

**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 DESIGNATING CERTAIN TCC
TESTIMONY AS PUBLIC COMMENT

Background:

Between June 12, 2023 and July 5 2023, Intervenor Tri-Cities C.A.R.E.S. submitted pre-filed testimony from multiple witnesses with Exhibit Numbers ranging from 5601 to 5630. This testimony came from local residents of Benton County expressing their opinions about the proposed Horse Heaven Wind Farm project.

The *Second Prehearing Conference Order* set out the disputed issues approved for presentation of evidence and supporting witnesses during the adjudicative hearing. That *Order* provided direction to parties presenting pre-filed testimony from witness(es) regarding Societal / Economic Impacts in the form of Local Concerns, Attitudes and Opinions.¹ The presenting party was required to “justify the witness’ significance as a representative of the local area and ability to speak for the community-at-large and understand they will be subject to cross-examination.” The Order differentiated pre-filed testimony for the adjudicative hearing from public comment.

Discussion:

RCW 80.50.090(4) creates a statutory right for any person to present the Council with their opinion in support of or in opposition to the proposed Horse Heaven Wind Farm proposal.

There is no doubt the citizens of Benton County are entitled to be heard by EFSEC regarding their views and opinions on the Horse Heaven Wind Farm project. Neighbors who will be able to see the wind turbines, solar arrays, or other project infrastructure from their homes have a particular interest in speaking to the Council. That said, there is a difference between public comment and the type of testimony intended to be considered during the course of an administrative hearing conducted under the Administrative Procedure Act.

Public comment before a state government board or commission is usually limited to written submissions or verbal comments delivered at a public meeting. In the latter case, each speaker is allowed only several minutes of time so that all persons present have an opportunity to address the governmental body. These short speeches from members of the public are typically not

¹ See *Second Prehearing Conference Order*, footnote 1.

questioned. Such statements from the citizenry are not made under oath. They simply become part of the record. The deciding body considers them before any final outcome is reached.

Testimony presented during EFSEC’s adjudicative hearing is given under oath by experts in various fields. Pre-filed testimony is submitted in writing, allowing the Council and all parties to read and review this evidence in advance of an adversarial hearing session in which the witness may be cross-examined. Pre-filed testimony is given much more scrutiny than public comment. The *Second Prehearing Conference Order* directed parties to sort out their witnesses as experts who would be cross-examined or as public commenters. The *Order* also allowed parties to present citizens speaking for the community-at-large to present testimony, subject to cross-examination questions during the adjudicative hearing.

TCC presented statements from a variety of local citizens and residents who have strong feelings about the project. However, many of these persons speak only for themselves, not as part of or on behalf of a local organization or association.

Decision

TCC witnesses who have not indicated in their pre-filed testimony that they serve in a leadership role in TCC or a similar position in local government or another citizens group will have their pre-filed testimony designated as public comment. During the adjudicative hearing, these witnesses will not be called to adopt their testimony under oath. These witnesses will also not be subject to cross-examination. Instead, the Council will read and review their testimony and any supporting exhibits as they would read any written comment filed by a member of the public or hear any verbal comment made during a public comment hearing during the course of EFSEC review of this application.

The following pre-filed testimony and associated exhibits filed by TCC are hereby designated as public comment:

EXH-5601_T	Barbara Buckmaster	EXH-5616_T	Ron Nelson
EXH-5603_R	Phyllis Riikonen	EXH-5617_T	Ted Owens
EXH-5604	Kevin Leary	EXH-5619_T	J. Polehn
EXH-5605_T	Jeff Banning	EXH-5621_R	Margaret Hue
EXH-5607_T	John Christensen	EXH-5622_T	Mike & Pam Minelli
EXH-5608_R	Frank Kliewer	EXH-5624_T	Nancy Graves
EXH-5609_T	Jeff Dress	EXH-5625_T	Sue Frost
EXH-5610_R	William McKay	EXH-5626_T	Karen Brun
EXH-5611_T	Chris Wright	EXH 5627_T	Dennis Simmelink
EXH-5613_T	Gaye Tesar	EXH 5628_T	Lloyd Lieske
EXH-5614_T	James and Sharon Fulton	EXH-5629_T	Tim Richardson
		EXH-5630_T	Chris Upchurch

These witnesses' statements will be accorded the same weight as all other public comments filed during the course of the adjudication.

DATED and effective at Olympia, Washington, on the 14th day of August, 2023.

WASHINGTON ENERGY FACILITY
SITE EVALUATION COUNCIL

A handwritten signature in black ink, appearing to read 'Adam E. Torem', with a large, sweeping loop at the beginning.

Adam E. Torem, Administrative Law Judge