



March 23, 2023

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**VIA EMAIL TO  
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Kathleen Drew  
Chair  
Energy Facility Site Evaluation Council  
PO BOX 43172  
Olympia WA, 98504-3172

Adam Torem  
Administrative Law Judge  
Energy Facility Site Evaluation Council  
PO BOX 43172  
Olympia WA, 98504-3172

**Re: In re: Scout Clean Energy, LLC (“Scout” or “Applicant”) – Docket No. 210111 - Preferred Venue for Horse Heaven Adjudicative Proceeding**

Dear Chair Drew and Judge Torem:

This submittal responds to Judge Torem’s invitation during the pre-hearing conference held on March 20 for parties to submit an optional letter in support of their position as to the venue for the live portion of the adjudication (*i.e.*, virtual, hybrid, or in-person).

As Applicant indicated during the first pre-hearing conference held on March 10, our understanding is that the Energy Facility Site Evaluation Council (“Council”) already made the decision to hold the hearings virtually. Based on this determination, the Applicant has been preparing to participate virtually.

Applicant believes that a fully virtual hearing affords all the same due process benefits as an in-person hearing with the added benefit of efficiencies in party and Council resources. This hearing will need to accommodate competing availability of several parties and Council members on an already tight timeline. A virtual hearing allows for a flexible process because Council members, witnesses, and parties—who are from a variety of locations—do not have to travel. Additionally, a fully virtual hearing reduces the burden on Applicant, who would otherwise bear the costs of hosting the in-person adjudication, including costs associated with the hearing space, travel costs for the ALJ, hotel accommodations for Council members and the ALJ, etc. In a post-pandemic world, we now know that hearings can be conducted virtually and still fully protect the parties’ rights to a comprehensive and fair adjudication.

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Given the number of parties involved and their competing intervals of unavailability over the summer, the practical reality is that the “live” portion of this hearing will likely need to be scheduled in several three or four-day increments, rather than over a single two-week interval. For that reason, if a fully virtual hearing is not an option, a hybrid approach is the second-best option, including opportunities for witnesses to appear and testify virtually. If an in-person hearing is decided, Applicant believes that the schedule can be organized in a way that mitigates the burden of travel and expenses by having a single in-person session on issues best suited for an in-person adjudication (including the in-person presentation requested by Yakama Nation) and holding the remainder of the live portion of the adjudication virtually. For a two-week hearing, a hybrid approach would mean that Applicant would only need to find and presumably pay the costs of appropriate facilities for a few days of hearings, rather than the entire two-week period. Similarly, the Council, the parties, and their witnesses would only need to travel, sort out childcare, and make other necessary accommodations for a few days. Limiting in-person testimony to key issues would also mitigate the Applicant’s burden of hosting (and paying for) an in-person adjudication.

Applicant thanks the Council and Judge Torem for the opportunity to present its views on this issue and will be prepared to discuss it further upon request at the upcoming prehearing conference scheduled for March 27.

Very truly yours,



Crystal S. Chase and Tim McMahan

cc: E. Schimelpfenig, Stoel Rives LLP  
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