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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 OPPOSITION TO MOTION
TO SUPPLEMENT THE KOBUS
DEPOSITION

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10 **I. INTRODUCTION**

11 At 5:05 p.m. on Tuesday, August 8, 2023, Applicant Scout Clean Energy filed its
12 motion to supplement the deposition of Applicant Project Manager David Kobus, taken
13 on July 21, 2023.

14 For the reasons stated herein, the request to supplement Mr. Kobus deposition
15 should be denied.

16 **II. THE REQUEST TO SUPPLEMENT THE KOBUS DEPOSITION IS UNTIMELY
AND INCONSISTENT WITH DISCOVERY RULES.**

17 As the Applicant failed to provide a witness to provide testimony concerning its
18 Amended Application for Site Certification (the UASC), on May 26, 2023, TCC noted
19 the deposition of Mr. Kobus, the project's managing agent, to be taken June 5, 2023.
20 On the applicant's website, there is a section entitled "Meet Dave Kobus Senior Project
21 Manager with Horse Heaven Clean energy project." The website says:

22 He notes that very few people in the energy industry have expertise in all
23 aspects of the industry, so it is vitally important to build teams of
24 experts who can go deep on specific subjects. While rare to find someone who
25 knows it all, Dave prepares himself with up-to-date information on the status of
26 everything related to the HHCEC development.

27 Following the service of the notice of deposition, the Applicant engaged in a long term
28 and continuous effort to prevent the deposition of Mr. Kobus from being taken,

1 documentation of which is found TCC's Motion to Compel Mr. Kobus to appear for his
2 deposition, filed on June 25, 2023.

3 On July 3, 2023, a discovery conference was held that resulted in a decision that
4 Mr. Kobus would be deposed on July 21, 2023, in Kennewick. On July 21, 2023, the
5 PALJ issued his "Order Granting TCC Motion to Compel/Granting Sanctions and
6 Denying Applicant Motion for Protective Order." In that order the PALJ concluded "that
7 Applicant's ongoing delays violated discovery rules." Order at 3. In his decision, the
8 PALJ imposed sanctions on the Applicant in the amount of \$2,400 as requested by
9 TCC.

10 Mr. Kobus did appear at his July 21, 2023 deposition, accompanied by his chief
11 assistant Pat Landess, and two of Scout's lawyers. Questions were asked on a variety
12 of subjects by counsel for the Intervenors. During the deposition, Mr. Kobus was asked
13 about "his experience with lithium-ion batteries," to which he responded:

14 I've studied the heck out of it and I have very good experts that support me with
15 any demand or question I desire. And the manufacturers are more than eager to
16 tell us all the technical details we need.
And we're evaluating – we have a whole group that we've hired at Scout that
knows batteries and knows what to do with them.

17 Deposition page 111, line 19 to page 112, line 7. On pages 123-24, questions were
18 directed to Mr. Kobus regarding discussion of fire suppression systems for the lithium-
19 ion batteries in the UASC at page 151¹, drawing his attention to this statement:

20 Proof of water availability is addressed in Section 3.3 of this ASC. Automatic
21 sprinkler systems would be installed in the project O&M building and BESS
containers per BCC 3.04.041.

22 In his deposition, he confirmed that automatic sprinkler systems would be installed.
23 Dep. at page 124, lines 3-18. During follow-up questions, Mr. Kobus was asked if "the
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25

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27 ¹ This page was unchanged from SCE' original ASC submitted in February, 2021; no change was
made in this portion of the ASC when the document was updated on December 1, 2022.

1 National Fire Protection Association had adopted new guideline for lithium-ion fires?”

2 Deposition at 212, lines 1-13. Mr. Kobus testified:

3 I understand there’s evolution of NFPA requirements, but we’re not
4 obligated to follow every new requirement that evolved since our permit
5 application.

6 We identify the standards that were available at the time of our
7 application, and that’s what we follow.

8 Deposition at 212, lines 17-24. Following questions from Intervenor’s counsel, no
9 questions were asked by counsel for SCE. Deposition at 215, lines 10-11. No requests
10 to modify or change any of Mr. Kobus’ answers were submitted.

11 Then on August 4, 2023, two weeks after the deposition was taken, SCE’S
12 counsel suggested that it may want to supplement Mr. Kobus’s testimony during a
13 prehearing conference. Counsel for TCC registered its strong objection to
14 supplementing testimony late in the adjudication process, just as the parties were
15 pulling together witness lists, working on prehearing briefs (due August 9), and
16 preparing for the fifth PHO (scheduled for August 10), along with witness preparation
17 for the adjudication (commencing on August 14).

18 No request to supplement the Kobus testimony was received on Monday or
19 Tuesday, August 7-8. However, after the close of the business day on August 8, a
20 motion was received that included technical testimony information regarding lithium-ion
21 batteries and fire standards. As indicated in the motion, the applicant completely
22 changed its approach to these lithium-ion fires and now says:

23 Applicant will allow these fire to “burn out” without application of water.
24 Motion at 2. There is no indication that this “burn out” plan has been given to the local
25 Benton County Fire Department, much less approved by it.² Nonetheless, SCE
26 “anticipates” Benton County Fire “will be on standby to keep the fire from spreading in
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28 ² Indeed, NFPA Standard 855, referenced in the motion, was adopted on July 26, 2019, well before
this application was filed.

1 perimeter areas.” This engenders a vision of six acres of lithium-ion batteries burning,
2 emitting extremely toxic fumes that would be blown to residential areas in Kennewick,
3 as the “best and most current information regarding the project” (motion at page 2, lines
4 24-26). The claim that “this supplemental testimony is of significance” appears as
5 tongue-in-check for a burn event that is more apocryphal than best practices.

6 Given the circumstances, the PALJ should forcefully deny the request as being
7 untimely. This is an application for a \$2.B project from a company worth \$750B, that
8 has a “whole group that we’ve hired at Scout that knows batteries and knows what to
9 do with them” (Kobus Dept at 112) with a project manager that has “studied the heck
10 out of it.” That SCE waits until after testimony is submitted, just hours before the final
11 PHO and less than a week before the hearing starts, to completely change its plan
12 demonstrates the delay is not for lack of information or knowledge but a strategic move
13 to disadvantage community interests with much smaller assets. Just as SCE violated
14 discovery rules in its continuing refusal to present Mr. Kobus for his deposition at all, it
15 continues its full-on gamesmanship and blatant bad faith, under cover of inapplicable
16 discovery rules.

17 **III. CONCLUSION.**

18 The motion should be denied and sanctions granted to TCC for responding to
19 this late filed motion. If the PALJ decides to consider the motion at all, there should be
20 opportunity for TCC and the other parties to fully and completely respond to this
21 technical material and present such information to the Council. This response should
22 not be confined by the already overly tight adjudication schedule.

23 DATED this 10th day of August, 2023.

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

