

1 the supplemental testimony of Dean Apostol, David Wardall, Mark Baird and Paul
2 Krupin and b) to deny TCC the opportunity for cross-examination of Brynn Guthrie.
3 The TCC's supplemental testimony from highly qualified expert witnesses and the
4 cross-examination of Applicant's visual expert are both necessary to develop a full
5 record on review for the Council and for the use of the Governor in making any final
6 record on review for the Council and for the use of the Governor in making any final
7 decision on this Council's recommendation to him.

8 **2. BACKGROUND.**

9 At the last scheduled hearing session for the adjudication, TCC and the
10 Applicant both requested the opportunity to present supplemental testimony. TCC's
11 request is found in EFSEC's transcripts at Tr. 1740, line 5 to Tr. 1741, line 11 and
12 specifically referenced the supplemental hearing sessions that had been set aside by
13 the Examiner (and Council) for September 11 and/or 15, 2023.
14

15 At Tr. 1741 at lines 14-22, the PALJ allowed all parties "to file a written motion
16 to supplement the record with whatever testimony and an offer of proof if not the
17 actual testimony." No conditions or restrictions were placed on the content of the
18 supplemental testimony to be submitted.

19 At Tr. 1741, line 18, to Tr. 1742, line 6, the PALJ set September 5 as the
20 deadline for submission of supplemental testimony and indicated an order on the
21 parties' requests would be issued on September 5 or 6. TCC timely filed
22 supplemental testimony of several expert witnesses on September 5.
23

24
25 PETITION FOR RECONSIDERATION OF ORDER ON
26 POST-HEARING MOTIONS TO SUPPLEMENT
RECORD; DENYING FURTHER ADJUDICATIVE
HEARINGS FOR CROSS-EXAMINATION OF
SUPPLEMENTAL AND REBUTTAL WITNESS
TESTIMONY - 2

LAW OFFICES OF
J. RICHARD ARAMBURU, PLLC
705 2ND AVE., SUITE 1300
SEATTLE 98104
Telephone (206) 625-9515
FAX (206) 682-1376
aramburulaw.com

1 On September 6, 2023, at 5:01 pm, TCC received a letter indicating that the
2 motion to file the supplemental testimony of Applicant's visual witness Ms. Guthrie
3 would be granted, but substantially all of TCC's supplemental testimony, including
4 TCC visual expert Mr. Apostol, would be "excluded." That letter indicated: "A more
5 detailed Order setting out the evidentiary basis for admitting or excluding each of your
6 newly proposed exhibits will follow in the days ahead." No ruling was made in the
7 letter as to when cross-examination on the supplemental testimony of Ms. Guthrie
8 would be scheduled.
9

10 On Thursday, September 7, 2023, counsel for TCC wrote the PALJ asking
11 when the cross-examination of Ms. Guthrie would be scheduled, providing dates of
12 availability of TCC's counsel (in addition to the previously scheduled dates of
13 September 11 and 15). TCC received no answer.
14

15 On Sunday, September 10, 2023, counsel for TCC wrote again asking when
16 the Guthrie cross-examination would be held and affirming dates of availability for the
17 Guthrie cross-examination but indicating unavailability on September 20-22. Again,
18 there was no answer.
19

20 On Tuesday, September 12, counsel for TCC wrote again asking when the
21 order on supplemental testimony would be issued and when the cross-examination of
22 Ms. Guthrie would be scheduled. Again, no answer was received.
23
24

25 PETITION FOR RECONSIDERATION OF ORDER ON
26 POST-HEARING MOTIONS TO SUPPLEMENT
RECORD; DENYING FURTHER ADJUDICATIVE
HEARINGS FOR CROSS-EXAMINATION OF
SUPPLEMENTAL AND REBUTTAL WITNESS
TESTIMONY - 3

LAW OFFICES OF
J. RICHARD ARAMBURU, PLLC
705 2ND AVE., SUITE 1300
SEATTLE 98104
Telephone (206) 625-9515
FAX (206) 682-1376
aramburulaw.com

1 On Thursday, September 14, TCC’s counsel sent an additional email, asking if
2 an order on supplemental testimony would be issued and confirming TCC’s intention
3 to cross examine Ms. Guthrie, requesting a date for that examination.

4 On Sunday, September 17, TCC again wrote asking when the order on the
5 supplemental testimony would issue and requesting the opportunity to cross-examine
6 Ms. Guthrie.

