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3 BEFORE THE STATE OF WASHINGTON  
4 ENERGY FACILITY SITING EVALUATION COUNCIL

5 In the Matter of the Application of:

6 Scout Clean Energy, LLC, for  
7 Horse Heaven Wind Farm, LLC,  
8 Applicant.

DOCKET NO. EF-210011

TCC'S RESPONSE AND  
OPPOSITION TO APPLICANT'S  
MOTION TO STRIKE REBUTTAL  
AND REPLY TESTIMONY OF  
TCC WITNESSES RICK DUNN,  
PAUL KRUPIN, DAVID SHARP,  
AND RICHARD SIMON

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12 **I. INTRODUCTION AND BACKGROUND.**

13 Scout Clean Energy ("SCE," the applicant in these proceedings) has moved to  
14 strike rebuttal and reply testimony (including exhibits) of each of Intervenor Tri-Cities  
15 C.A.R.E.S. (TCC) rebuttal witness. These include Benton County PUD Manager Rick  
16 Dunn, environmental specialist Paul Krupin, former wind industry manager Dave Sharp  
17 and wind resource analyst Rich Simon. The principal argument is that the Striking  
18 Order entered on July 28, 2023 supports striking their testimony.

19 In fact, the PALJ<sup>1</sup> has now permitted TCC to file a motion for reconsideration of  
20 his Order Granting Applicant's Motion to Strike TCC Testimony (the Striking Order).  
21 TCC has accepted the PALJ's opportunity to file a motion for reconsideration and is  
22 filing that motion concurrently with this response to SCE's motion to strike the testimony  
23 of all TCC reply/rebuttal witnesses. As the considerations and authority in the  
24 reconsideration motion are similar to those in this response, and will be considered at

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26 <sup>1</sup> As indicated in prior pleadings, this and other motions, responses and objections submitted by TCC  
do not waive their continuing objection to the PALJ and its request to recuse himself.

27 **TCC'S RESPONSE & OPPOSITION TO APPLICANT'S MOTION**  
28 **TO STRIKE REBUTTAL & REPLY TESTIMONY OF TCC**  
WITNESSES RICK DUNN, PAUL KRUPIN, DAVID SHARP,  
AND RICHARD SIMON - 1

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1 the same time as this opposition, TCC incorporates the content of the reconsideration  
2 motion herein to avoid repetition.

3 As will be shown herein, the testimonies of TCC's rebuttal witnesses deal with  
4 the most important issues that the Council faces in this adjudication. The rebuttal  
5 witness testimony for TCC is provided by four persons with unique backgrounds in  
6 environmental review, electric systems and wind analysis, and their testimony is clearly  
7 relevant to the issues approved in PHO#2 and is in rebuttal to direct testimony offered  
8 by the Applicant. Accordingly, the motion to strike should be denied.

9 **II. STANDARDS FOR ADMISSION OF TESTIMONY.**

10 TCC incorporates the content of Section II in its Motion for Reconsideration of  
11 the Striking Order (RecSO) setting forth relevant legal authority. As indicated in that  
12 motion, the standard for admission of evidence in administrative proceedings is greatly  
13 relaxed. It is clear from their testimony, their education and their experience that TCC  
14 witnesses Dunn, Krupin, Sharp and Simon provide evidence "which reasonably prudent  
15 person are accustomed to rely in the conduct of their affairs." RCW 34.05.452. As  
16 such neither their rebuttal nor reply testimony should be stricken.

17 **III. TESTIMONY OF TCC REBUTTAL WITNESSES KRUPIN, SHARP, DUNN AND  
18 SIMON SHOULD BE ADMITTED IN WHOLE OR IN PART.**

19 The testimony presented by TCC's rebuttal and reply witnesses must be  
20 considered in the context of the standard of review in the *Vancouver Energy*  
21 *Distribution Terminal, Report to the Governor on Application NO 2013-01* (December  
22 19, 2017) at page 6:

23 The Council must weigh and balance the need for the proposed facility against  
24 its impacts on the broad public interest, including human welfare and  
25 environmental stewardship. The Council then determines whether the proposed  
26 facility at the particular site selected will produce a net benefit that justifies a  
27 recommendation of project approval.

