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7 BEFORE THE STATE OF WASHINGTON
8 ENERGY FACILITY SITING EVALUATION COUNCIL

9 In the Matter of the Application of:

10 Scout Clean Energy, LLC, for
11 Horse Heaven Wind Farm, LLC,
12 Applicant.

DOCKET NO. EF-210011

13 INTERVENOR TRI-CITIES
14 C.A.R.E.S MOTION TO COMPEL
ATTENDANCE OF SENIOR
PROJECT MANAGER DAVID
KOBUS AT A DEPOSITION AND
FOR SANCTIONS

15 **I. INTRODUCTION.**

16 Following the authorization of the Presiding Administrative Law Judge (PALJ)
17 Torem on May 19, 2023, Intervenor Tri-Cities C.A.R.E.S (TCC) filed a notice to take the
18 deposition of David (Dave) Kobus, Applicant's Senior Project Manager for the Horse
19 Heaven Wind Project (the "wind project"). Since that time, Applicant has steadfastly
20 refused to produce Mr. Kobus for his deposition, without moving for a protective order.
21 The Applicant claims that TCC's counsel may ask questions that are not relevant to the
22 proceedings. This refusal is without a basis in law, either within the Civil Rules, APA
23 practice or the rulings in this proceeding.

24 The PALJ should order Mr. Kobus to appear for his deposition on a shortened
25 time frame and award TCC terms and sanctions for its improper refusal to make this
26 key witness available for deposition.

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28 INTERVENOR TRI-CITIES C.A.R.E.S MOTION TO COMPEL
ATTENDANCE OF SENIOR PROJECT MANAGER DAVID
KOBUS AT A DEPOSITION AND FOR SANCTIONS - 1

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1 **II. MOTION.**

2 Intervenor TCC moves the PALJ for an order compelling the attendance of Mr.
3 David Kobus, the Senior Project Manager for this project, at a deposition on an
4 expedited basis. Because of the improper refusal of the applicant to respond to
5 authorized discovery, the PALJ should award sanctions to TCC, including 1) a
6 reasonable time to utilize the deposition testimony in hearing preparation and 2)
7 monetary sanctions based on the additional cost incurred by TCC because of the
8 improper refusals of the Applicant.¹

9 **III. FACTUAL BACKGROUND.**

10 3.1 THE PROJECT AND PROJECT MANAGER.

11 On February 8, 2021, Scout Clean Energy filed with EFSEC its Application for
12 Site Certification (ASC) for the Horse Heaven Wind Farm (the Project), applying to
13 EFSEC for approval of a wind, solar and storage project. Paragraph 1.4 of the ASC
14 (page 1-2) states that: "All communications concerning this ASC should be directed to
15 Mr. Dave Kobus, who is the designated agent for the Project[.]" Press releases and
16 newspaper accounts from the Applicant indicate that Mr. Kobus has been associated
17 with this project at least since September 5, 2020. See **Exhibit A** to the Declaration of
18 J. Richard Aramburu in Support of Motion to Compel Deposition (hereinafter Aramburu
19 Decl.)

20 The cover letter from Scout to EFSEC accompanying the ASC stated that if
21 EFSEC staff had "any questions, or require further information, please contact Dave
22 Kobus. . ." See the Application for the Horse Heaven Application the EFSEC webste.

23 The SEPA environmental checklist at Paragraph 3 identified Mr. Kobus in
24

25 ¹ This motion is directed to the Presiding Administrative Law Judge. TCC has filed a motion to
26 recuse the assigned ALJ Adam Torem dated May 25, 2023 and a ruling on the motion was received on
27 June 23, denying the request. TCC stands by its motion for recusal and this motion does not waive any
rights regarding the recusal request directed to the currently assigned ALJ, Mr. Torem.

1 response to the “Address and phone number of applicant and contact person.”²

2 On the applicant’s website, in a section titled “Meet Dave Kobus: Senior Project
3 Manager with Horse Heaven Clean Energy Center,” he is described as follows:

4 When the opportunity to lead the development of Horse Heaven Clean Energy
5 Center (HHCEC) arose, Dave did not hesitate to join. With deep knowledge of
6 the existing energy infrastructure in the region, combined with his passion for
7 contributing positively to his community, HHCEC was a perfect fit.

8 In his role with HHCEC, Dave builds teams of consultants who can provide top
9 level expertise for each aspect of the project. He evaluates what consultants are
10 preparing, does his research and asks any questions needed to fill in the full
11 picture of the project. He notes that very few people in the energy industry have
12 expertise in all aspects of the industry, so it is vitally important to build teams of
13 experts who can go deep on specific subjects. While rare to find someone who
14 knows it all, Dave prepares himself with up-to-date information on the status of
15 everything related to the HHCEC development.

16 *“As the region grows, we will need more energy supply. And it takes a diverse
17 mix of technology to be able to create that reliable and robust supply,” said Dave.
18 “It took me a long time to grasp how energy sources and supply are interrelated,
19 so I understand where people are coming from when they have questions. It’s
20 really important to me that I am able to explain this project to anyone, and to
21 demonstrate how exciting this project really is.”*

22 Italics in original; underline supplied.³ The amended and updated ASC filed in
23 December, 2022 continued to list Mr. Kobus as the designated agent for the Project.
24 See EFSEC Horse Heaven project website.

25 Indeed, Mr. Kobus is listed in the Amended ASC as a participant in all variety of
26 project issues, including a Biological Survey Review (page 1-29), project blogs (page 1-
27 59), emails with the Yakama nation and cultural studies (page 1-63, 1-66,1-67, 1-69, 1-
28 74. 1-77, 1-79), the Benton County Road system (page 1-63), DNR consultation (page
1-69), ethnobotanical survey (1-78, 1-79, 1-81), visual impacts and tower locations
(page 1-87, 1-88, 1-90, 1-91).

29 ² The Environmental Checklist is included on the EFSEC website.

30 ³ Source:
31 [https://horseheavencleanenergy.com/meet-dave-kobus-senior-project-manager-with-horse-heaven-clean-
32 -energy-center/](https://horseheavencleanenergy.com/meet-dave-kobus-senior-project-manager-with-horse-heaven-clean-energy-center/). This entry in the website is **Exhibit B** to the Aramburu Decl.

1 Further, neither the original nor amended SCA were signed by any
2 representative of the Applicant, and neither SCA included any listing of the authors of
3 the document. As described on page 2 above, Mr. Kobus is the only witness that is
4 identified (by the Applicant) as having “up to date information on the status of
5 everything related to the HHCEC development.”

6 3.2 REQUESTS TO TAKE KOBUS DEPOSITION.

7 Based on requests made by the parties, especially at the third prehearing
8 conference held on May 2, 2023, the PALJ ruled in Prehearing Order No. 2 (PHO#2)
9 (May 19, 2023) that discovery pursuant to the APA and EFSEC Rules (WAC 463-30-
10 190) would be authorized. See page 2. The PALJ specifically authorized use of
11 Washington’s Superior Court Rules 26-37, modifying them only to determine their use
12 “will be subject to expedited response time of no more than 10 business days.”
13 Accordingly, TCC sought a deposition of Mr. Kobus promptly. However, TCC then met
14 with the continuous refusal of the Applicant to make their Project Manager available for
15 deposition. Below is a timetable of TCC’s efforts to schedule this deposition.

16 3.2.1. On May 26, 2023, TCC provided notice of taking Mr. Kobus’s
17 deposition to Scout and other parties; the deposition was noted for June 5, 2023. See
18 **Exhibit C** to Aramburu Decl. As the managing agent of Scout, a notice of deposition is
19 sufficient to compel his attendance. CR 30(b)(1). A deposition date of June 5 was
20 selected because the results of the deposition could be used as a part of TCC’s filings
21 for the first round of testimony, due June 12.

