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2 BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITING EVALUATION COUNCIL

3 In the Matter of the Application of:
4 Scout Clean Energy, LLC, for Horse Heaven
Wind Farm, LLC,
5
6 Applicant.

DOCKET NO. EF-210011
APPLICANT'S RESPONSE TO TTC'S
MOTION FOR RECONSIDERATION OF
ORDER TO STRIKE ALL OR PART
PREFILED TESTIMONY OF TCC
WITNESSES RICK DUNN, PAUL
KRUPIN, DAVID SHARP, AND
RICHARD SIMON

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9 I. INTRODUCTION

10 Pursuant to the Order Granting Tri-Cities C.A.R.E.S.' ("TCC") Request for Leave to
11 File Motion for Reconsideration, Scout Clean Energy, LLC, for Horse Heaven, LLC
12 ("Applicant"), respectfully requests that EFSEC deny TCC's Motion for Reconsideration of
13 Order to Strike All or Part Prefiled Testimony of TCC Witnesses Rick Dunn, Paul Krupin,
14 David Sharp, and Richard Simon ("Motion"). The Motion fails for multiple reasons. First, it
15 fails to provide any specific grounds for reconsideration, as required under Civil Rule 59(a).
16 Nor does TCC's proffered argument that the disputed issue of the project's "scope and scale"
17 somehow allows this testimony to have any merit. Finally, the Motion simply rehashes the
18 arguments made by TCC in its response to Applicant's Motion to Strike, arguments that have
19 already been considered and denied.

20 II. ARGUMENT

21 A. **TCC Has Not Provided Any Grounds Under Civil Rule 59(a) to Grant the**
22 **Motion for Reconsideration.**

23 A motion of reconsideration can be granted for any of the reasons under Washington
24 Superior Court Civil Rule 59. CR 59(a). The Motion makes no mention of this standard and
25 certainly does not meet it. *See* Motion. In fact, the Motion does not identify any specific
26 grounds under Civil Rule 59 in support.

1 Construing the Motion generously, to the extent TCC may attempt to implicitly raise
2 an argument under CR 59(a)(8) (error in law), the presiding officer (“ALJ”) has made no
3 error of law that warrants granting the Motion. TCC seems to argue that the “relaxed rules of
4 evidence” in administrative proceedings would warrant letting this testimony in. But even
5 under these “relaxed standards,” the plain text of RCW 34.05.452 allows the ALJ to exclude
6 evidence that is “immaterial” or “irrelevant” to the proceedings. RCW 34.05.452(1). As
7 indicated in the Second Prehearing Conference Order, the Order Overruling Objections to
8 Second Prehearing Conference Order (“Order Overruling Objections”), and the Order
9 Granting Applicant’s Motion to Strike TCC Testimony of Rick Dunn, Paul Krupin, David
10 Sharp, and (In Part) Richard Simon (“Order Striking TCC’s Testimony”), the topics
11 discussed in the testimony of Rick Dunn, Paul Krupin, and David Sharp are outside the scope
12 of the disputed issues list and therefore both irrelevant and immaterial to these proceedings.

13 **B. The Overall Size and Scope of the Project Is Not a Catchall That Allows**
14 **Testimony on Any Perceived Issue.**

15 Throughout its Motion, TCC asserts that the testimony submitted by the above-
16 mentioned witnesses goes to the “overall scope and size of the project.” Motion at 5
17 (accessibility issues and lack of alternatives), 8-9 (BPA interconnectivity), 9-11 (commercial
18 viability and wind productivity). It seems that TCC’s understanding would allow *any* issue
19 under the overall scope and scale issue category. As indicated in the second prehearing
20 conference order, overall scope and scale is not a catchall for all issues. It is intended to
21 relate to issues of local concerns and opinions and, of course, is cabined by EFSEC’s
22 statutory and regulatory review criteria. Second Prehearing Conference Order at 2. In
23 addition, on multiple occasions the ALJ has expressly stated that these issues do not fall
24 under *any of the disputed issues*, including overall size and scope. Order Overruling
25 Objections at 4; Order Striking TCC’s Testimony at 2-4. The selective application of
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1 EFSEC’s policy objectives in RCW 80.50.010 is not sufficient to overcome the clear legal
2 deficiencies of the testimony.

