments deemed frivolous will be stricken and reviewed for any available sanction under the APA.*

6. Discovery – Expectations, Needs, and EFSEC Experience

- Informal Discovery per APA – RCW 35.05.446
- What are the Parties’ Needs / Preferences for this Adjudication
- *Reference:* EFSEC Past Practices – Kittitas Valley Wind, Whistling Ridge, and Tesoro

7. Questions / Concerns / Other Pre-Hearing Issues?