22 3.2.2. On May 30, 2023, counsel for Scout wrote a letter to the PALJ
23 indicating that Mr. Kobus was on vacation and would not appear on June 5, 2023. The
24 Applicant’s letter also objected to the deposition of Mr. Kobus, but did not file a motion
25 for protective order.

26 3.2.3. In addition, in objection when no confirmation of Mr. Kobus’s
27

1 attendance at the June 5 deposition was received, counsel for TCC indicated it would
2 file a motion to compel Mr. Kobus to attend his deposition if he did not appear.

3 3.2.4. On June 2, 2023, the PALJ responded to the May 30 letter written
4 by Mr. McMahon.⁴ In his letter, the PALJ noted that there was no need for advance
5 permission from the presiding ALJ to note a deposition. This letter is found in the
6 Adjudication folder on the EFSEC website.

7 3.2.5. On June 15, 2023, following the filing of TCC's direct testion,
8 counsel for TCC sent an email to counsel for the Applicant to reschedule the deposition
9 of Mr. Kobus for 10 am on June 22, 2023, when he presumably had returned from
10 vacation. An alternate deposition date of Friday, June 23, 2023 was also offered. See
11 **Exhibit D** to Aramburu Decl.

12 3.2.6. On June 15, 2023, counsel for Scout responded to TCC's June 15,
13 2023 letter, asking TCC to limit the scope of its deposition to specific questions – but
14 again refusing to make Mr. Kobus available for deposition. Again no protective order
15 was sought.

16 3.2.7. On June 16, 2023, counsel for TCC responded to the Applicants'
17 June 15 email acknowledging the "disputed issues for adjudication" and that Benton
18 County and TCC were fully communicating and cooperating. See **Exhibit E** to
19 Aramburu Decl. TCC counsel also indicated that further delay and unwarranted
20 interference with TCC's right to engage in discovery were entirely inappropriate, and if
21 the Applicant continued to refuse to make Mr. Kobus available we would seek an order
22 to compel his attendance.

23 3.2.8. On June 18, 2023, counsel for the Applicant continued its
24 obstinate refusal to make Mr. Kobus available for deposition, saying he would not
25

26 ⁴ In EFSEC practice, discovery materials are not filed in the administrative record as the PALJ
27 acknowledged in his letter.

1 appear unless the parties would “agree in advance to limit the scope of the deposition
2 to the fairly narrow range of issues that Judge Torem has identified. . . .” Counsel
3 acknowledged that TCC may need to file a motion. See Exhibit F to the Aramburu Decl.

4 3.2.9. On June 19, 2023, counsel for TCC responded to the June 18
5 email from Scout’s counsel, pointing out that PHO#2 indicated that approved issues
6 would be “broadly construed” and again requesting that Mr. Kobus be made available
7 for testimony on June 22.

8 3.2.10. On June 23, 2023, counsel for Scout proposed a phone call “next
9 week” to discuss the permissible scope of questions. See Exhibit G to Aramburu Dec.

10 3.2.11. On June 23, 2023, counsel for TCC indicated its intention to file
11 this motion to compel, but stated it would review proposals for a limited scope of
12 questioning if promptly received. Exhibit G.

13 **4. LEGAL AUTHORITY: OTHER THAN TO DELAY TCC, NO JUSTIFIABLE**
14 **REASON EXISTS FOR REFUSING TO MAKE MR. KOBUS AVAILABLE FOR**
15 **A DEPOSITION.**

16 Generally, a party may use any variety or type of discovery allowed by the Civil
17 Rules. See CR 26(a). The court will step in only if the discovery is “unreasonably
18 cumulative or duplicative,” if “other means of discovery are otherwise available” or if the
19 discovery is “unduly burdensome or expensive,” taking into account the importance of
20 the issues at stake in the litigation.” *Id.* Regarding whether the deposition of Mr. Kobus
21 would be “unduly burdensome or expensive” to the Applicant, the Applicant itself
22 represents in the Amended ASC that it is a “portfolio company of Brookfield
23 Renewable” which is in turn described as follows:

24 Brookfield Renewable operates one of the world’s largest publicly traded,
25 pure-play renewable power platforms. Its portfolio consists of hydroelectric,
26 wind, solar and storage facilities in North America, South America, Europe and
27 Asia, and totals approximately 24,000 MW of installed capacity and an
28 approximately 100,000 MW development pipeline.
Brookfield Renewable is the flagship listed renewable power company of
Brookfield Asset Management, a leading global alternative asset manager with
approximately \$750 billion of assets under management.

1 Amended ASC at 1-1. In contrast, TCC is a private public interest organization that
2 represents many local interests, has no financial or equity interest in the project and it
3 is not a competitor to Brookfield, As the PALJ is aware, this is an extraordinary project,
4 which the Applicant claims will cost \$1,727,000,000 (\$1.7 Billion). ASC at Paragraph
5 2.3.14 (page 2-85). Physically, the project will extend over 25 miles of landscapes and
6 ridge lines in Benton County.

7 In short, there is no basis to restrict the discovery right of a small, nonprofit,
8 public interest corporation which is the only intervenor representing the interests of the
9 public in this matter. Mr. Kobus is certainly touted as having extensive testamentary
10 knowledge concerning the Project; indeed he is offered by the applicant as the most
11 knowledgeable person on the Scout staff: “Dave prepares himself with up-to-date
12 information on the status of everything related to the HHCEC development.”⁵

13 Without any basis of any kind, the applicant claims “the purpose of this
14 requested deposition is to unduly burden Applicant and harass Mr. Kobus by diving into
15 information that is neither relevant nor material to these proceedings and in no way
16 related to the defined issues.” See Applicant’s May 30 letter to ALJ Torem. However
17 the Applicant itself has quoted Mr. Kobus as an aggressive spokesman for the project:

18 It’s really important to me that I am able to explain this project to anyone, and to
19 demonstrate how exciting this project really is.

20 *Id.* Apparently, “anyone” does not include counsel for the public interest intervenor.

21 Counsel for Scout participated in PHC#3 on May 2, 2023, at which discovery
22 was discussed, and did not propose any “guardrails” that might be established
23 regarding deposition testimony. When PHO#2 was issued, it contained lists of
24 permitted and prohibited issues, which came with the following guidance from the
25 PALJ:

26 _____
27 ⁵ See the Scout Website, Exhibit B to the Aramburu Decl..

1 The scope and intent of these approved issues will be broadly construed to allow
2 parties to present their individual cases for and against the project, subject to
3 motions to strike irrelevant evidence or witness testimony that is clearly outside
4 the scope of EFSEC's review process.

5 The Applicant did not file an objection to this treatment of issues, to the section on
6 "Discovery" or ask that additional restrictions ("guardrails") be placed on issue
7 discussion or the discovery mechanisms. It is far too late for the Applicant to make
8 additional objections on the relevancy of issues or discovery mechanisms based on
9 vague general grounds. Counsel for TCC has repeatedly confirmed that it will keep
10 within the guidance in PHO#2.

11 Moreover, the Applicant has not moved for a protective order, which is required
12 before a party can withhold a witness from discovery. Indeed, the Applicant advertises
13 Mr. Kobus as "Mr. Know-It-All."⁶

14 As noted in *Physicians Ins. Exch. v Fisons Corp.*, 122 Wn 2d 299, 353-54, 858
15 P.2d 1054 (1993):

16 The rules are clear that a party must fully answer all interrogatories and all
17 requests for production, unless a specific and clear objection is made. If the drug
18 company did not agree with the scope of production or did not want to respond,
19 then it was required to move for a protective order. In this case, the documents
20 requested were relevant. The drug company did not have the option of
21 determining what it would produce or answer, once discovery requests were
22 made.⁸⁹

23 Footnote 89 stated, in part:

24 *Taylor v. Cessna Aircraft Co.*, 39 Wn. App. 828, 836, 696 P.2d 28 (defendant
25 and its counsel could not unilaterally decide what was relevant in a particular
26 case, defendant's remedy was to seek a protective order, not to withhold
27 discoverable material), review denied, 103 Wn.2d 1040 (1985).