7 At 11:15 p.m. on September 17, 2023, an email was issued by the PALJ
8 indicating (for the first time) that no cross examination of Ms. Guthrie would be
9 allowed and that an order on the supplemental testimony would be “published in the
10 days ahead.”
11

12 On September 22, 2023, at 5:01 p.m., an order was finally issued, which is the
13 subject of this motion for reconsideration.
14

15 **3. THE ORDER DENYING SUPPLEMENTAL TESTIMONY BY SEVERAL TCC**
16 **WITNESSES, INCLUDING EXPERTS, SHOULD BE RECONSIDERED AND**
17 **REVERSED.**

18 As noted above, the ruling of August 25, 2023, allowed “supplemental
19 testimony” following a request by TCC, but did not place any restrictions on the nature
20 of such testimony. However, following an extended delay, the Order denied the
21 request to submit the supplemental testimony of TCC’s visual expert, aerial firefighting
22 experts, local farmers and a qualified expert concerning air pollution.
23

1 In making its request on the last day of the hearing, TCC described the severe
2 time limitations placed on it and other intervenors that prevented it from making a
3 complete presentation to the Council. The PALJ acknowledges “the compressed
4 nature of the litigation schedule” (Order at 2), which included multiple requests by
5 intervenors and Benton County for additional time to prepare and present testimony. A
6 significant portion of the already limited time available for hearing preparation was
7 taken up by the Applicant’s obdurate refusal to allow TCC to take the deposition of the
8 Applicant’s managing agent, David Kobus. As noted in the Order Granting TCC
9 Motion to Compel Attendance of Senior Project Manager David Kobus at a Deposition
10 (July 21, 2023) at page 3, the “*Applicant’s ongoing delays violated discovery rules.*”
11 The Order also concluded that: “*These delays were unnecessary and cost TCC time*
12 *and money.*” Such loss of time came during the critical periods in May and June when
13 testimony was being prepared; TCC requested a continuance to allow for sufficient
14 time for hearing preparation, but it was denied.
15
16

17 The APA requires that a reviewing body provide full opportunity to make a
18 record on relevant issues. RCW 34.05.449(2) provides that: “the presiding officer
19 shall afford to all parties the opportunity to respond, present evidence and argument,
20 conduct cross-examination, and submit rebuttal evidence, except as restricted by a
21 limited grant of intervention or by the prehearing order.” Unlike other administrative
22 proceedings involving proceedings between agencies and individuals, the EFSEC
23
24

25 PETITION FOR RECONSIDERATION OF ORDER ON
26 POST-HEARING MOTIONS TO SUPPLEMENT
RECORD; DENYING FURTHER ADJUDICATIVE
HEARINGS FOR CROSS-EXAMINATION OF
SUPPLEMENTAL AND REBUTTAL WITNESS
TESTIMONY - 5

LAW OFFICES OF
J. RICHARD ARAMBURU, PLLC
705 2ND AVE., SUITE 1300
SEATTLE 98104
Telephone (206) 625-9515
FAX (206) 682-1376
aramburulaw.com

1 statute recognizes that the selection of sites for development of clean energy “will
2 have a significant impact upon the welfare of the population” and that the Council
3 must “conduct a public process that is transparent and inclusive to all with particular
4 attention to overburdened communities.” RCW 80.50.010. Moreover, the Legislature
5 has instructed that the Council act “without unnecessary delay while also encouraging
6 meaningful public comment and participation in energy facility decisions.” RCW
7 80.50.010(6).
8

9 The Order indicates that admission of TCC’s supplemental testimony will create
10 “undue delay” due either to the opportunity for cross-examination or the potential for
11 surrebuttal testimony. See page 3. However, ten days before the supplemental
12 testimony was filed (August 25), the adjudication schedule (specifically approved by
13 the Council) already included reserved dates for additional testimony for September
14 11 and 15.
15

16 Against this background, TCC requests that the PALJ reconsider this decision
17 to deny the admission of the testimony of several TCC supplemental witnesses. The
18 following addresses the particular circumstances of each witness whose testimony
19 was stricken.
20

21 2.1 Testimony of Dean Apostol. As indicated, the Supplemental Testimony of
22 Mr. Apostol specifically addresses Councilmembers’ questions during his cross
23 examination and provides a more organized response, appropriate for supplemental
24

