

1 '1
2 -
3
4
5 **BEFORE THE STATE OF WASHINGTON**
ENERGY FACILITY SITE EVALUATION COUNCIL

6 In the Matter of the Application of:
7 Scout Clean Energy, LLC, for Horse
8 Heaven Wind Farm, LLC, Applicant
9

DOCKET NO. EF-210011

**COUNSEL FOR THE
ENVIRONMENT'S MOTION TO
SUPPLEMENT RESPONSIVE
TESTIMONY OF EXPERT
DONALD MCIVOR**

10
11 Counsel for the Environment (CfE) moves the Presiding Administrative Law Judge
12 (ALJ) to supplement the record with the Supplemental Responsive Testimony (Supplemental
13 Testimony) of Donald McIvor. *See* EXH-3016_R. Mr. McIvor's Supplemental Testimony is
14 responsive to the discovery deposition and exhibits of Washington Department of Fish and
15 Wildlife (WDFW) employee James Watson taken on July 14, 2023. *See* Yakama Nation
16 Motion to Supplement the Record ("Yakama Nation Motion"), Exhibit B ("Watson
17 Deposition"), filed July 31, 2023, with EFSEC Adjudication. Mr. McIvor's supplemental
18 testimony is relevant to the adjudication because it clarifies and amends his testimony
19 regarding the proposed Horse Heaven Hills Wind and Solar Farm Project ("Project") impacts
20 on wildlife and appropriate mitigation.

21 Mr. McIvor is CfE's expert. CfE filed the responsive testimony of Mr. McIvor on July
22 5, 2023. Subsequent to filing Mr. McIvor's responsive testimony, Yakama Nation took the
23 discovery deposition of WDFW employee James Watson. *See* Watson Deposition. All parties
24 were given due notice of the deposition and all parties were given the opportunity to ask
25 Mr. Watson questions during the deposition. Following the deposition, the Yakama Nation
26

1 moved to supplement the record with the testimony of Mr. Watson and the discovery
2 deposition of other WDFW experts. *See* Yakama Nation Motion. Mr. McIvor's supplemental
3 testimony is in response to his review and consideration of the discovery deposition of
4 Mr. Watson and relevant exhibits.

5 It is appropriate that Mr. McIvor's Supplemental Testimony be made a part of the
6 record because it is relevant to the Project's wildlife impacts and appropriate mitigation. The
7 compressed and expedited adjudication schedule did not permit the parties to complete
8 discovery prior to the submission of testimony. As a result, CfE's expert Mr. McIvor submitted
9 his responsive testimony without the benefit of consideration of the discovery deposition of
10 Mr. Watson and relevant exhibits. The Supplemental Testimony of Mr. McIvor clarifies and
11 amends his testimony in response to this new information learned in discovery.

12 CfE respectfully requests that Mr. McIvor's Supplemental Testimony to be made a part
13 of the record because it is in response to new information learned in discovery and is relevant
14 to the adjudication.

15
16 DATED this 11th day of August, 2023.

17 BOB FERGUSON
18 Attorney General

19 

20 _____
21 SARAH REYNEVELD, WSBA #44856
22 Counsel for the Environment
23 Assistant Attorney General
24
25
26