

**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

ORDER DENYING TCC MOTION TO  
DISMISS APPLICATION DUE TO  
WATER SUPPLY ISSUE

**Procedural Background:**

On July 7, 2023, Tri-Cities C.A.R.E.S. (TCC) filed a *Motion to Dismiss Application: Failure to Comply with WAC 463-60-165 Regarding Water Supply (Motion to Dismiss – Water Supply)*. TCC contends that the Applicant has failed to provide EFSEC with information required by WAC 463-60-165 concerning water supply for the project.

On July 14, 2023, the Applicant, Scout Clean Energy (SCE) filed its *Opposition to Tri-Cities C.A.R.E.S.’s Motion to Dismiss (Opposition)*.

On July 24, TCC filed its *Reply to Opposition of Applicant to Dismiss Re Water Supply (Reply)*.

**Summaries of Party Positions:**

TCC argues that SCE’s Updated Application for Site Certification (UASC) should be dismissed or suspended until SCE can submit a water use authorization or contractual right to use water sufficient to address all needs of the proposed project. TCC points out that SCE’s original plan to obtain water from the City of Kennewick is no longer in place and no alternate water right or water source has been identified in the UASC.

The Applicant contends that TCC’s *Motion to Dismiss* is not based in law, cannot rely on strict compliance with EFSEC’s application review requirements, and is not warranted in this case.

TCC’s Reply reiterates its argument that SCE has not complied with WAC 463-60-165(3). TCC also provides information from the Port of Walla Walla regarding its inability to provide water supply to the proposed Horse Heaven Wind Farm project.

**Regulatory Requirements**

Applications for Site Certification are required to contain certain information as set out in Chapter 463 WAC. The purpose statement in WAC 463-60-010 explains that ASC’s must provide the Council with information regarding proposed project design “in such detail as *determined by the council* to enable the council to go forward with its application review” (emphasis added). WAC 463-60-116 recognizes that an applicant may need to amend its ASC over the course of EFSEC’s application review and provides instruction on when amendments

can be submitted to the Council. WAC 463-60-165 sets out the information required to be included in an ASC with regard to water supply.

**Discussion and Analysis:**

TCC fails to cite to any statutory provision allowing an ASC to be dismissed from EFSEC’s application review process. There is no such statutory authority. EFSEC’s mandate is to review ASC’s and make a recommendation to the governor. The regulatory requirements for submitting an ASC are very detailed, but WAC 463-60-010 makes it clear that the Council determines whether the information submitted by an applicant is sufficient to allow EFSEC review.

The water supply requirements of Chapter 463-60 WAC are not jurisdictional. There is no question that water supply is an essential element of this project’s future construction, operation and maintenance. However, that is a question to be finalized only if the governor determines that EFSEC should enter into a Site Certification Agreement (SCA) with SCE.

SCE’s ASC will continue to be reviewed by the Council. The adjudicative hearing set to begin next week will go forward as scheduled. If and when an SCA is to be granted, the question of water supply will be a condition precedent that must be satisfied at that time.

**Decision**

For the reasons set out above, TCC’s *Motion to Dismiss* the application is **DENIED**.

DATED and effective at Olympia, Washington, on the 7th day of August, 2023.

WASHINGTON ENERGY FACILITY  
SITE EVALUATION COUNCIL



Adam E. Torem, Administrative Law Judge