



STATE OF WASHINGTON

## ENERGY FACILITY SITE EVALUATION COUNCIL

PO Box 43172 • Olympia, Washington 98504-3172

June 2, 2023

Tim McMahan, Counsel for Applicant  
Stoel Rives LLP  
760 SW Ninth Avenue, Suite 3000  
Portland, OR 97205

RE: Deposition of Dave Kobus

Dear Mr. McMahan,

Thank you for your letter of May 30, 2023, informing me of your objection to the notice of deposition that Tri-Cities C.A.R.E.S. (TCC) served on Mr. Dave Kobus, Senior Project Manager for Scout Clean Energy, LLC, on Friday, May 26, 2023. As is typical in discovery practice, this deposition notice was not filed with the Council and no copy was sent to me as the presiding administrative law judge (ALJ). The only information I have on this topic comes from your letter. To date, Mr. Aramburu has not filed any responsive letter to explain TCC's position.

You indicated that TCC noted Mr. Kobus' deposition for next Monday, June 5, 2023, a date on which he is unavailable. Therefore, Mr. Kobus will not be attending the noted deposition. In civil practice, it is customary and indicates common courtesy for attorneys to attempt to select a mutually agreeable date for depositions. I do not know whether any such consideration was made in this instance, but I certainly encourage it between all parties in this adjudication.

You also noted an objection to TCC's deposition notice as violative of both the Administrative Procedure Act (APA) and the Second Prehearing Conference Order (2nd PH Order) issued on May 19, 2023. You correctly quoted select portions of the 2nd PH Order, but neither the APA nor the 2nd PH Order prohibited the taking of depositions. Nor did the 2nd PH Order require advance permission from the presiding ALJ to note a deposition.

You are certainly correct in your inferences from the 2nd PH Order that formal discovery tools are not the favored method for obtaining information that is, or may prove to be, relevant to issues to be litigated in the upcoming adjudication. However, depending on what information TCC is seeking, it is wholly possible that Mr. Kobus may have something relevant to provide to Mr. Aramburu's client. Of course, that remains to be seen, but I have no further insight or indications as to how that question, if posed to me, might be answered. Your letter's further

speculation as to Mr. Aramburu's motives for serving this notice of deposition are your own and I will make no such judgments until and unless this matter is brought before me for a decision.

Your letter does not state any request for relief. You have not filed a motion to quash this deposition. You only explain why Mr. Kobus will not appear for this deposition. Therefore, my letter in response takes no action on this matter. Instead, I use this correspondence to again encourage the Applicant and TCC (and all parties cc'd on this letter) to use informal discovery methods to gather any information a party may think is relevant to this proceeding. In my humble experience, when one asks for information, one generally receives what they're seeking. Resorting to more formal discovery methods takes time, energy, resources, and may not ultimately prove effective under the compressed timeframe of EFSEC's adjudication process.

In a footnote to your letter, you indicated some confusion as to how to proceed in responding to TCC's deposition notice due to TCC's demand that I be recused from this adjudication. I assure you (and all other parties) that I remain the ALJ on this matter until and unless you receive notice to the contrary. The Council plans to issue its ruling on Mr. Aramburu's Motion for Disqualification / Recusal of Presiding Administrative Law Judge soon. I will simultaneously be signing a separate order responding to that pleading.

In sum, if the Applicant is unable to work out an informal resolution to provide TCC with any relevant evidence that Mr. Kobus might know or have regarding a topic germane to the adjudication, I expect that pertinent motions will be filed promptly regarding this disputed deposition. I will rule expeditiously on any such discovery-related motions.

Sincerely,



Adam Torem  
Administrative Law Judge

cc: Jon Thompson, AAG  
Kenneth Harper, Benton County  
Sarah Reyneveld, Counsel for the Environment  
Shona Voelckers, Yakama Nation  
Richard Aramburu, Tri-Cities C.A.R.E.S.