28 As described above, more recently, on June 20, 2023 Scout's counsel said:

If you'll submit the questions you'd like to ask Mr. Kobus, we'll undertake to have
Mr. Kobus answer them in good faith, in writing and under oath, subject to the
objections we're raising as to scope.

As noted above, it is counsel for a party seeking discovery that decides the methods

⁶ See Exhibit B to Aramburu Decl.

1 and extent of use of discovery subject to limitations above; a party defending discovery
2 does not get to set the manner of discovery. But Scout now wants to dictate to TCC
3 how it should conduct discovery, apparently requiring TCC to submit interrogatories
4 under Rule 33 rather than a deposition under Rule 30. Of course, that process will
5 essentially allow Scout lawyers to fashion responses to interrogatories, while in a
6 deposition, an “attorney shall not privately confer with deponents during the deposition
7 between a question and an answer except for determining the existence of privilege.”
8 CR 30(h)(5).

9 There is an additional factor here. The applicant has filed a 644-page Updated
10 Application for Site Certification, but it is not signed by the applicant. Nor is there any
11 list of authors who are responsible for the content of the application. The Applicant’s
12 Opening Testimony does not even contain a list of authors. The only representative of
13 the applicant that is identified as knowledgeable about the application is Mr. Kobus.

14 The unwarranted refusal of the Applicant to make its Project Manager available,
15 self-described by the Applicant as Mr. “Know-It-All,” supports the granting of an order
16 requiring his immediate availability for a deposition.

17 **V. REQUEST FOR SANCTIONS.**

18 As described above, TCC has had to respond to the frivolous refusals of the
19 Applicant to make his project manager available for deposition. The Applicant
20 continuously refused to produce its long time project manager claiming the need to refine
21 issues, when these issues were established by PHO#2, though no mention of the need
22 to further refine issues was made during the prehearing process and no objection to
23 PHO#2 was filed. In any event, concerns about individual questions are resolved
24 during the deposition by objection to questions or by motions to strike.

25 The Applicant, a \$750B company, was well aware of the highly compressed
26 schedule for these hearings, but continuously refused to make Mr. Kobus available for
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1 his deposition to prevent use of his testimony in adjudicative hearings. These delays
2 were clear violations of the terms and spirit of PHO#2 and the more traditional Civil
3 Rules for discovery at CR 26-37. This has created two specific types of injury to TCC.
4 First, TCC has been delayed for over a month from obtaining and using the Kobus
5 deposition to prepare testimony or as a resource for testimony of other TCC witnesses.
6 Second, it has put TCC, a community organization to substantial expense to deal with
7 applicant's repetitive objections and to draft this motion.

8 Unless the frivolous actions of the Applicant are sanctioned, it will continue to
9 create delay and expense for the other parties to these proceedings. Given the
10 circumstances, the PALJ should grant sanctions to TCC for the frivolous and
11 unwarranted refusal to comply with standard discovery requests.

12 The rule requiring sanction for discovery violations is well established.

13 Like CR 11, CR 26(g) makes the imposition of sanctions mandatory, if a violation
14 of the rule is found. Sanctions are warranted in this case. What the sanctions
15 should be and against whom they should be imposed is a question that cannot
16 be fairly answered without further factual inquiry, and that is the trial court's
17 function. While we recognize that the issue of imposition of sanctions upon
18 attorneys is a difficult and disagreeable task for a trial judge, it is a necessary
19 one if our system is to remain accessible and responsible.

20 *Physicians Ins. Exch. v Fisons Corp.*, 122 Wn.2d 299, 355 (1993).

21 Appropriate sanctions for the frivolous failure of the Applicant to make its
22 managing agent available for deposition are as follows. First, that TCC should be
23 granted a reasonable time after the deposition is taken, and transcribed, to submit the
24 deposition as testimony or allow its use by other witnesses for TCC, without regard to
25 the existing adjudication schedule. TCC requests that it be given three full weeks after
26 the deposition is signed by the witness (Mr. Kobus) per CR 30(e) to submit testimony
27 based on the content of the deposition. No rebuttal should be allowed by Applicant to
28 this material unless it falls within the deadline for the submission by PHO#2 or
29 amendments thereto.

1 Second, the PALJ should award monetary sanctions in the amount of \$2,400 to
2 TCC as attorney fees incurred as a result of the improper and frivolous failure to make
3 Mr. Kobus available for his deposition. These fees are itemized in the attached
4 Declaration of J. Richard Aramburu In Support of Motion to Compel.

5 **VI. CONCLUSION.**

6 The refusal of the Applicant to make its “know-it-all” project manager available
7 for deposition, without filing a protective order, is inconsistent with PHO#2 and the Civil
8 Rules, especially based on the Applicant statements to the public of Mr. Kobus’s
9 accessibility: “It’s really important to me that I am able to explain this project to
10 anyone.” In light of clear violation of the rules, the motion to compel should be granted.

11 In addition, because the violation was willful and deliberate, sanctions should be
12 entered against the Applicant as follows. First, TCC should be permitted to file
13 testimony based on the deposition of Mr. Kobus within three weeks of the signing of his
14 deposition, without regard to the current schedule for submission of testimony. Second,
15 TCC should be granted \$2,400 in sanctions based upon the fees incurred based on the
16 actions of the applicant.

17 Respectfully submitted this 25th day of June, 2023.

18
19 /s/
20 J. Richard Aramburu, WSBA #466
21 Attorney for Tri-Cities C.A.R.E.S.
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www.thecr.com

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Dueling realities highlight week 1

By STEVE PEOPLES

AP National Political Writer

NEW YORK — On the campaign trail with President Donald Trump, the pandemic is largely over, the economy is roaring back and murderous mobs are infiltrating America's suburbs.

With Democrat Joe Biden, the pandemic is raging, the economy isn't lifting the working class and systemic racism threatens Black lives across America.

The first week of the fall sprint to Election Day crystallized dizzyingly different versions of reality as the Republican incumbent and his Democratic challenger trekked from Washington and Delaware to Wisconsin and Pennsylvania and back, each man on an urgent mission to sell his particular message to anxious voters.

All the conflicting messages carry at least a sliver of truth, some much more than others, as the candidates fight to navigate one of the most turbulent election seasons in modern history. And beyond legitimate crises threatening public health, the economy and public safety, a new divide erupted Friday over the military.

Trump aggressively denied allegations reported late Thursday that in 2018, he described U.S. service members killed in World War I and buried at an American military cemetery in France as "losers" and "suckers." The report, sourced anonymously by The Atlantic and largely confirmed by The Associated Press, comes as Trump tries to win support from military members and their families by highlighting a commitment to veterans' health care and military spending.

"I've done more for the military than almost anyone else," Trump said Friday from the Oval Office, after describing the allegations on social media as "a disgraceful attempt to influence the 2020 Election."

See **Dueling** page 2

Getting Bizzy



The Commercial Review/Bailey Cline

Bizy Dips business owner Hannah Long said she enjoys baking cinnamon rolls because she loves the smell. Long will open her new bakery and coffee shop in the John Jay Center for Learning lobby on Tuesday.

Long is opening coffee shop and bakery Tuesday in John Jay Center for Learning

By BAILEY CLINE

The Commercial Review

Hannah Long started baking with her mom, Kim McAbee, when she was a child. She treasures her memories of baking cinnamon rolls together every Christmas Eve.

As an adult, Long has become a talented baker, McAbee said.

"The baking comes so easy to her," she explained, noting that she tends to follow recipes to-the-book while her daughter can successfully throw a recipe together. "She's not afraid to try (new things). Hers is always much better than mine."

