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Sent via E-mail to: adamtorem@writeme.com

June 29, 2023

Hon. Adam Torem
Presiding Administrative Law Judge
Energy Facility Site Evaluation Council
PO Box 43172
Olympia, WA 98504-3172

RE: Horse Heaven Wind Farm LLC - EFSEC Docket No. EF-210011
Request for Continuance

Dear Judge Torem:

On behalf of Counsel for the Environment (CfE), Tri-Cities C.A.R.E.S., the Yakama Nation, and Benton County, we respectfully request a continuance of the current adjudication schedule for the Horse Heaven Wind Farm Project EFSEC Docket No. EF-210011. We request a continuance of at least one month with a promptly scheduled prehearing conference to determine a mutually available hearing time for the parties. WAC 10-08-090. The applicant concurs with a one-month extension request assuming that the Council is able to efficiently address scheduling.

There is good cause to grant this continuance request because the parties have repeatedly represented through motions, and on the record, that the current compressed litigation schedule will prejudice their ability to fully complete discovery, submit testimony, present their respective cases, and in the case of CfE fully participate in the scheduled August hearing. While we believe good cause to grant a continuance exists, the parties' requests for continuances have repeatedly been denied without a prehearing conference or opportunity to present argument. WAC 10-08-090. Our understanding of the primary reason for denial is the timing limitation imposed by RCW 80.50.100, specifically that the "the council shall report to the governor its recommendations as to the approval or rejections of an application, or such later time as is mutually agreed by the council and the applicant." Recently the Applicant requested a further extension of time, to January 31, 2024. On June 20, 2023, the Yakama Nation, TCC, and Benton County asked that the Council provide additional time for the parties to prepare their cases if the extension of the time was granted. *See attached letter*. However, in its June 21, 2023 meeting, the Council determined that any modification to the adjudication schedule should be decided by you, not the Council.

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Now that the Council and Applicant have agreed to the Applicant's additional extension request until January 2024, the parties respectfully request that, for the reasons set out below, you grant the request for a continuance of the adjudication schedule in this matter to extend the deadline for submitting opening testimony, all subsequent deadlines to submit testimony, and the scheduled hearing.

First, the schedule prejudices the parties' ability to submit their first round of testimony with the benefit of conducting discovery in this matter. The window for discovery in this matter was unnecessarily compressed from when the pre-hearing conference order was issued on May 19, 2023, to when the first round of testimony was due on June 12, 2023. As a result, the parties are still engaged in and were unable to fully complete discovery prior to the deadline for serving their first round of testimony, did not have the benefit of discovery completion in presenting the testimony of their witnesses, and in some cases, were unable to submit necessary testimony. Indeed, TCC has been delayed in its request for the deposition of the Applicant's Project Manager Dave Kobus and very recently filed a motion to compel; it is uncertain when that deposition can be taken. Consequently, both the deadline for completion of the first round of testimony and the discovery deadline should be extended.

Second, the deadlines for the subsequent rounds of responsive and reply testimony should be extended. These deadlines also potentially prejudice the parties because they do not allow the parties sufficient time to review the extensive testimony submitted by the parties, prepare responsive testimony, and/or submit responsive testimony with the benefit of discovery completion.

Finally, the scheduled hearing should be continued until at least September 11, 2023, because the current hearing schedule does not allow for the full preparation or participation of the parties. As stated, CfE will be on vacation during the first week of the scheduled hearing and in general, the August hearing is inconvenient and/or potentially prejudicial for the other parties due to the reasons stated in the parties' letter to the Council of June 20, 2023, attached. All the parties to the adjudication of this large and significant project should be entitled to a full and complete record for the ultimate decision-makers, the Council, and Governor.

Thank you for your consideration.

Sincerely,



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A handwritten signature in black ink, appearing to read 'J. Richard Aramburu', with a large, sweeping flourish at the end.

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