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March 23, 2023

Kathleen Drew
EFSEC Chair
kathleen.drew@efsec.wa.gov

Honorable Adam Torem
Administrative Law Judge for the Horse Heaven application
adamtorem@writeme.com

EFSEC Adjudication
Attn: Lisa Masengale / Horse Heaven
adjudication@efsec.wa.gov

RE: In the matter of the Application of Scout Clean Energy, LLC, Docket EF-210011:
Venue for Hearing

Dear Chairperson Drew and Judge Torem:

This office represents Benton County, a party in this proceeding. The County has previously stated on the record its strong desire for an in-person hearing for the adjudication phase of this matter. I now wish to reiterate that interest in writing.

The need for Benton County and its concerned residents to have an opportunity for an in-person hearing is especially important because of the extraordinary scope of this project. Through the DEIS process, the community has made clear that public participation will be vigorous. Allowing the County and its residents an in-person hearing is, in a very real sense, a question of access to the adjudicatory process. Such access will align with the interests of EFSEC members and the fundamental purposes of the EFSLA site certification process. We hope that you will give this request great weight in reconsidering whether a virtual hearing will be sufficient.

The experience of many public officials with virtual hearings has been the result of necessity and has yielded mixed results. A virtual or decentralized hearing process offers some benefits but these benefits mainly place a heightened value on expediency, which should be outweighed here by other considerations. A few comments from the County's experience as a regular sponsor of public hearings and meetings follow.

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First, video links hinder communication. While words can usually be adequately heard in a virtual setting, this is not always the case, as when parties speak over one another. Presumably this will be minimized to the extent possible, but body language and non-verbal context will be almost completely absent. Changes in expression, vocal inflection, and eye contact all help convey meaning but are difficult to discern virtually.


Second, lags in video technology regularly occur. When this occurs, it is difficult to raise a point without blatantly interrupting another speaker. Some persons may be reluctant to make statements, or their statements may be inadequately heard, out of anxiety over appearing to derail another speaker even if the person desiring to interject has good cause to do so.

Third, there is simply no doubt that EFSEC, and each of the parties, will demonstrate a stronger commitment to the adjudicative process by conducting the hearing in-person.

The County also understands the appeal of a hybrid approach. However, this approach should be seen as a compromise that will result in some of the detriments noted above. Lack of speaker context, disruptions in the flow of communications, and technological glitches will likely influence even a partly-virtual proceeding. A virtual option should be used sparingly, such as for making the proceedings accessible on a case-by-case basis for witnesses or other participants who otherwise would be unable to attend at all.

Thank you for your consideration of these remarks.

Very truly yours,



Kenneth W. Harper

Cc: Client
Parties of Record