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5 BEFORE THE STATE OF WASHINGTON
6 ENERGY FACILITY SITE EVALUATION COUNCIL
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8 In the Matter of the Application of:

9 Scout Clean Energy, LLC, for
10 Horse Heaven Wind Farm, LLC,
11 Applicant

Docket No. EF-210011

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JOINT MOTION TO STRIKE
APPLICANT'S DIRECT TESTIMONY

I. Introduction

The Confederated Tribes and Bands of the Yakama Nation (“Yakama Nation”), Benton County, and Tri-Cities C.A.R.E.S. jointly move the Energy Facility Site Evaluation Council (“Council”) to strike all direct testimony filed to-date by Scout Clean Energy, LLC (“Applicant”) in the above-captioned proceeding. The documents filed by Applicant as direct testimony are inadmissible because they were filed after the deadline set by the administrative law judge (“Judge Torem”) and do not contain sworn testimony by any of Applicant’s purported witnesses. Both the Second Pre-Hearing Conference Order and basic principles of fairness require that the Applicant be held to the same filing deadline and standards as all other parties in this proceeding.

II. Argument in Support

The deadline for direct testimony was made clear to all parties. The Second Pre-Hearing Conference Order requires that all direct testimony “. . . be electronically filed and a copy e-mailed to

1 all other parties no later than 5:00 p.m. on [Monday, June 12, 2023].” The June 12, 2023 deadline was
2 discussed in detail during the May 2, 2023 Pre-Hearing Conference, with all parties *except for the*
3 *Applicant*, objecting to the proposed schedule as unfair, inappropriate, and inconsistent with discovery
4 procedures. *See* Third Pre-Hearing Conference Transcript, pgs. 43-62.

5 At 10:22 pm on June 12, 2023, Counsel for the Applicant e-mailed documents that it identified
6 as direct testimony for both filing and service. Declaration of Shona Voelckers in Support of Joint
7 Motion to Strike Applicant’s Direct Testimony (“Voelckers Decl.”), ¶3, Exhibit A. The documents
8 identified as the Applicant’s direct testimony are not sworn witness statements made under penalty
9 of perjury. *See Id.* at ¶4. Instead, the documents appear to be purported testimony that is signed by
10 counsel for the Applicant. *Id.* Without signed oaths or affirmations by the witnesses themselves,
11 the testimony still has not been filed. RCW 34.05.452(3); *see also* Wash. Ev. Rule 603.
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13 Even if the Applicant has submitted properly-sworn statements, it filed the direct testimony
14 well after the deadline without any demonstration of good cause for the delay. Applicant provided
15 no explanation in its filing email for its failure to meet the deadline set forth in the Second Pre-Hearing
16 Order. The Applicant did not request the other parties’ agreement to an extension of the June 12,
17 2023 deadline for direct testimony. Voelckers Decl. at ¶5. Indeed, the Applicant previously stated a
18 readiness to file its witnesses’ direct testimony on April 3, 2023. First Pre-Hearing Conference
19 Transcript, pg. 33.
20

21 The Applicant – the only party to this proceeding who has not objected to the strenuously
22 compressed schedule – should be held to the same deadline as the other parties. All parties are
23 working under a strenuous schedule, as documented in numerous objections and motions to continue.
24 The Applicant has had extensively more time than any other party to prepare for the adjudication.
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1 Not only has the Applicant had its application submitted to EFSEC since February 8, 2021, but it has
2 been planning some version of the Horse Heaven Hills Project for over a decade. See EXH-4003 at
3 TYN0013-14. Allowing the Applicant to file its direct testimony after the deadline set by Judge
4 Torem would violate general principles of fairness and due process.

5 **III. Conclusion**

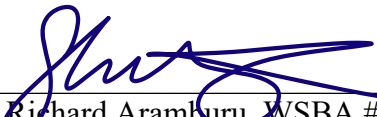
6 The Applicant has failed to file any timely and sworn witness statements as part of its direct
7 testimony. The Applicant did not request an extension or provide any explanation for its failure
8 to meet the procedural deadline. The documents filed as direct testimony on June 12, 2023 should
9 be stricken in whole.
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11 Dated this 16th day of June, 2023.

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Per email
authorization
6/16/23

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Per email
authorization
6/16/23

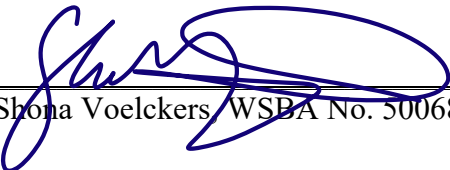
CERTIFICATE OF SERVICE

I, Shona Voelckers, certify that on June 16, 2023 I electronically filed the foregoing document with the Energy Facility Site Evaluation Council (“EFSEC”) at Adjudication@efsec.wa.gov.

I further certify that on June 16, 2023 I served the same upon all parties of record and identified EFSEC staff in this proceeding by electronic mail as follows:

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Dated this 16th day of June, 2023.



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 Counsel for Yakama Nation