

BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITING 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 GRANTING SCOUT CLEAN
ENERGY'S MOTION TO FILE
SUPPLEMENTAL TESTIMONY OF
DAVID KOBUS

Procedural Background:

On August 4, 2023, Scout Clean Energy (SCE) notified the parties of its intent to submit supplemental testimony from Dave Kobus in order to provide further context to his discovery deposition taken on Friday, July 21, 2023. Dave Kobus is the Project Manager for Scout Clean Energy on the Horse Heaven Hills Wind and Solar Farm Project.

At a pre-hearing conference conducted by Administrative Law Judge (ALJ) Adam E. Torem on August 4, 2023, counsel for Tri-Cities C.A.R.E.S. (TCC) voiced concerns about allowing Mr. Kobus to submit new information at a time so close to the beginning of the adjudicative hearing. SCE indicated its intent to work with all parties to resolve any opposition to SCE's anticipated *Motion to Supplement* the record with supplemental testimony from Dave Kobus.

On August 8, 2023, SCE filed its *Motion to Supplement the Deposition of David Kobus* and attached *Supplemental Testimony of Dave Kobus on Behalf of Scout Clean Energy*. The Supplemental Testimony consists of a captioned cover page, a single page of testimony, and two additional pages regarding SCE's planned modification of its battery energy storage system (BESS) to comply with more recent fire suppression guidance.

On August 10, 2023, TCC filed its *Opposition to SCE's Motion to Supplement*. In sum, TCC asserts that SCE's filing is untimely and not in accordance with discovery rules. As such, TCC contends that allowing supplemental testimony into the record regarding a discovery deposition would be unduly prejudicial.

Decision:

Following a discovery conference supervised by the ALJ on July 3, 2023, the applicant was directed to make Mr. Kobus available for a discovery deposition. A subsequent order issued on July 21, 2023 formally compelled this discovery deposition and sanctioned the applicant for the delay involved in making Mr. Kobus available to TCC for examination. TCC took Mr. Kobus' deposition that same day. The applicant chose not to ask its own follow-up questions at that discovery event.

TCC moved to admit a transcript of Mr. Kobus' discovery deposition to the record in this matter. No party opposed allowing this discovery product into evidence.

SCE now seeks to submit a limited supplement explaining why Mr. Kobus testified as he did on July 21, 2023 regarding the then-current fire suppression methods for BESS facilities. SCE takes the position that Mr. Kobus explaining the development of new BESS fire suppression standards is information that adds context to the testimony in the Kobus deposition. SCE believes this sort of clarification is not prejudicial, but actually complimentary to the admission of the Kobus deposition.

I agree with the applicant's position. In my own estimation, I find Mr. Kobus' proposed Supplemental Testimony will be helpful to EFSEC Councilmembers and assist them in more fully understanding the apparently new and updated fire prevention standards now in effect for BESS facilities. From the testimony submitted thus far in the adjudication, regulation of BESS facilities seems to be in flux, including best practices for fire suppression techniques.

In an ongoing effort to ensure that the EFSEC Councilmembers and the record created in this adjudicative hearing is as complete as possible, Scout Clean Energy's *Motion to Supplement* is **GRANTED**. Dave Kobus will be permitted to adopt his proposed Supplemental Testimony when he appears before the EFSEC Council to testify at the adjudicative hearing.

When Mr. Kobus appears to adopt his Supplemental Testimony at some mutually agreed date and time during the second week of this proceeding, all parties will be permitted to cross-examine Mr. Kobus, but *only* with questions focused on the limited information contained in his Supplemental Testimony. Councilmembers will also be allowed to ask questions of Mr. Kobus within the scope of his Supplemental Testimony.

DATED and effective at Olympia, Washington, on the 16th day of August, 2023.

WASHINGTON ENERGY FACILITY SITE
EVALUATION COUNCIL



Adam E. Torem, Administrative Law Judge