When Long got married in 2012, she began selling chocolate-covered strawberries for Valentine's Day. As her strawberries gained popularity, she started selling them and other baked goods at the Portland Farmers Market. Now she sells out of stock at the market nearly every Saturday, and she recently announced plans to open a central location.

Almost eight years after her strawberry success, Long is opening her own bakery and coffee shop, Bizzy Dips, in the John Jay Center for Learning lobby at 101 S. Meridian St., Portland.

After a ribbon-cutting ceremony and soft opening Friday, the new business will open to the public Tuesday.

Long said she's excited to open her shop in the facility in part because of its centralized location.

"We're really just right at the heart of Portland," she said.

Long plans to sell popular items like cinnamon rolls and chocolate-covered strawberries. She will also sell muffins, cookies and other baked goods. She decided to add coffee to her shop menu because she loves coffee and, as she said, "what

goes better with baked goods than coffee?"

Her drink menu will include a full lineup of espresso drinks, lattes, cappuccinos, cold brew and regular coffee. She plans to theme different drinks after bakery items, like a chocolate-covered strawberry mocha or a blueberry crumble latte. She will also sell iced and hot tea as well as flavored sodas and hot chocolate for non-coffee drinkers.

For now, Long will continue baking her goods in her kitchen at the Prayer Cottage, a house located at the corner of Pleasant and Middle

streets in Portland. Her father built the cottage for their family to use as a meeting place, and it's also used for Bible studies and traveling missionaries. She hopes to add an oven and baking area at John Jay so visitors can smell the fresh treats when they walk inside.

Long plans to rope her husband, Patrick, into some barista training. Patrick explained that while his home-based recruitment marketing job lost some business during the COVID-19 shutdown, his wife's bakery was booming.

See **Bizzy** page 5



The Commercial Review/Bailey Cline

Wabash way

Fort Recovery middle school Wabash tribe members react to trivia answers during Indian Way Day Friday on the high school football field. The Wabash tribe won the Fort Recovery trivia contest that afternoon.

Officer agrees to plead guilty

SOUTH BEND, Ind. (AP) — A white former South Bend police officer whose fatal shooting of a Black man last year roiled then-Mayor Pete Buttigieg's presidential campaign has agreed to plead guilty to a felony charge stemming from an alleged on-duty sexual encounter he had a month before that shooting.

A plea agreement filed Wednesday calls for Ryan O'Neill to plead guilty to a ghost employment count, while prosecutors would drop a felony charge of official misconduct and a misdemeanor public indecency charge, the South Bend Tribune reported.

A probable cause affidavit filed in March with the sexual-encounter charges states that O'Neill was in his police cruiser, in uniform, on May 16, 2019, when he pulled up next to a woman and solicited her for a sex act. O'Neill paid her \$20 before that sex act, it states.

A special prosecutor filed those charges against O'Neill, 44,

in March after finding that he was justified in the unrelated fatal June 16, 2019, shooting of Eric Logan. O'Neill had said he shot Logan, 54, after he refused his orders to drop a knife while O'Neill was investigating a report of a person breaking into cars.

The special prosecutor, Ric Hertel, said during a March news conference that evidence showed Logan approached O'Neill with a knife and the officer feared for his safety when he fired two shots, one of which struck Logan in the upper abdomen.

O'Neill resigned weeks after the shooting. The fallout from Logan's killing presented Buttigieg with some of the toughest moments of his bid to win the Democratic nomination for president.

A federal lawsuit that Logan's family filed against O'Neill and the city of South Bend accusing O'Neill of using excessive deadly force is pending.

Weather

Jay County had a high temperature of 77 degrees Friday.

Skies will be mostly sunny today with a high of 80. The low will be 52.

Expect a high of 78 Sunday under mostly cloudy skies. The

high on Labor Day will be 79 and thunderstorms are possible in the afternoon. Lows Sunday and Monday will be in the 60s. Tuesday's high will be 85.

See page 2 for an extended outlook.

In review

The Commercial Review office will be closed Monday in observance of the Labor Day holiday. We will reopen for regular business hours — 8 a.m. to 4 p.m. — on Tuesday.

Coming up

Tuesday — Results from today's JCHS football game at Seeger.

Wednesday — Coverage of Tuesday's Portland City Council meeting.



Wells launches new tourism site

Wells County has launched a new effort to attract visitors.

Wells County Chamber of Commerce and Economic Development launched a new website — visitwellscounty.com — recently following a study by Ball State University, The News Banner (Bluffton) reported.

The chamber's goal with the new site is to increase awareness of tourism opportunities such as events, places to eat and available lodging. Organizations hosting events will be able to upload information to the site.

"We are excited to offer a website for members of the community, as well as visitors, to have a central location to find information on events, activities and other things to do as they plan a trip through Wells County, Wells County Economic Development executive director Chad Kline said in a press release.

Clinic open

Adams Health Network has opened a free COVID-19 community testing clinic at the hospital's Physicians' Office Building, 815 High St., Decatur.

The effort is in partnership with Indiana Department of Health and Adams County Health Department.

The clinic will be open from 5 to 8 p.m. Monday through Friday and 8 a.m. to 4 p.m. Saturday and Sunday. Results are expected to take two to three days.

Development planned

Bruns Construction Enterprises is planning a residential and entertainment district on West Bank Road in Celina, The Daily Standard reported.

The project is planned for West Bank Road and would involve housing, a community pool and playground, and an entertainment area with a stage and deck adjacent to the recently renovated Boardwalk grill. There is also room for retail space.

The Daily Standard reported that construction on the first phase of the project could begin as early as this fall.

Partners honored

Three companies that are customers of Ardagh Group were honored at the PACK Design

Business roundup

Awards and the Wine Packaging Conference last month.

Ardagh, which operates glass manufacturing plants in Dunkirk and Winchester, makes bottles for Ken Wright Cellars, the second-place finisher in the best luxury package design category.

A customized gift set by A X R Napa Valley took first place for best assorted set design and The Debate finished second in the same division. Both companies glass bottles are manufacture by Ardagh in the U.S.

"We celebrate these brands for their commitment to innovation and recognize them for being leaders in wine packaging design," said John T Shaddox, chief commercial officer for Ardagh's North American Glass business unit, in a press release.

Scout adding

Scout Clean Energy this week announced plans to add solar and battery storage components to a proposed wind farm in Benton County, Washington.

Scout, which is in the final stages of constructing Bitter Ridge Wind Farm in southwestern Jay County, has been working on development of the Washington facility since 2016. The wind farm is expected to produce 850 megawatts of combined wind, solar and batter power.

"Scout has been monitoring power market interest for solar and storage technology along with wind, referred to as a hybrid facility," said Scout project manager Dave Kobus in a press release. "Recent improvements in technology have created the economic conditions needed to support demand for co-locating a wind-solar-battery storage project in the Horse Heaven Hills."

Lutheran honored

Lutheran Health Network's Dupont Hospital this week received Level 1 Geriatric Emergency Department Accreditation from the American College of Emergency Physicians.

The accreditation is based on best practices for geriatric care. Level 1 is the most comprehensive designation.

"This particular patient population requires a higher level of specialized care," said Andrew Offerle, medical director of Dupont's emergency department. "We understand that many of our older patients have complicated medical needs and our processes our processes tion to help r needs."

Bid revealed

NextEra Energy announced plans to purchase a 100% owned electric sewer utility in Florida, the company reported this week.

NextEra, which operates Bluff Point Center in southern and northern had filed suit to have the ruling that the public record.

New design

Burger King restaurant design on new order options with first of them in

The sites will feature triple drive-on-site ordering and advanced mobile app. The new design is more than traditional restaurants.

"We took in how consumer changing and want to interact," said International officer Josh K... a new design attractive to our franchisees their return."

President named

Walgreens this week appointed president of West Standley president, CEO Rite Aid. He has Pathmark Stores

of National Association of Chain Drug Stores.

