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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

REPLY IN SUPPORT OF JOINT MOTION
TO STRIKE APPLICANT'S DIRECT
TESTIMONY

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13 Applicant's response provides no rational reason that the Energy Facility Site Evaluation
14 Council ("Council") should deny Confederated Tribes and Bands of the Yakama Nation ("Yakama
15 Nation"), Benton County, and Tri-Cities C.A.R.E.S. ("Parties") Joint Motion to Strike Applicant's
16 Direct Testimony. Applicant has failed to demonstrate any unique impediments to filing their direct
17 testimony. Therefore, denial of the Parties' Motion to Strike would be impermissibly prejudicial.

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19 Applicant failed to demonstrate any unique circumstance that justifies its admittedly untimely
20 filing. Despite Applicant's claim that it faced unique challenges in meeting the June 12, 2023 5:00pm
21 deadline, Mr. McMahan's declaration makes it clear that the Applicant faced the same technological
22 realities as the other parties. *Compare* Declaration of Timothy L. McMahan in Support of Response
23 in Opposition to Motion to Strike Applicant's Testimony ("McMahan's Decl.") ¶¶ 4-5 with
24 Declaration of Shona Voelckers in Support of Reply in Support of Joint Motion to Strike Applicant's
25 Direct Testimony ("Voelckers Decl.") ¶ 5, Declaration of Carol Cohoe in Support of Reply in
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1 Support of Joint Motion to Strike Applicant’s Direct Testimony (“Cohoe Decl.”) ¶ 2-4. The Parties
2 also had to work through electronic filing logistics and service of large documents. Voelckers Decl.
3 ¶ 5, Cohoe Decl. ¶ 2-4. Furthermore, it is clear from Mr. McMahan’s declaration that Applicant
4 could have – but in-explicably chose not to – file the remainder of its direct testimony while working
5 to resolve its technological issues with the voluminous exhibit. McMahan Decl. ¶ 4.

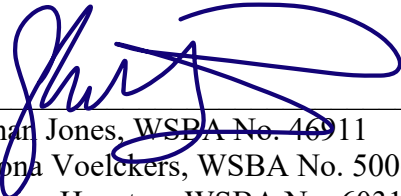
6 Applicant’s contention that it should be exempt from RCW 34.05.452(3)’s oath
7 requirement is unsupported by the law. RCW Chapter 34.05 applies to this adjudication as an
8 administrative proceeding, and “. . . all rulings upon objections to the admissibility of evidence
9 shall be made in accordance with the provisions of RCW 34.05.452.” WAC 463-30-310; RCW
10 80.50.090. Both Evidence Rule 603 and RCW 34.05.452(3) clearly require that witness testimony
11 must be made under oath, and Applicant has provided no citation to the contrary.

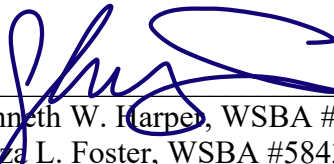
12 Denial of the Motion to Strike will be prejudicial to the Parties who expended significant time
13 and effort to submit sworn testimony by the June 12, 2023 deadline. On top of the weeks of
14 preparation and meetings with witnesses, counsel for Yakama Nation personally met with each
15 witness during the week preceding June 12th to ensure that they understood the oath of affirmation
16 before working through a Tribal holiday to redact and format all exhibits for a timely filing.
17 Voelckers Decl. ¶ 4. The other Parties had to dedicate similar time commitments to filing complete
18 and sworn testimony by the 5:00pm deadline. *See* Cohoe Decl. ¶ 2-4. Failure to hold the Applicant
19 accountable to the filing deadline prejudices the Parties who made the heavy lift to file timely and
20 complete sworn direct testimony.
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23 Lastly, Applicant erroneously conflates formatting errors with their failure to file any sworn
24 testimony by the deadline. The Parties acknowledge that, despite good faith efforts to comply with
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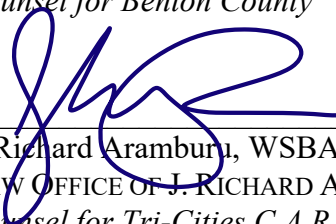
1 the Prehearing Order Regarding Naming Conventions, some minor formatting errors were made.
2 Consistent with Judge Torem's June 21, 2023 letter, the Parties will take immediate steps to submit
3 any formatting corrections requested by Public Records Officer Lisa Masengale. Applicant's failure
4 to file timely sworn testimony is a far cry from a formatting error and cannot be corrected through
5 resubmission. The documents filed by Applicant on June 12, 2023 should be stricken.

6 Dated this 21st day of June, 2023.

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Per email
authorization
6/21/23

19 
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Per email
authorization
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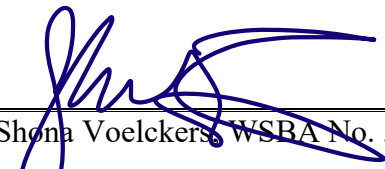
CERTIFICATE OF SERVICE

I, Shona Voelckers, certify that on June 21, 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 21, 2023 I served the same upon all parties of record and identified EFSEC staff in this proceeding by electronic mail as follows:

| Party | Counsel of Record |
|-----------------------------|--|
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Dated this 21st day of June, 2023.



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