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1           3.1 Rebuttal Testimony of Rick Dunn.

2           As managing director of Benton County PUD, with hands-on experience of  
3 running a large electric utility to meet the needs of the whole of Benton County,  
4 Mr. Dunn is uniquely qualified to address the predicate issues of this application. In  
5 particular, he is well placed to address “courses of action that will balance the  
6 increasing demands for energy facility location and operation in conjunction with the  
7 broad interests of the public.” He also can address the “overall scope and scale of the  
8 Horse Heaven Wind Project,” one of the approved disputed issues in this adjudication  
9 (PHO#2, page 2), and is well-suited to provide testimony on the Applicant’s claim in the  
10 UASC section on “Analysis of Alternatives” that: “The site represents a commercially  
11 viable wind resource area that is favorable for regional utilities with peak loading  
12 demand” (UASC at 2-118) as well as the Phase 2 alternatives of a wind/solar mix or  
13 wind only set forth at UASC 2-100 to 2-102.

14           His testimony at pages 1-7, line 8 concentrates on the balancing test,  
15 addressing the value of the proposed project in comparison with the adverse  
16 environmental, societal and other impacts. He concludes, based on the project itself,  
17 that project benefits are marginal at best. This testimony will inform the Council as to  
18 whether the HHWP meets the standard of review in Council Order 868 (*Whistling*  
19 *Ridge*) at page 15:

20           *The council must consider whether this project will produce a net benefit after*  
21 *balancing the legislative directive to provide abundant energy at reasonable cost*  
*with the impact to the environment and the broad interest of the public.*

22           At pages 8-13, Mr. Dunn directly responds to the testimony of Mr. Poulos,  
23 applicant’s expert witness. In particular, he debunks the Poulos claims (repeated in the  
24 UASC at page 2-118, that the project provides peaking power benefits during the  
25 winter) based on his experience in Benton County. He points to the minimal  
26 “dispatchability” of power from this wind project. His testimony is also relevant to the

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1 choices presented between wind+solar and wind-only alternatives for Phase 2 of the  
2 project.

3 This testimony is well within the relaxed standards for admissible evidence in  
4 administrative proceedings and should not be stricken.

### 5 3.2 Rebuttal Testimony of Paul Krupin.

6 The applicant contends that the entirety of Mr. Krupin's testimony should be  
7 stricken because he does not have qualifications to present evidence regarding visual  
8 or fire issues. In fact, as indicated in TCC's Motion for Reconsideration, Mr. Krupin has  
9 extensive background in many environmental areas, including but not limited to visual  
10 and fire issues. Regarding visual matters, Mr. Krupin's education in physical  
11 geography and extensive use of mapping support his testimony.

12 As noted in his rebuttal testimony at pages 1-2, Mr. Krupin addresses mapping  
13 issues and testimony of Ms. Guthrie. At page 2-10, Mr. Krupin provides statistical  
14 information regarding populations visually impacted by wind turbines, partially in  
15 response to testimony of Mr. Poulos. This statistical and mapping testimony is fully  
16 within Mr. Krupin's education and experience. At pages 8-15, Mr. Krupin again uses  
17 maps to address visual issues and cites to appropriate authorities to address viewing  
18 locations provided. The use of topographic maps and line-of-site visibility are fully  
19 within his background and experience as a technical and environmental reviewer with a  
20 variety of state and federal agencies. As noted above, the Applicant will have  
21 abundant time to cross-examine Mr. Krupin on these subjects.

22 The discussion of fire issues by Mr. Krupin is based on historic fire maps and  
23 use of standard mapping graphics and software, such as CalTopo; these are areas  
24 within his expertise. See pages 17-35. Mr. Krupin provides mapping in relation to fire  
25 areas and resources. His testimony is fully supported by established criteria and local  
26 and state standards. At pages 35-37, Mr. Krupin provides background information on

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1 fire sources discussed in the UASC and documented criteria in the published journals.  
2 All of this information is fully within his background as a project analyst. His testimony  
3 both addresses information in the UASC and the lack of complete analysis of fire  
4 impacts and the fire concerns related to the use of lithium-ion batteries.<sup>2</sup>

5 3.3 Rebuttal/Reply Testimony of David Sharp.