25 PETITION FOR RECONSIDERATION OF ORDER ON
26 POST-HEARING MOTIONS TO SUPPLEMENT
RECORD; DENYING FURTHER ADJUDICATIVE
HEARINGS FOR CROSS-EXAMINATION OF
SUPPLEMENTAL AND REBUTTAL WITNESS
TESTIMONY - 6

LAW OFFICES OF
J. RICHARD ARAMBURU, PLLC
705 2ND AVE., SUITE 1300
SEATTLE 98104
Telephone (206) 625-9515
FAX (206) 682-1376
aramburulaw.com

1 testimony on an issue of vital importance to this adjudication. While it is true that his
2 supplemental testimony does include a map showing a reconfiguration of turbines that
3 could mitigate the enormous visual impacts of the proposed 244 turbines over 25
4 miles, review of mitigation proposals is fully appropriate for EFSEC, as shown in the
5 Whistling Ridge matter. See Council Order No. 870, Order on Reconsideration.
6 Whistling Ridge Energy Project, pages 9-12.
7

8 RCW 80.50.010 specially provides that council action should: “enhance the
9 public's opportunity to enjoy the esthetic and recreational benefits of the air, water and
10 land resources; . . .” The testimony of Mr. Apostol will be of substantial assistance to
11 the Council under its obligation to enhance the public's opportunity to enjoy the firmly
12 established aesthetic benefits of the iconic Horse Heaven Hills.
13

14 The expert testimony of Mr. Apostol on the critical area of visual impacts should
15 be admitted, subject to cross-examination.

16 2.2 Testimony of Aerial Firefighting Experts David Waddell and Mark Baird.

17 There is no dispute that Messrs. Waddell and Baird are each highly qualified
18 in aerial firefighting, with many years of experience all over the world. Mr. Wardall's
19 resume is EXH-5907_S. Mr. Baird describes his experience as an instructor pilot and
20 seven-years experience as “a pilot engaged in aerial firefighting using the DC-10 fire
21 tanker.” EXH-5910_S, page 1. There is also no question that the issue of fires near
22
23
24

1 wind turbines is before the Council in its consideration of whether to modify the
2 proposal to account for aerial firefighting.

3 However, the PALJ prematurely ruled on the merits of the testimony from these
4 uniquely qualified witnesses. He said, “neither of the witnesses had visited the site of
5 the proposed project.” Order at 3. However, the witnesses used detailed project plans
6 and topographic maps to assess the project area and its terrain, with and without the
7 wind turbines proposal. See Baird testimony, EXH-5910_S at pages 6-15, which
8 includes among numerous reviewed materials an aerial photo of a fire that occurred
9 during the adjudication (June 16, 2023) near the ridgeline taken from a DC-10 fighting
10 that fire.
11

12 Nor did the PALJ explain why he thought a site visit was required.¹ The PALJ
13 said they offered “experiences from California wildfires that occurred in forested
14 terrain, not dryland wheat fields” without explaining why his distinction made any
15 difference. Order at 3. The Baird and Waddell testimony identified the minimum
16 distances needed from obstructions to successfully deploy aerial fire suppressants,
17 which has no relation to the terrain in which the fires were being fought. In summary,
18
19
20
21

22 ¹ If actual site visits are required to make decisions on the project, the whole Council would be
23 disqualified because they did not go onto the site during their November, 2022, site visit.

1 aerial firefighting must be performed within safe distances from obstructions, but in
2 close proximity to the fires.

3 Testimony regarding the height of wind turbines in common fire-risk areas is
4 highly relative to making safe decisions regarding this project. The PALJ should
5 reconsider his decision and admit the testimonies of Messrs. Wardall and Baird.
6

7 2.3 Testimony on Air Quality Impacts from Paul Krupin. Consistent with the
8 Legislative directive for this Council “to promote air cleanliness” in RCW 80.50.010(2),
9 “air quality” was a specific “disputed issue” as identified in the “Second Pre-Hearing
10 Conference Order” (May 19, 2023) at page 2.

