



May 30, 2023

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VIA EMAIL

Hon. Adam Torem
Presiding Administrative Law Judge
EFSEC Docket No. EF-210011

**Re: Scout Clean Energy, LLC, for Horse Heaven Wind Farm, LLC (“Applicant”)
Objection to Tri-Cities C.A.R.E.S. (“TCC”) Formal Discovery Deposition Notice**

Dear ALJ Torem:

On May 26, 2023, Applicant received a notice of deposition from Intervenor TCC demanding that Scout Clean Energy, LLC Senior Project Manager Dave Kobus appear for deposition on June 5, 2023. No rationale is provided for this demand. Mr. Kobus will be on vacation on June 5, and for the reasons stated below, Mr. Kobus will not appear for this deposition. Applicant objects to this deposition¹ as violative of RCW 34.05.446, WAC 463-30-190, and your May 19, 2023 Second Pre-Hearing Conference Order (the “Order”).

RCW 34.05.446(3) (applicable in EFSEC proceedings per WAC 463-30-190) makes clear that the taking of depositions must be permitted by the presiding officer, typically conditioned on “a showing of necessity and unavailability by other means.” Moreover, the operative Order provides that “pre-filed testimony shall serve as the chief source of” discovery, and any additional discovery must be expressly limited to “only information that is relevant to the approved issues for the adjudication.” Accordingly, “[p]arties must not seek discovery that is unreasonably cumulative or duplicative or obtainable from another source that is more convenient, less burdensome, or less expensive.” *Id.* This is consistent with past practice. *See, e.g.,* Kittitas Valley Wind Power, Council Order No. 790, Prehearing Order No. 8 (Mar. 12, 2004) (formal discovery available only by specific written request and conditioned on a showing that informal discovery had been previously attempted and refused); Whistling Ridge Energy Project, Council Order No. 848, Prehearing Order No. 4 (June 29, 2010) (formal discovery waived in favor of informal discovery subject to the “rule of reason”); Vancouver Energy Distribution Terminal, Case No. 15-001, First Pre-Hearing Order (May 5, 2015) (permitting formal discovery only after a written motion showing good cause).

¹ Applicant notes that TCC has demanded that ALJ Torem recuse himself from these proceedings for reasons that the Applicant considers to be frivolous and based on accusations that are petulant at best. The status of the ALJ makes it unclear how to proceed in responding to the meritless demand for Mr. Kobus to sit in a deposition.

ALJ Torem
May 30, 2023
Page 2

To date, the Applicant has received no informal discovery communications or requests from TCC, much less any specific requests for information from Mr. Kobus.² Mr. Kobus is the Project Manager for the project, not a scientific or other expert typically relied on for testimony concerning information to best inform the Siting Council in its decision process. Accordingly, Mr. Kobus will not be filing pre-filed testimony in the first round and may or may not do so in upcoming proceedings, depending on need for such testimony as it may arise.

TCC has made no showing of necessity or unavailability as required under RCW 34.05.446(3). Absent any justification from TCC, it appears that the purpose of this requested deposition is to unduly burden Applicant and harass Mr. Kobus by diving into information that is neither relevant nor material to these proceedings and in no way related to the defined issues. At a minimum, TCC must disclose exactly what it intends by this deposition and be prepared to justify this demand given the requirements discussed above.

Sincerely,



Timothy L. McMahan

CC: EFSEC Service List

² On May 18, 2023, Applicant received a formal request for interrogatories and production, to which it is currently preparing a response.