6 SCE moves to strike both the reply and rebuttal testimony of Mr. Sharp. In each  
7 situation, his testimony is both within the list of approved disputed issues and his  
8 background and expertise.

9 Mr. Sharp's reply testimony at EXH-5404\_R focuses entirely on rebuttal of Mr.  
10 Poulos, providing testimony referencing EXH-1031\_R. His support exhibits further  
11 reference Mr. Poulos testimony, including EXH-5405\_R, the actual BPA transmission  
12 queue, with EXH-5407\_R being the actual interconnection proposal with BPA.

13 Mr. Sharp's testimony in EXH-5408\_R does focus on the Brynn Guthrie  
14 testimony. However the testimony is principally factual, based on Mr. Sharp's own  
15 observations such as the proximity of the wind turbines to public use areas, including  
16 the BLM Horse Heaven Trail Head. See page 2. He also has visited areas where  
17 pictures were taken for the "Key Viewing Areas" (page 3 line 21 to page 4, line 26) and  
18 provides his own photograph at EXH-5414\_R. Again, this testimony is responsive to  
19 that of a SCE witness.

20 3.4. Rebuttal Testimony of Rich Simon.

21 The rebuttal testimony of Mr. Simon was carefully organized to address the  
22 direct testimony of SCE's witness Greg Poulos. See EXH-5503\_R. Given these  
23 circumstances, and limitations, it is impossible to say that this testimony is beyond the  
24 scope of disputed issues. Accordingly, the request to strike lines 6-23 on page two

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26 <sup>2</sup> Significantly, SCE has no expert witnesses on fire impacts or lithium-ion batteries, relying only on  
the anonymous/unsigned UASC.

1 includes testimony concerning the value of the project, part of the balancing test for the  
2 Council to decide what “scope and scale” of the Applicant’s project should be  
3 approved, and the request should be denied. Mr. Simon also addresses whether the  
4 kind of “open-ended” permits that the Applicant seeks are “within the scope of EFSEC  
5 approval.” The request to strike lines 22-26 on page 3 is similarly inappropriate. The  
6 question of which proposed turbines are more productive goes directly to the question  
7 of whether turbines should be removed to account for societal, public interest and  
8 environmental values and whether there is “a net benefit” in approving the project.

9 On page 4, lines 10-17 and page 5, lines 12-15, Mr. Simon simply points out  
10 that the question of “reasonable cost” is a predicate issue in deciding consistency with  
11 RCW 80.50.010(3). Similarly on page 6, Mr. Simon continues discussion of whether the  
12 project meets established criteria and whether under the transparency requirements  
13 recently imposed by the legislature in modification to RCW 80.50.010 that plainly  
14 prohibit the withholding of important project data. At lines 12-16, Mr. Simon states from  
15 his experience, that agencies are wary of wind turbines on ridge lines due to fire  
16 containment issues.

17 There is no basis to strike any of Mr. Simon’s rebuttal testimony.

18 **IV. CONCLUSION.**

19 The motion of the Applicant to strike sections of rebuttal testimony should be  
20 rejected and this testimony remain as a part of the record.

21 DATED this 7<sup>th</sup> day of August, 2023.

22  
23 /s/  
24 J. Richard Aramburu, WSBA #466  
25 Attorney for Tri-Cities C.A.R.E.S.

26  
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1 DECLARATION OF SERVICE

2 I hereby certify that I have this day served the foregoing upon the parties of  
3 record in this proceeding (listed below my signature block) by authorized method of  
4 service pursuant to WAC 463-30-120(3) to the email addresses for parties as provided.

5 Dated at Seattle, Washington this 7<sup>th</sup> day of August, 2023.

6  
7 /s/  
8 Carol Cohoe, Legal Assistant  
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