11 Mr. Krupin is an identified expert in air pollution matters due to his long
12 experience in government addressing these matters. This was recognized by the
13 PALJ in his “Order Granting (in Part) TCC’s Motion for Reconsideration” (August 21,
14 2023) at page 2 (“TCC also clarified why Mr. Krupin’s analysis and critique of potential
15 fugitive dust impacts on air quality should be admitted.”) His supplemental testimony
16 identifies violations of several PM10 and other small particulate matters especially
17 impactful to human health in the greater Tri-Cities community.
18

19 The PALJ should reconsider his decision and allow Mr. Krupin’s testimony.
20
21
22
23
24

25 PETITION FOR RECONSIDERATION OF ORDER ON
26 POST-HEARING MOTIONS TO SUPPLEMENT
RECORD; DENYING FURTHER ADJUDICATIVE
HEARINGS FOR CROSS-EXAMINATION OF
SUPPLEMENTAL AND REBUTTAL WITNESS
TESTIMONY - 9

LAW OFFICES OF
J. RICHARD ARAMBURU, PLLC
705 2ND AVE., SUITE 1300
SEATTLE 98104
Telephone (206) 625-9515
FAX (206) 682-1376
aramburulaw.com

1 **4. FAILURE TO ALLOW CROSS EXAMINATION OF APPLICANT’S WITNESS**
2 **BRYNN GUTHRIE.**

3 As described above, the Council set aside two additional days for examination
4 or cross-examination of witnesses that submitted supplemental testimony, September
5 11 and/or 15. Following the decision to allow the supplemental testimony of Ms.
6 Guthrie, TCC requested several times that her cross-examination be scheduled on the
7 previously established hearing dates. No response was received until the evening of
8 September 17 -- after the dates for testimony had passed -- and no written order was
9 issued until the Order Regarding Supplemental Testimony on September 22.
10

11 During the course of this adjudication, all witnesses who submitted written
12 testimony were subject to cross-examination at the request of other parties. Though
13 not every witness was cross-examined, the opportunity for such cross-examination
14 was provided to all parties. Indeed, the Order at page 2 notes that the Washington
15 Administrative Procedure Act (APA) provides that all parties are provided “the
16 opportunity to respond, present evidence and argument, conduct cross-examination
17 and submit rebuttal evidence.” RCW 34.05.449(1) and (2). Indeed, the order admits
18 that when “a tribunal precludes all cross-examination on a legitimate issue, it may
19 compromise the fact-finding process and subject itself to a closer examination of
20 competing factors,” and “when a court prematurely terminates cross-examination of a
21

1 witness at a pre-determined time simply to complete a trial it commits reversible error.”

2 Order at page 2-3.

3 Nonetheless, the PALJ denies TCC and other parties the opportunity for cross
4 examination of Ms. Guthrie on two bases. First, that “TCC has already had the
5 opportunity to cross-examine Ms. Guthrie regarding her prefiled testimony.” Order at
6 page 3. No authority is cited for this unique proposition. The supplemental Guthrie
7 testimony is new and, as the PALJ admits, responds to TCC’s visual witness Dean
8 Apostol.
9

10 Second, the PALJ says that due to “the limited nature of Ms. Guthrie’s
11 testimony, per ER 611(a)(2), any additional cross examination would be needless
12 waste of the Council’s time and resources.” The Examiner’s conclusion that the
13 Supplemental Testimony of Ms. Guthrie was of a “limited nature” places the Examiner
14 in the position of deciding the content of testimony before cross examination. The
15 conclusion that the cross-examination would be a “needless waste” of his time and
16 that of the Council has the PALJ prejudging the outcome of cross questions and
17 answers, a clear violation of the appearance of fairness doctrine.
18

19 As to the alleged imposition on the “Council’s time and resources,” on August
20 25 the Council had set aside specific dates for examination and cross-examination of
21 supplemental testimony with the designation of September 11 and 15. As described
22 above, on September 7, the day after the PALJ issued his preliminary decision to
23

24
25
26
PETITION FOR RECONSIDERATION OF ORDER ON
POST-HEARING MOTIONS TO SUPPLEMENT
RECORD; DENYING FURTHER ADJUDICATIVE
HEARINGS FOR CROSS-EXAMINATION OF
SUPPLEMENTAL AND REBUTTAL WITNESS
TESTIMONY - 11

LAW OFFICES OF
J. RICHARD ARAMBURU, PLLC
705 2ND AVE., SUITE 1300
SEATTLE 98104
Telephone (206) 625-9515
FAX (206) 682-1376
aramburulaw.com

1 allow the Guthrie supplemental testimony, TCC's counsel indicated his intention to
2 cross-examine her and even provided dates of availability in addition to those set
3 aside by the Council. However, despite follow-up requests on September 10, 12 and
4 14, the PALJ did not respond. Effectively, the PALJ's delays allowed the clock to run
5 out on possible cross-examination of Ms. Guthrie, with no reason or explanation
6 provided.
7