"John's leadership experience and strong understanding of our industry and the U.S. healthcare markets will allow him to hit the ground running, drive our transformation and fulfill our purpose to help people lead healthier and happier lives across America," executive vice chairman and

also planned to accept donations, with 100 percent going to the Red Cross.

"We extend our deepest sympathies to everyone throughout communities that have been impacted by the storm. It is imperative that we do our part to help during such difficult times," said Walgreens regional vice president of the Midwest region

Scout adding

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"Scout has been monitoring power market interest for solar and storage technology along with wind, referred to as a hybrid facility," said Scout project manager Dave Kobus in a press release. "Recent improvements in technology have created the economic conditions needed to support demand for co-locating a wind-solar-battery storage project in the Horse Heaven Hills."



The Commercial Review/Katie Lyons

Jay County Chamber of Commerce held a ribbon-cutting ceremony Friday for Bizy Dips Bakery and Coffee Shop, which will be located in John Jay Center for Learning, 101 S. Meridian St., Portland. Following a soft opening Friday, the business will open to the public Tuesday.

Bizy ...

Continued from page 1

He's taken the supportive role in helping Hannah achieve her dream business.

"I'm not a baker — I'm the official taste-tester," he said.

Patrick is also helping his wife with marketing, but he noted she has the final say in all decisions.

Rusty Inman, executive director of John Jay Center for Learning, said the organization's board proposed in November that it might be nice to have a coffee shop or meeting place.

After connecting with a few different business owners, they chose Bizy Dips.

Inman thinks both Bizy Dips and John Jay will have a mutually beneficial relationship.

"I'm excited to bring people in the door," he said.

McAbee noted that she's proud of her daughter for starting a bakery.

"It's like an art to her; she's just really good at

it," McAbee said. "I'm the mom — I'm supposed to be teaching (her) recipes, but she's always giving me recipes."

Event

Banquet

for **HALF off***

Thanks to the Jay County Visitor & Tourism Bureau

The Jay County Visitor & Tourism Bureau has graciously agreed to pay for half of the building rental fee for the first 10 rentals of our newly renovated building. The rental needs to be some sort of class/activity that will help bring people to Pennville.

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Field Day held in partnership with

Jay & Blackford Soil & Water Conservation Districts

Purdue Extension & Clean Water Indiana

For additional information contact Jay County SWCD at 260-726-4888

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Meet Dave Kobus: Senior Project Manager with Horse Heaven Clean Energy Center

[< Back](#)

Dave Kobus grew up working on his family's dairy farm in a small town. There he developed a deep appreciation for the land and people who worked it. He knows that farming is a calling and that those who rely on agriculture face many challenges in their efforts to feed the community and provide for their families. That's one of his many motivators today as the Senior Project Manager for Horse Heaven Clean Energy Center.

Dave left his hometown to join the Navy where he served on nuclear submarines. He transitioned his post to serve as a prototype instructor to train the next generation of Navy nuclear operators. This was the catalyst for Dave's passion supporting the professional development, education and career connections for young professionals and kids alike, which continues to this day as a team leader, project developer and grandfather.

"One of the most satisfying facets of my career has been the ability to assimilate and develop new talent," said Dave. "I am often surprised at what people can do based on a tip or a nudge, which makes it worthwhile for me to invest my time to help them build the foundational knowledge necessary for their future accomplishments."

While in the service, Dave married and started to envision a life with a family and career that would make a meaningful difference. At the same time, his interest in nuclear technology grew. Following eight years in the service, Dave began working for energy industry groups across the country and engrossed himself in college coursework that expanded his understanding of energy technology. While working, he earned his undergraduate degree in nuclear technology and then a Master's in engineering management from Washington State University Tri-Cities.

Dave settled in Richland over 35 years ago to be closer to family. Here, he began working with Energy Northwest within their nuclear portfolio. As the company started exploring renewable energy development, Dave volunteered extra time to get involved. He was inspired to move into renewable energy after a business trip to Palm Springs. As he was driving through the region with his wife, he saw the wind turbines on the distant hills and said, "One day, I'm going to be involved in wind energy." He describes that as his "beacon on the hill" moment.

Soon after, Energy Northwest decided to move forward with a wind development project. Because of his volunteerism in renewable energy with the company, Dave became the lead renewable developer for the Nine Canyon Wind Project – a single wind project built in three phases that spanned 10 years of his career.

"I'm really proud of that project and I learned a lot about how interrelated our energy system is," said Dave. "I feel passionate about what I do – it's why I got started in it and it keeps me going through the peaks and valleys of a development cycle. I can point to those wind turbines and know exactly how they benefit my community. That keeps me going for these long-term projects."

When the opportunity to lead the development of Horse Heaven Clean Energy Center (HHCEC) arose, Dave did not hesitate to join. With deep knowledge of the existing energy infrastructure in the region, combined with his passion for contributing positively to his community, HHCEC was a perfect fit.

In his role with HHCEC, Dave builds teams of consultants who can provide top level expertise for each aspect of the project. He evaluates what consultants are preparing, does his research and asks any questions needed to fill in the full picture of the project. He notes that very few people in the energy industry have expertise in all aspects of the industry, so it is vitally important to build teams of experts who can go deep on specific subjects. While rare to find someone who knows it all, Dave prepares himself with up-to-date information on the status of everything related to the HHCEC development.

"As the region grows, we will need more energy supply. And it takes a diverse mix of technology to be able to create that reliable and robust supply," said Dave. "It took me a long time to grasp how energy sources and supply are interrelated, so I understand where people are coming from when they have questions. It's really important to me that I am able to explain this project to anyone, and to demonstrate how exciting this project really is."

For Dave, this project is a labor of love and a promise to his community, including his grandchildren, that the Tri-Cities can be an energy hub. He connects it to the Tri-Cities economic development plans which aim to create long-lasting skilled professional jobs for the lifetime of a project. Dave envisions a self-sustaining energy tech industry for the region, which utilizes the amazing renewable resources available locally to keep a strong employment pipeline available for future generations. With more opportunities to enter in these high-skill fields, more young people from the region can build their future career plans locally.

"Those wind turbines can spark curiosity for kids – just like they did for me in Palm Springs. My grandsons see me working on this project, and they see the turbines. I want them to see how they can fashion a career and a life that allows them to explore their passions while leaving a legacy too."

Dave also views this project as a way of enhancing the quality of life around the region. From being self-sufficient suppliers of their own energy to the economic investments that go into local efforts, Dave prefers having wind and solar developments locally, so the benefits come directly into his own community. Based on his lifetime of experience, he believes that if you can see them, you are sharing in their benefits.

"I think its inspirational as it's a sustainable way to generate the power we all need while providing resources that benefit everyone in various ways to ensure a thriving community. It's a graceful solution to address several of our community's pressing needs."

This includes the checks he plays a part in delivering to local farmers who are partnered with the project to lease portions of their land. Connecting with his roots, Dave understands how the HHCEC can lift farmers with additional revenues.

"I'm working for these landowners and the people who have spent their entire lives in debt to get the equipment they need earn a living in agriculture," said Dave. "To have this additional resource means they could send their kids to college, buy the equipment they need to invest back into their farming operations, and spend their money in town which creates an



economic multiplier – improving the quality of life for everyone.”

“At the end of the day I have to look in the mirror and feel good about what I’m doing and that it’s for the overall good,” he continued. “With this project, I am serving the community in what I do.”

WANT TO STAY IN THE LOOP?

