



STATE OF WASHINGTON

ENERGY FACILITY SITE EVALUATION COUNCIL

PO Box 43172 • Olympia, Washington 98504-3172

June 30, 2023

Counsel for the Environment
ATTN: Sarah Reyneveld
Office of the Attorney General
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188

Attorneys for Benton County
ATTN: Kenneth W. Harper
Menke Jackson Beyer, LLP
807 North 39th Avenue
Yakima, WA 98902

Yakama Nation Office of Legal Counsel
ATTN: Ethan Jones, Shona Voelckers,
& Jessica Houston
P.O. Box 151
Toppenish, WA 98948

J. Richard Aramburu
Counsel for Tri-Cities C.A.R.E.S.
705 2nd Avenue, Suite 1300
Seattle, WA 98104-1797

RE: Request for Continuance (letter dated June 29, 2023 – e-filed June 30, 2023)

Dear Ms. Reyneveld,

Thank you for your letter received this morning requesting a continuance “of at least one month” and a promptly scheduled conference to determine mutually agreeable hearing dates. Your letter indicated that the Applicant “concur[s] with a one-month extension request assuming that the Council is able to efficiency (sic) address scheduling.” The Applicant subsequently e-mailed to clarify that its “support is for a 30-day extension is with the assumption that the Council can take this action without additional delay or other unknown impediments.”

Your letter refers to repeated motions seeking similar relief and the difficulties encountered in submitting testimony. You cite to the recent agreement between the Council and the Applicant to extend to January 31, 2024 the deadline for EFSEC to make its recommendation to the governor as new grounds to reconsider a continuance. You specifically request extending the deadlines for the remaining rounds of pre-filed testimony and delaying the hearing to begin no earlier than September 11, 2023.

Neither I nor the Council are inclined to postpone the Horse Heaven Wind Farm adjudication. Granting a continuance in this matter would more than likely result in the need for a further extension of the newly agreed January 31, 2024 date noted above. After reviewing existing filings regarding Council members’ and parties’ unavailability in September 2023, it would appear that no more than eight (8) days of hearing time could be scheduled that month. Given the amount of time that has passed since those dates were provided, there is no guarantee they remain accurate. Thus, it does not appear possible to allow only a 30 day continuance.

June 30, 2023
Horse Heaven Adjudication
Request for continuance Response

I recognize the stress the parties are under to develop their cases for or against the proposed project under the compressed schedule required by RCW 80.50.100. The Applicant's recent agreement to allow the Council additional time to complete its review and ultimate recommendation to the governor extends the statutory deadline out to January 31, 2024. While this may on its face seem to provide good cause for also postponing the adjudication, there are many more logistical considerations to be evaluated when attempting to reset hearing dates for five parties, all of your witnesses, the EFSEC Horse Heaven Council (seven members and the Chair), EFSEC staff, the assistant attorney general, and the administrative law judge (ALJ).

A thirty day continuance will artificially compress the Council's post-hearing tasks. The Council must have sufficient time to receive your post-hearing briefs and thoughtfully deliberate all of the evidence admitted during the adjudication. The ALJ will also need time to craft findings of fact and conclusions of law following the Council's deliberations. Delaying the adjudication into mid-late September 2023 would result in these post-hearing tasks stretching into the holiday season and inevitable further delays due to councilmember unavailability during that period of time. In sum, the remaining months of 2023 following this adjudication are not blank space available for only this adjudication.

Finally, I want to point out that delaying the Horse Heaven Wind Farm adjudication would have a cascading effect on many other applications for site certification currently pending before the Council. EFSEC is in the process of scheduling hearings for at least two other projects that are at the procedural stage where it is will soon be appropriate to move forward on their adjudications. Granting a continuance as requested might result in this adjudication losing its priority place in the line of pending applications before EFSEC. The Applicant's limited consent to continuing this adjudication does not appear to allow for such a potentially extended delay.

Based on these reasons I have to deny your request for a continuance. **The filing deadlines for the second and third rounds of testimony remain as set in the recent *Order Denying Joint Motion to Strike* issued this past Monday, June 26, 2023.** Also, please note that the *Second Prehearing Conference Order* does not set a deadline or cutoff for discovery to be complete; the parties may, if appropriate, continue to seek information from each other after mid-July, when all testimony is due to be filed. If significant new information is discovered, parties may supplement their pre-filed testimony accordingly.

Sincerely,



Adam Torem
Administrative Law Judge

cc: Jonathan Thompson and Jenna Slocum, AAGs
Tim McMahan and Willa Perlmutter, Counsel for the Applicant