8 The Examiner correctly analyzes the obligation of agencies to allow cross
9 examination at page 2 of his Order. Washington law is very clear on the
10 indiscriminate elimination of cross examination:

11 Due process guarantees the right to a full and fair hearing. *Olympic Forest*
12 *Prods., Inc. v. Chaussee Corp.*, 82 Wn.2d 418, 422, 511 P.2d 1002 (1973).
13 Although the process which is due varies according to the type of proceeding,
14 cross examination is an integral part of both criminal and civil judicial
15 proceedings. *Hannah v. Larche*, 363 U.S. 420, 4 L.Ed.2d 1307, 80 S.Ct. 1502
16 (1960); 5 K. Tegland, *Wash. Prac.*, Evidence § 245 (2d ed. 1982). Cross
17 examination is, however, limited by other factors; it must pertain to matters
18 within the scope of the direct examination and matters affecting the credibility of
19 the witness. ER 611(b). It may be curtailed where the relevance of the evidence
20 is outweighed by the danger of undue delay, waste of time or needless
21 presentation of cumulative evidence. ER 403. Further, the court has discretion
22 to exercise reasonable control over the mode and order of interrogating
23 witnesses to avoid needless consumption of time. ER 611(a)(2). However,
24 preclusion of all cross examination on a legitimate issue calls into question the
25 factfinding process and requires that the competing factors be more closely
26 examined. *State v. York*, 28 Wn. App. 33, 621 P.2d 784 (1980). After reviewing
the record, we are compelled to conclude the court's premature termination of
cross examination based on a predetermined time to complete trial was error.

Baxter v Jones, 34 Wn. App 1, 3-4, 658 P.2d 1274 (1983).

PETITION FOR RECONSIDERATION OF ORDER ON
POST-HEARING MOTIONS TO SUPPLEMENT
RECORD; DENYING FURTHER ADJUDICATIVE
HEARINGS FOR CROSS-EXAMINATION OF
SUPPLEMENTAL AND REBUTTAL WITNESS
TESTIMONY - 12

LAW OFFICES OF
J. RICHARD ARAMBURU, PLLC
705 2ND AVE., SUITE 1300
SEATTLE 98104
Telephone (206) 625-9515
FAX (206) 682-1376
aramburulaw.com

1 Further, the Washington Supreme Court discussed the vital importance of
2 cross-examination as part of quasi-judicial hearings in *Chrobuck v. Snohomish*
3 *County*, in which the Court reversed a Snohomish County rezone action. In that case,
4 where the rezone was in furtherance of a proposed oil refinery, the court spoke to the
5 specific need for cross-examination in contested proceedings on technical matters,
6 and warned of the results if this vital right is taken away:
7

8 Generally speaking, in the ordinary zoning or rezoning hearing before a
9 planning commission the cross-examination of persons expressing their views
10 may not be appropriate or contribute anything of value to the fact-finding
11 process. Where, as here, however, the hearing assumes distinctly adversary
12 proportions, the proponents and opponents are represented by counsel, expert
13 witnesses are called, and complex, technical and disputed factors, revolving
14 about such matters as oil refinery processes, air pollution, noise levels, visual
15 impacts, water and vegetation contamination, shipping and dockage
16 operations, oil spillage control, tidal currents and fishery preservation, are
17 involved, it would appear particularly pertinent to an objective factual evaluation
18 of the testimony presented to permit cross-examination in a reasonable degree.
19 Otherwise, it is possible that matters of vital significance to the fact-finding
20 tribunal may be glossed over, obscured or omitted in a recital-like presentation
21 of technical subjects and expert opinion.
22

23 *Chrobuck v. Snohomish County*, 78 Wn.2d 848, 870–71, 480 P.2d 489 (1971). Based
24 on the failure to allow cross-examination and for other reasons, the *Chrobuck* court
25 held that the appearance of fairness doctrine had been violated. *Id.* at 867, 871. The
26 right to cross-examine opposing experts is critical to this right to a fair hearing and has
been deemed a “component” of the appearance of fairness doctrine for any quasi-

1 judicial proceeding. *Earle M. Jorgensen Co. v. City of Seattle*, 99 Wn.2d 861, 867, 665
2 P.2d 1328 (1983).²

3 It is not for the PALJ to decide what the content of cross-examination might be
4 or decide that such examination is a “needless waste.”³ Our courts have held that an
5 affidavit, such as provided by Ms. Guthrie, is not a substitute for cross-examination:

6 “[A]n affidavit—not being subject to cross-examination—is a poor substitute for a live
7 witness—whose tone or inflection of voice, movement of head, hand or eye, and
8 general conduct or demeanor are discernible and sometimes determinative.”