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 (509) 490-4892

 horseheaven@scoutcleanenergy.com

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3
4 BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITING EVALUATION COUNCIL

5
6 In the Matter of the Application of:

7 Scout Clean Energy, LLC, for
8 Horse Heaven Wind Farm, LLC,
Applicant.

DOCKET NO. EF-210011

NOTICE OF INTENTION TO
TAKE DEPOSITION OF DAVID
KOBUS

9
10
11 TO: DAVID KOBUS, Scout Clean Energy Senior Project Manager
12 AND TO: Tim McMahon and Steel Rives, attorneys for Applicant Scout Clean
13 Energy and Horse Heaven Wind Farm;
14 AND TO: Counsel of Record

15 Please take notice that the testimony of DAVID KOBUS will be taken Virtually on
16 oral examination, under oath, before a Notary Public / court reporter, at the following
time, date and place:

17 DATE: Monday, June 5, 2023

18 TIME: 9:30 a.m.

19 PLACE: Verb8tim Court Reporting to provide Zoom link.

20 This oral examination will be subject to continuance or adjournment from time to time or
place to place until completed.

21 DATED this 26th day of May, 2023

22 

23 J. Richard Aramburu, WSBA #466
24 Attorney for Tri-Cities C.A.R.E.S.

25
26
27
28 NOTICE OF INTENTION TO TAKE DEPOSITION
OF DAVID KOBUS - 1

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DECLARATION OF SERVICE

I hereby certify that I have this day served the foregoing Notice of Deposition upon all parties of record in this proceeding listed on the following page(s), by authorized method of service pursuant to WAC 463-30-120(3) to the email or street addresses for for parties as provided.

Dated at Seattle, Washington this 26th day of May, 2023.



Carol Cohoe, Legal Assistant
Law Offices of J. Richard Aramburu, PLLC

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sonia.bumpus@efsec.wa.gov

Deposition of Dave Kobus

Rick Aramburu <Rick@aramburulaw.com>

Thu 6/15/2023 3:22 PM

To: McMahan, Tim <tim.mcmahan@stoel.com>; adamtorem@writeme.com
<adamtorem@writeme.com>

Cc: Aziza Foster <zfooster@mjbe.com>; Dolloff, Julie K (ATG)
<julie.dolloff@atg.wa.gov>; Ethan Jones <Ethan@yakamanation-olc.org>; Jessica Houston
<jessica@yakamanation-olc.org>; Julie Kihn <Julie@mjbe.com>; Ken Harper
<kharper@mjbe.com>; Masengale, Lisa (EFSEC)
<lisa.masengale@efsec.wa.gov>; Reyneveld, Sarah (ATG)
<sarah.reyneveld@atg.wa.gov>; Schimelpfenig, Emily K.
<emily.schimelpfenig@stoel.com>; Shona Voelckers <shona@yakamanation-
olc.org>; Thompson, Jonathan C (ATG) <jonathan.thompson@atg.wa.gov>; Stavitsky, Ariel
H. <ariel.stavitsky@stoel.com>

Bcc: aramburulaw@gmail.com <aramburulaw@gmail.com>; 'Dave Sharp'
<dave@tricityscare.org>; pam@tricityscare.org <pam@tricityscare.org>; Paul Krupin
<Paul@Presari.com>

Mr. McMahan:

I write to reschedule the deposition of Mr. Kobus, who was unavailable for deposition on the previously noted date of June 5, 2023. I would like to take Mr. Kobus deposition on **10 am on June 22, 2023** in a virtual format, but I am also available to take his deposition on Friday, June 23. I will be asking him questions about the original and amended ASC.

In this email, I am only copying party representatives.

Should you have any questions, please contact me.

Rick Aramburu
Law Offices of J. Richard Aramburu
705 2nd Ave #1300
Seattle, Washington 98104
Telephone: (206) 625-9515
Email: rick@aramburu-eustis.com

This email may be protected by the Attorney-Client Privilege; if received in error, please discard and notify this office. Thank you.

From: McMahan, Tim <tim.mcmahan@stoel.com>

Sent: Tuesday, May 30, 2023 12:03 PM

To: adamtorem@writeme.com

Cc: Bumpus, Sonia (EFSEC) <sonia.bumpus@efsec.wa.gov>; Moon, Amy (EFSEC)

<amy.moon@efsec.wa.gov>; adjudication@efsec.wa.gov; aramburulaw@gmail.com; Aziza Foster <zfoster@mjbe.com>; Dolloff, Julie K (ATG) <julie.dolloff@atg.wa.gov>; Ethan Jones <Ethan@yakamanation-olc.org>; Jessica Houston <jessica@yakamanation-olc.org>; Julie Kihn <Julie@mjbe.com>; Ken Harper <kharper@mjbe.com>; Masengale, Lisa (EFSEC) <lisa.masengale@efsec.wa.gov>; Reyneveld, Sarah (ATG) <sarah.reyneveld@atg.wa.gov>; Schimelpfenig, Emily K. <emily.schimelpfenig@stoel.com>; Shona Voelckers <shona@yakamanation-olc.org>; Thompson, Jonathan C (ATG) <jonathan.thompson@atg.wa.gov>; Stavitsky, Ariel H. <ariel.stavitsky@stoel.com>
Subject: Horse Heaven Wind Farm Docket #EF-210011; Response to TCC's Demand for Deposition

Hello Judge Torem – Please find attached a letter responding to TCC regarding TCC's demand to take the deposition of Dave Kobus. Thank you for your attention to this matter. Best, TLM

Tim McMahan | Partner

STOEL RIVES LLP | 760 SW Ninth Ave, Suite 3000 | Portland, OR 97205

Direct: (503) 294-9517 | Mobile: (503) 504-8693

tim.mcmahan@stoel.com | [Bio](#) | [vCard](#) | www.stoel.com



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RE: Deposition of Dave Kobus. June 22, 2023 at 10 am

Rick Aramburu <Rick@aramburulaw.com>

Fri 6/16/2023 2:42 PM

To:Perlmutter, Willa B. <willa.perlmutter@stoel.com>

Cc:Doloff, Julie K (ATG) <Julie.Doloff@atg.wa.gov>;ethan@yakamanation-olc.org <ethan@yakamanation-olc.org>;jessica@yakamanation-olc.org <jessica@yakamanation-olc.org>;Julie@mjbe.com <Julie@mjbe.com>;kharper@mjbe.com <kharper@mjbe.com>;Masengale, Lisa (EFSEC) <lisa.masengale@efsec.wa.gov>;Reyneveld, Sarah (ATG) <Sarah.Reyneveld@atg.wa.gov>;shona@yakamanation-olc.org <shona@yakamanation-olc.org>;Thompson, Jonathan C (ATG) <jonathan.thompson@atg.wa.gov>;McMahan, Tim <tim.mcmahan@stoel.com>;Stavitsky, Ariel H. <ariel.stavitsky@stoel.com>;Schimelpfenig, Emily K. <emily.schimelpfenig@stoel.com>

Bcc:'Dave Sharp' <dave@tricityscare.org>;pam@tricityscare.org <pam@tricityscare.org>;Paul Krupin <Paul@Presari.com>

Ms. Perlmutter:

The applicant's continuing efforts to delay and impede discovery are entirely inconsistent with the Examiner's orders and determinations, as well as the Civil Rules on discovery, CR 26-37.

We are cognizant of the Examiner's rulings and well aware of the "disputed issues for adjudication." If you think during the course of Mr. Kobus deposition that questions are improper, you may exercise your right to object. Regarding the "coordination" of TCC with those of Benton County, please be advised that we are fully following the Examiner's direction and communicating and cooperating with the County.

To date, we have attempted to engage in informal means of settlement of discovery issues as provided in PHO#2. However, further delay and unwarranted interference with TCC's right to engage in discovery are entirely inappropriate. If the Applicant continues to refuse to make its project manager Mr. Kobus available for deposition, we will seek orders to compel his attendance and appropriate relief, including additional time for presentation of testimony.

(We have deleted Judge Torem from the email string as he is not a party to these discussions.)

Rick Aramburu
Law Offices of J. Richard Aramburu
705 2nd Ave #1300
Seattle, Washington 98104
Telephone: (206) 625-9515
Email: rick@aramburu-eustis.com

This email may be protected by the Attorney-Client Privilege; if received in error, please discard and notify this office. Thank you.

