

**BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL**

In the Matter of the Application of:

Scout Clean Energy, LLC, for
Horse Heaven Wind Farm, LLC,
Applicant

DOCKET NO. EF-210011

THIRD PRE-HEARING
CONFERENCE ORDER

Procedural Setting

On July 25, 2023, Administrative Law Judge (ALJ) Adam E. Torem conducted a pre-hearing conference in this matter that was preceded by a “mock hearing” and technical trial of each party’s ability to connect to the virtual hearing room on Microsoft Teams. During the prehearing conference, the following items were discussed (summary):

- Parties’ joint request to strike hearing dates (8/10 & 8/11)
- Parties’ joint request to extend filing deadline for pre-hearing briefs (to 8/9)
- Process for Presentation of Confidential Testimony and Evidence
- Order of presentation of evidence at adjudicative hearing (general flow)
- Development of daily roster / line-up of witnesses for adjudicative hearing
- ALJ letter to Councilmembers on “what to expect” during adjudicative hearing
- Additional prehearing conferences to be held prior to adjudicative hearing

Based on the parties’ inputs and discussions at the above-noted pre-hearing conference, the undersigned ALJ orders the following modifications of the schedule for the adjudicative hearing and associated procedural rules and processes:

Modified Schedule for Adjudication

EFSEC will conduct the virtual adjudicative hearing (for cross-examination of witnesses who have submitted pre-filed written testimony) in August 2023 on the following **eight (8)** dates *with a public comment hearing in the middle of the final week of hearing*:

- Monday, August 14th & Tuesday, August 15th
- Wednesday, August 16th –morning session only
- Monday August 21st through Friday, August 25th
- Wednesday, August 23rd – Public Comment Hearing – 5:30 p.m. to 8:00 p.m.

The previously scheduled hearing dates of Thursday, August 10th and Friday, August 11th are canceled per a joint request from all parties.

The daily schedule for the adjudicative hearing will be as follows:

- 8:30 a.m. to 9:00 a.m. – daily preview and “housekeeping” session for parties and ALJ
- 9:00 a.m. to 4:00 p.m.* – evidentiary hearing with cross-examination of witnesses
 - Councilmembers attend these evidentiary sessions
 - Evidentiary hearing sessions will be approximately 50 to 80 minutes in length following by 5-10 minute comfort breaks (*flexible per witness timing*)
 - Lunch breaks of at least one hour will be taken midday (*flexible start/end time*)
 - *Daily end time of 4:00 p.m. might be extended to 4:30 p.m. (*only if needed*)

Pre-Hearing and Post-Hearing Briefs

Pre-hearing briefs are permissible and encouraged in order to allow parties to present their cases for and against the proposed project. Any party wishing to file a pre-hearing brief must do so no later than Wednesday, **August 9, 2023** (*this new date reflects a one-week extension from the original deadline, per a joint request from all parties*). Opening briefs shall not exceed 15 pages;¹ oversized briefs will not be considered by the Council. The Council does not anticipate allowing opening oral statements at or during the adjudication.

Post-hearing briefs may be required by the Council. The tentative due date, subject to revision at the close of the adjudication, will be Friday, September 22, 2023. Parties may choose to raise policy and legislative intent issues in their post-hearing briefs.

Closed Record Hearings – Confidential Information – Testimony / Cross-Examination

The adjudicative hearing is being conducted virtually via Microsoft Teams. EFSEC Staff will create a “breakout room” for hearing sessions that involve discussion of information or data that has been designated as confidential by a party. All questions and answers regarding such confidential information shall be conducted in a closed record proceeding.

Access to the “breakout room” for these closed record proceedings will be monitored by EFSEC Staff. Parties wishing to cross-examine a witness presenting confidential information or data must have signed the appropriate confidentiality agreement(s) and notify EFSEC during a “housekeeping” session of the adjudicative hearing so that adequate preparations can be made to protect the confidential information from improper disclosure. Parties who have not signed a confidentiality agreement will not be admitted into the closed record proceeding.

The public will be excluded from the closed record portion of the proceeding and provided notice of the approximate time for re-commencing the public record hearing.

¹ Pre-hearing and post-hearing briefs shall be double-spaced and with font size not less than 12-point text.

Order of Presentation of Evidence

Per the parties' input at the conference, the flow of evidence will be approximately as follows:

- 1) Land Use Consistency (1 day)
- 2) Environmental / Physical Impacts (2 days)
- 3) Cultural / Historic / Archaeological Resource Impacts (1 day)
- 4) Societal / Economic Impacts (1-2 days)
- 5) Cumulative Impacts (less than 1 day)
- 6) Site Restoration and Decommissioning (less than 1 day)

The parties shall continue to work collaboratively to develop a proposed daily line-up of witnesses on these topics, estimating the time needed for cross-examination and re-direct examination of each witness. Time should be built into the schedule to allow for questions from the Councilmembers and/or the ALJ.

Development of Daily Roster of Witnesses at Adjudicative Hearing

The parties will continue to collaborate on developing a projected daily "line-up" of witnesses per the ordering of testimony noted above. Further discussion (and potential adoption) of this line-up will occur at the next pre-hearing conference on Friday, August 4th, 2023 (*see below*).

ALJ Letter to Councilmembers – Setting Expectations for Adjudicative Hearing

This is the first adjudication conducted by EFSEC in approximately seven years. The current Council is constituted of entirely new members and none have experienced an adjudication. Therefore, the ALJ will craft a letter to councilmembers describing what to expect at the adjudicative hearing sessions next month. Topics to be included in the letter are

- daily rhythm (timing of hearing sessions, breaks, etc.)
- process for adoption of testimony, cross-examination, and ALJ ruling on objections
- option for councilmembers to ask questions
- virtual participation expectations for councilmembers
 - cameras on or off at councilmembers' option
 - camera on when asking questions of witnesses or participants
- suggestion that councilmembers view the hearing on largest possible screen
- explanation of purpose and logistics of closed record hearings
- explanation that Yakama Nation witnesses may sometimes speak in their language, but without expectation of translation or understanding on the part of councilmembers

Final Pre-Hearing Conferences

Per the parties' request at the conference, an additional pre-hearing conference to discuss scheduling and the daily line-up of witnesses will be held on **Friday, August 4, 2023 beginning at 3:15 p.m.** Additional logistical issues may also be discussed at that conference.

A final pre-hearing conference before the adjudicative cross-examination hearing on **Thursday, August 10, 2023 from 2:00 p.m. to 5:00 p.m.** (*this date is shifted from the originally scheduled on Tuesday, August 8th*). At that conference, all final "housekeeping" matters (i.e., ordering of witnesses, marking of exhibits, coordination and testing of any remaining virtual hearing mechanics, etc.) will be discussed to ensure the adjudication runs as smoothly as possible.

DATED and effective at Olympia, Washington, on the 31st day of July, 2023.

WASHINGTON ENERGY FACILITY
SITE EVALUATION COUNCIL



Adam E. Torem, Administrative Law Judge