9
10 *Meadows v. Grant’s Auto Brokers, Inc.*, 71 Wn.2d 874, 879, 431 P.2d 216 (1967) (See
11 *Weyerhaeuser v. Pierce County*, 124 Wn.2d 26, 33–34, 873 P.2d 498 (1994), (“[O]ral
12 cross examination can be used to test credibility, and can be shaped to elicit and
13 develop testimony as the cross examination progresses.”). While “Courts may, within
14 their sound discretion, deny cross-examination if the evidence sought is vague,
15 argumentative or speculative” (*State v. Darden*, 145 Wash.2d 612, 620–21, 41 P.3d
16 1189 (2002); the PALJ did not allow any questions of the witness).

17
18
19 ² **Error! Main Document Only.** Our Supreme Court has held that EFSEC proceedings are
20 subject to the appearance of fairness doctrine. “We also hold that EFSEC members did not
21 violate the appearance of fairness doctrine.” *Residents v Site Evaluation Council*, 165 Wn.2d
22 275, 322 (2008).

23 ³ **Error! Main Document Only.** The summary conclusion that cross-examination of Ms.
24 Guthrie would be a “needless waste” is a clear example of prejudgment of the result of cross
25 examination and a clear violation of the appearance of fairness doctrine, especially given the
26 importance of the issue to the proceedings.

1 Moreover, Ms. Guthrie’s cross-examination has been denied because it
2 conflicts with the Council schedule. The PALJ has previously established the deadline
3 for final briefs in this adjudication as October 13, 2023. But the Council announced at
4 its September 20 monthly meeting that it will issue its Final Environmental Impact
5 Statement for the project at its October, 2023 monthly meeting, scheduled for October
6 18, 2023. The Council has steadfastly insisted that the SEPA process must be
7 separate from the adjudication, a process that Benton County, the Yakama Indian
8 Nation and TCC have continuously and strenuously objected to. Allowing
9 supplemental evidence, and the cross-examination of Ms. Guthrie, would likely result
10 in the need for extending the adjudication after the issuance of the FEIS, resulting in
11 the comingling of the adjudication with the SEPA process.
12

13 The Council cannot deny cross-examination of an important witness based on
14 its own SEPA schedule, especially where hearing dates were deliberately left open for
15 such cross-examination (September 11 and 15) well before any conflict with the
16 issuance of the FEIS.
17

18 **5. THE ELIMINATION OF TESTIMONY BASED ON THE CONTENT OF THE**
19 **FINAL ENVIRONMENTAL IMPACT STATEMENT IS CONTRARY TO SEPA.**

20 As noted above, the PALJ excluded the testimony of aerial firefighting experts
21 David Wardall and Mark Baird based on his private understanding of the testimony,
22 including his belief that “their testimony is not tailored to the type of project being
23

24
25 PETITION FOR RECONSIDERATION OF ORDER ON
26 POST-HEARING MOTIONS TO SUPPLEMENT
 RECORD; DENYING FURTHER ADJUDICATIVE
 HEARINGS FOR CROSS-EXAMINATION OF
 SUPPLEMENTAL AND REBUTTAL WITNESS
 TESTIMONY - 15

LAW OFFICES OF
J. RICHARD ARAMBURU, PLLC
705 2ND AVE., SUITE 1300
SEATTLE 98104
Telephone (206) 625-9515
FAX (206) 682-1376
aramburulaw.com

1 considered by EFSEC” (Order at 3-4). As indicated, maintaining minimum distances
2 from ground obstructions is a critical element of safety for aircraft and has no
3 relationship to whether the fire suppression efforts are in a pine forest, open plains or
4 wheat fields.

5 An additional reason for reconsideration is also found on page 4 of the Order,
6 which states:

7
8 Given the extent of the record already created in the adjudicative hearings (and
9 the further consideration of this topic anticipated from the SEPA process) the
10 Council will not benefit from considering the expertise and opinions expressed
11 by Mr. Wardall and Mr. Baird.