From: Perlmutter, Willa B. <willa.perlmutter@stoel.com>
Sent: Thursday, June 15, 2023 4:51 PM
To: Rick Aramburu <Rick@aramburulaw.com>; Rick Aramburu <Rick@aramburulaw.com>
Cc: Adam Torem (adamtorem@write.me.com) <adamtorem@write.me.com>;
zfoster@mjbe.com <zfoster@mjbe.com>; Dolloff, Julie K (ATG) <Julie.Dolloff@atg.wa.gov>;
ethan@yakamanation-olc.org; jessica@yakamanation-olc.org; Julie@mjbe.com;
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shona@yakamanation-olc.org; Thompson, Jonathan C (ATG)
<jonathan.thompson@atg.wa.gov>; McMahan, Tim <tim.mcmahan@stoel.com>; Stavitsky,
Ariel H. <ariel.stavitsky@stoel.com>; Schimelpfenig, Emily K.
<emily.schimelpfenig@stoel.com>
Subject: FW: Deposition of Dave Kobus

Good afternoon, Mr. Aramburu.

I am responding to your email this afternoon to my colleague Tim McMahan, regarding your proposal to take Dave Kobus's deposition next week. We are checking with Mr. Kobus about his availability and we will circle back to you on that shortly.

In the meantime, however, please understand that your extremely broad and vague statement that you intend to ask Mr. Kobus "about the original and amended ASC" is unacceptable as we determine whether to make Mr. Kobus available for deposition. As you know, Judge Torem directed that "the parties' pre-filed testimony shall serve as the chief source of discovering each party's principal positions" and "**any additional discovery must seek only information that is relevant to the approved issues for the adjudication.**" Second Pre-Hearing Conference Order, p. 4 (May 19, 2023). Your representation about the intended scope of Mr. Kobus's deposition clearly falls very wide of Judge Torem's unambiguous instruction. Any questions you plan to ask Mr. Kobus have to be limited to those that are consistent with TCC's role as an intervenor in this case: specifically, "the organization's significant interest in wildlife and ecosystem conservation as well as local decision-making to preserve the community's uniquely picturesque natural landscapes." Mr. Kobus will answer questions on those limited subjects. Moreover, we will not agree to allow Mr. Kobus to respond to any questions regarding land use topics, as Judge Torem affirmatively identified Benton County as the lead for those issues. *Id.*, p. 5

We hope that we can agree to these limitations without the need to involve Judge Torem any more than necessary. Please confirm in writing that you will agree to limit your questions to the areas identified by the judge and we will work with you to get Mr. Kobus's deposition scheduled for next week. Absent your confirmation we do not intend to produce Mr. Kobus voluntarily – but of course we hope that it will not be necessary for us to refuse to produce him or to ask the judge to weigh in.

Additionally, as a housekeeping matter, please note that as we previously advised you, I'll be

working with Tim McMahan and with the rest of the Horse Heaven team as litigation counsel. To that end, I'd appreciate it if you would include me on all correspondence going forward.

We look forward to your agreement to the approach we've outlined. Once we get your confirmation we'll firm up a date and time for Mr. Kobus's deposition.

Many thanks,

Willa Perlmutter | Of Counsel

STOEL RIVES LLP | 760 SW Ninth Ave, Suite 3000 | Portland, OR 97205

Direct: (503) 294-9462 | Mobile: (202) 441-0531

willa.perlmutter@stoel.com | [Bio](#) | [vCard](#) | www.stoel.com



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Begin forwarded message:

From: Rick Aramburu <Rick@aramburulaw.com>

Date: June 15, 2023 at 3:22:23 PM PDT

To: "McMahan, Tim" <tim.mcmahan@stoel.com>, adamtorem@writeme.com

Cc: Aziza Foster <zfoster@mjbe.com>, "Dolloff, Julie K (ATG)" <julie.dolloff@atg.wa.gov>, Ethan Jones <Ethan@yakamanation-olc.org>, Jessica Houston <jessica@yakamanation-olc.org>, Julie Kihn <Julie@mjbe.com>, Ken Harper <kharper@mjbe.com>, "Masengale, Lisa (EFSEC)" <lisa.masengale@efsec.wa.gov>, "Reyneveld, Sarah (ATG)" <sarah.reyneveld@atg.wa.gov>, "Schimelpfenig, Emily K." <emily.schimelpfenig@stoel.com>, Shona Voelckers <shona@yakamanation-olc.org>, "Thompson, Jonathan C (ATG)" <jonathan.thompson@atg.wa.gov>, "Stavitsky, Ariel H." <ariel.stavitsky@stoel.com>

Subject: Deposition of Dave Kobus

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Should you have any questions, please contact me.

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Telephone: (206) 625-9515
Email: rick@aramburu-eustis.com

This email may be protected by the Attorney-Client Privilege; if received in error, please discard and notify this office. Thank you.

From: McMahan, Tim <tim.mcmahan@stoel.com>
Sent: Tuesday, May 30, 2023 12:03 PM
To: adamtorem@writeme.com
Cc: Bumpus, Sonia (EFSEC) <sonia.bumpus@efsec.wa.gov>; Moon, Amy (EFSEC) <amy.moon@efsec.wa.gov>; adjudication@efsec.wa.gov; aramburulaw@gmail.com; Aziza Foster <zfoster@mjbe.com>; Dolloff, Julie K (ATG) <julie.dolloff@atg.wa.gov>; Ethan Jones <Ethan@yakamanation-olc.org>; Jessica Houston <jessica@yakamanation-olc.org>; Julie Kihn <Julie@mjbe.com>; Ken Harper <kharper@mjbe.com>; Masengale, Lisa (EFSEC) <lisa.masengale@efsec.wa.gov>; Reyneveld, Sarah (ATG) <sarah.reyneveld@atg.wa.gov>; Schimelpfenig, Emily K. <emily.schimelpfenig@stoel.com>; Shona Voelckers <shona@yakamanation-olc.org>; Thompson, Jonathan C (ATG) <jonathan.thompson@atg.wa.gov>; Stavitsky, Ariel H. <ariel.stavitsky@stoel.com>
Subject: Horse Heaven Wind Farm Docket #EF-210011; Response to TCC's Demand for Deposition

Hello Judge Torem – Please find attached a letter responding to TCC regarding TCC's demand to take the deposition of Dave Kobus. Thank you for your attention to this matter. Best, TLM

Tim McMahan | Partner

STOEL RIVES LLP | 760 SW Ninth Ave, Suite 3000 | Portland, OR 97205

Direct: (503) 294-9517 | Mobile: (503) 504-8693

tim.mcmahan@stoel.com | [Bio](#) | [vCard](#) | www.stoel.com



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Carol Cohoe

From: Perlmutter, Willa B. <willa.perlmutter@stoel.com>
Sent: Sunday, June 18, 2023 3:42 PM
To: Rick Aramburu
Cc: Dolloff, Julie K (ATG); ethan@yakamanation-olc.org; jessica@yakamanation-olc.org; Julie@mjbe.com; kharper@mjbe.com ; Masengale, Lisa (EFSEC); Reyneveld, Sarah (ATG); shona@yakamanation-olc.org; Thompson, Jonathan C (ATG); McMahan, Tim; Stavitsky, Ariel H.; Schimelpfenig, Emily K.
Subject: RE: Deposition of Dave Kobus. June 22, 2023 at 10 am

Good afternoon, Mr. Aramburu.

As I hope my previous email made clear, we are not refusing to make Mr. Kobus available for a deposition. We are, however, unwilling to make him available for questioning if TCC will not agree in advance to limit the scope of the deposition to the fairly narrow range of issues that Judge Torem has identified as the scope of your client's involvement in this matter. We trust you will understand that simply reminding us of our right to object to improper questioning is not a helpful solution to our concern that your plan to question Mr. Kobus "about the original and amended ASC," without reasonable limitations, will result in a fishing expedition not contemplated either by the orders in this case or by the rules of discovery.