3 **C. TCC Makes No Other New Arguments Supporting Admission of the Above-**
4 **Mentioned Witnesses Testimony.**

5 The Motion does not contain any new arguments for why the evidence of the above-
6 mentioned witness should be included in this adjudication. While TCC makes the same
7 argument that the “balancing test” in RCW 80.50.010 allows this testimony (*see* TCC’s
8 Opposition to Applicant’s Motion to Strike Pre-filed Testimony of TCC Witnesses (“TCC’s
9 Rebuttal”) at 2-3), TCC fails to point to any authority that requires the adjudicative
10 proceeding to address all of RCW 80.50.010. That is because there is none. *See* WAC 463-
11 30-300 (“[T]he council shall ... schedule the hearing process so that the following general
12 subject areas [none of which include commercial viability, grid interconnectivity, or
13 accessibility] may be heard ... *to the extent they are in issue[.]*” (emphasis added)); *see also*
14 RCW 34.05.449(2) (stating that the presiding officer must allow for the full opportunity to
15 respond, present evidence and argument, conduct cross-examination, and submit rebuttal
16 evidence, “*except as restricted by ... the prehearing order*” (emphasis added)).

17 There are numerous instances where TCC restates the arguments it made in TCC’s
18 Rebuttal. For example, TCC notes that pages 1-7 and 17-20 discuss Paul Krupin’s “general
19 concerns and the defects in the submitted materials” and “the lack of discussion of
20 alternatives.” TCC also tries to requalify Paul Krupin by submitting a “position description”
21 for a position at the Department of Energy, but even TCC admits that the visual analysis on
22 “pages 36 to 65 is factual, as opposed to analytical.” Motion at 6. Neither of these
23 statements supports requalifying Paul Krupin as an expert in visual analysis. These exact
24 arguments are made on pages 4-5 of TCC’s Rebuttal. With regard to Sharp, TCC again

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1 argues that grid injection capacity goes to the so-called “balancing test” required by EFSEC.¹
2 These arguments have already been considered and rejected.

3 **III. CONCLUSION**

4 We respectfully request that the Energy Facility Site Evaluation Council deny TCC’s
5 Motion for Reconsideration of Order to Strike All or Part Prefiled Testimony of TCC
6 Witnesses Rick Dunn, Paul Krupin, David Sharp, and Richard Simon.

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8 DATED: August 9, 2023.

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24 _____
25 ¹ RCW 80.50.010 provides substantial *policy* direction regarding the State’s policy to rapidly deploy
26 clean energy. The statute provides in part that it is the “*intent* to seek courses of action that will
balance the increasing demands for energy facility location and operation in conjunction with the
broad interests of the public. In addition, it is the intent of the legislature to streamline application
review for energy facilities to meet the state's energy goals . . .” This policy direction is not a
“balancing test” that somehow overcomes disallowed testimony.

1 **CERTIFICATE OF FILING AND SERVICE**

2 I hereby certify that on August 9, 2023, I filed the foregoing APPLICANT’S
3 RESPONSE TO TTC’S MOTION FOR RECONSIDERATION OF ORDER TO STRIKE
4 ALL OR PART PREFILED TESTIMONY OF TCC WITNESSES RICK DUNN, PAUL
5 KRUPIN, DAVID SHARP, AND RICHARD SIMON, dated August 9, 2023, with the
6 Washington Energy Facility Site Evaluation Council through electronic filing via email to
7 adjudication@efsec.wa.gov.

8 I hereby certify that I have this day served the foregoing document upon all parties
9 of record in this proceeding by electronic mail at the email addresses listed on the attached
10 Service List.

11 DATED: August 9, 2023.

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