12 (Emphasis supplied). Apparently, the Hearing Examiner is aware of the content of the
13 FEIS, though the document continues to be withheld from the parties and public.

14 In addition, the Examiner has previously ruled that “compliance with the State
15 Environmental Policy Act will not be taken up during the adjudication” at page 2 of
16 PHO#2. In a footnote, the PALJ said that: “Compliance with RCW 43.21C and WAC
17 197-11 is a separate and parallel process.” *Id.* Citing the “anticipated” treatment of
18 this important public safety concern in the FEIS is improper reason to reject expert
19 witness testimony and is inconsistent with the PALJ’s prior orders.

20 **6. CONCLUSION.**

21 The compressed and abbreviated adjudication schedule effectively denied TCC
22 the fair opportunity to present its case. After requesting continuances to prepare its
23

24
25 PETITION FOR RECONSIDERATION OF ORDER ON
26 POST-HEARING MOTIONS TO SUPPLEMENT
RECORD; DENYING FURTHER ADJUDICATIVE
HEARINGS FOR CROSS-EXAMINATION OF
SUPPLEMENTAL AND REBUTTAL WITNESS
TESTIMONY - 16

LAW OFFICES OF
J. RICHARD ARAMBURU, PLLC
705 2ND AVE., SUITE 1300
SEATTLE 98104
Telephone (206) 625-9515
FAX (206) 682-1376
aramburulaw.com

1 case, TCC submitted supplemental testimony, as allowed by the PALJ, to assure its
2 full participation in this matter of public importance. The PALJ should reconsider his
3 decision to deny the admission of the supplemental testimony and admit the same as
4 a part of the adjudication.

5
6 The PALJ should also reconsider his decision to deny cross examination of the
7 supplemental testimony of Applicant's visual witness. The ruling that such cross-
8 examination would be "needless waste" of the Council's time without hearing even the
9 first question is a clear legal error. The PALJ should correct this error and allow TCC
10 to cross examine this witness.

11 Respectfully submitted this 2nd day of October, 2023.

12
13 Law Offices of J. Richard Aramburu PLLC

14 /s/ J. Richard Aramburu
15 J. Richard Aramburu, WSBA #466
16 Attorney for Intervenor
17 Tri-Cities C.A.R.E.S.

18
19
20
21
22
23
24
25 PETITION FOR RECONSIDERATION OF ORDER ON
26 POST-HEARING MOTIONS TO SUPPLEMENT
RECORD; DENYING FURTHER ADJUDICATIVE
HEARINGS FOR CROSS-EXAMINATION OF
SUPPLEMENTAL AND REBUTTAL WITNESS
TESTIMONY - 17

LAW OFFICES OF
J. RICHARD ARAMBURU, PLLC
705 2ND AVE., SUITE 1300
SEATTLE 98104
Telephone (206) 625-9515
FAX (206) 682-1376
aramburulaw.com

1 By Email: Sarah.Reyneveld@atg.wa.gov CEPSeaEF@atg.wa.gov;
2 julie.dolloff@atg.wa.gov

3 Tim McMahan
4 Stoel Rives LLP
5 760 SW Ninth Avenue, Suite 3000
6 Portland, OR 97205
7 Counsel for Scout Clean Energy, LLC
8 By Email: tim.mcmahan@stoel.com
9 emily.schimelpfenig@stoel.com;
10 ariel.stavitsky@stoel.com

11 Shona Voelckers
12 Yakama Nation shona@yakamanation-olc.org
13 ethan@yakamanation-olc.org
14 jessica@yakamanation-olc.org

15 EFSEC Staff
16 lisa.masengale@efsec.wa.gov; alex.shiley@efsec.wa.gov;
17 andrea.grantham@efsec.wa.gov; sonia.bumpus@efsec.wa.gov

18
19
20
21
22
23
24
25 PETITION FOR RECONSIDERATION OF ORDER ON
26 POST-HEARING MOTIONS TO SUPPLEMENT
RECORD; DENYING FURTHER ADJUDICATIVE
HEARINGS FOR CROSS-EXAMINATION OF
SUPPLEMENTAL AND REBUTTAL WITNESS
TESTIMONY - 19

LAW OFFICES OF
J. RICHARD ARAMBURU, PLLC
705 2ND AVE., SUITE 1300
SEATTLE 98104
Telephone (206) 625-9515
FAX (206) 682-1376
aramburulaw.com