We would be happy to talk with you in an attempt to arrive at an agreement on a reasonable scope for the deposition you seek. If you continue to insist on conducting a free-ranging deposition without regard to the defined scope of the adjudication or of TCC's identified role therein, however, you may need to file your threatened motion and at that point we can all ask for Judge Torem's input. Once more, however, please understand that we hope that will not be necessary and that we can reach a reasonable accommodation that gets you what you need – while still respecting the appropriate statutory and procedural status of this matter and TCC's narrowly defined role in it.

Many thanks,

Willa Perlmutter | Of Counsel
STOEL RIVES LLP | 760 SW Ninth Ave, Suite 3000 | Portland, OR 97205
Direct: (503) 294-9462 | Mobile: (202) 441-0531
willa.perlmutter@stoel.com | [Bio](#) | [vCard](#) | www.stoel.com



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From: Rick Aramburu <Rick@aramburulaw.com>
Sent: Friday, June 16, 2023 2:42 PM
To: Perlmutter, Willa B. <willa.perlmutter@stoel.com>
Cc: Dolloff, Julie K (ATG) <Julie.Dolloff@atg.wa.gov>; ethan@yakamanation-olc.org;
jessica@yakamanation-olc.org; Julie@mjbe.com; kharper@mjbe.com <kharper@mjbe.com>;
Masengale, Lisa (EFSEC) <lisa.masengale@efsec.wa.gov>; Reyneveld, Sarah (ATG)
<Sarah.Reyneveld@atg.wa.gov>; shona@yakamanation-olc.org; Thompson, Jonathan C (ATG)
<jonathan.thompson@atg.wa.gov>; McMahan, Tim <tim.mcmahan@stoel.com>; Stavitsky, Ariel H.
<ariel.stavitsky@stoel.com>; Schimelpfenig, Emily K. <emily.schimelpfenig@stoel.com>
Subject: RE: Deposition of Dave Kobus. June 22, 2023 at 10 am

Ms. Perlmutter:

The applicant's continuing efforts to delay and impede discovery are entirely inconsistent with the Examiner's orders and determinations, as well as the Civil Rules on discovery, CR 26-37.

We are cognizant of the Examiner's rulings and well aware of the "disputed issues for adjudication." If you think during the course of Mr. Kobus deposition that questions are improper, you may exercise your right to object. Regarding the "coordination" of TCC with those of Benton County, please be advised that we are fully following the Examiner's direction and communicating and cooperating with the County.

To date, we have attempted to engage in informal means of settlement of discovery issues as provided in PHO#2. However, further delay and unwarranted interference with TCC's right to engage in discovery are entirely inappropriate. If the Applicant continues to refuse to make its project manager Mr. Kobus available for deposition, we will seek orders to compel his attendance and appropriate relief, including additional time for presentation of testimony.

(We have deleted Judge Torem from the email string as he is not a party to these discussions.)

Rick Aramburu
Law Offices of J. Richard Aramburu
705 2nd Ave #1300
Seattle, Washington 98104
Telephone: (206) 625-9515
Email: rick@aramburu-eustis.com

This email may be protected by the Attorney-Client Privilege; if received in error, please discard and notify this office. Thank you.

From: Perlmutter, Willa B. <willa.perlmutter@stoel.com>
Sent: Thursday, June 15, 2023 4:51 PM
To: Rick Aramburu <Rick@aramburulaw.com>; Rick Aramburu <Rick@aramburulaw.com>
Cc: Adam Torem (adamtorem@writeme.com) <adamtorem@writeme.com>; zfoster@mjbe.com <zfoster@mjbe.com>; Dolloff, Julie K (ATG) <Julie.Dolloff@atg.wa.gov>; ethan@yakamanation-olc.org; jessica@yakamanation-olc.org; Julie@mjbe.com; kharper@mjbe.com <kharper@mjbe.com>;
Masengale, Lisa (EFSEC) <lisa.masengale@efsec.wa.gov>; Reyneveld, Sarah (ATG) <Sarah.Reyneveld@atg.wa.gov>; shona@yakamanation-olc.org; Thompson, Jonathan C (ATG) <jonathan.thompson@atg.wa.gov>; McMahan, Tim <tim.mcmahan@stoel.com>; Stavitsky, Ariel H. <ariel.stavitsky@stoel.com>; Schimelpfenig, Emily K. <emily.schimelpfenig@stoel.com>
Subject: FW: Deposition of Dave Kobus

Good afternoon, Mr. Aramburu.

I am responding to your email this afternoon to my colleague Tim McMahan, regarding your proposal to take Dave Kobus's deposition next week. We are checking with Mr. Kobus about his availability and we will circle back to you on that shortly.

In the meantime, however, please understand that your extremely broad and vague statement that you intend to ask Mr. Kobus "about the original and amended ASC" is unacceptable as we determine whether to make Mr. Kobus available for deposition. As you know, Judge Torem directed that "the parties' pre-filed testimony shall serve as the chief source of discovering each party's principal positions" and "*any additional discovery must seek only information that is relevant to the approved issues for the adjudication.*" Second Pre-Hearing Conference Order, p. 4 (May 19, 2023). Your representation about the intended scope of Mr. Kobus's deposition clearly falls very wide of Judge Torem's unambiguous instruction. Any questions you plan to ask Mr. Kobus have to be limited to those that are consistent with TCC's role as an intervenor in this case: specifically, "the organization's significant interest in wildlife and ecosystem conservation as well as local decision-making to preserve the community's uniquely picturesque natural landscapes." Mr. Kobus will answer questions on those limited subjects. Moreover, we will not agree to allow Mr. Kobus to respond to any questions regarding land use topics, as Judge Torem affirmatively identified Benton County as the lead for those issues. *Id.*, p. 5

We hope that we can agree to these limitations without the need to involve Judge Torem any more than necessary. Please confirm in writing that you will agree to limit your questions to the areas identified by the judge and we will work with you to get Mr. Kobus's deposition scheduled for next week. Absent your confirmation we do not intend to produce Mr. Kobus voluntarily – but of course we hope that it will not be necessary for us to refuse to produce him or to ask the judge to weigh in.

Additionally, as a housekeeping matter, please note that as we previously advised you, I'll be working with Tim McMahan and with the rest of the Horse Heaven team as litigation counsel. To that end, I'd appreciate it if you would include me on all correspondence going forward.

We look forward to your agreement to the approach we've outlined. Once we get your confirmation we'll firm up a date and time for Mr. Kobus's deposition.

Many thanks,

Willa Perlmutter | Of Counsel
STOEL RIVES LLP | 760 SW Ninth Ave, Suite 3000 | Portland, OR 97205
Direct: (503) 294-9462 | Mobile: (202) 441-0531
willa.perlmutter@stoel.com | [Bio](#) | [vCard](#) | www.stoel.com



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Begin forwarded message:

From: Rick Aramburu <Rick@aramburulaw.com>
Date: June 15, 2023 at 3:22:23 PM PDT
To: "McMahan, Tim" <tim.mcmahan@stoel.com>, adamtorem@writeme.com
Cc: Aziza Foster <zfoster@mjbe.com>, "Dolloff, Julie K (ATG)" <julie.dolloff@atg.wa.gov>, Ethan Jones <Ethan@yakamanation-olc.org>, Jessica Houston <jessica@yakamanation-olc.org>, Julie Kihn <Julie@mjbe.com>, Ken Harper <kharper@mjbe.com>, "Masengale, Lisa (EFSEC)" <lisa.masengale@efsec.wa.gov>, "Reyneveld, Sarah (ATG)" <sarah.reyneveld@atg.wa.gov>, "Schimelpfenig, Emily K." <emily.schimelpfenig@stoel.com>, Shona Voelckers <shona@yakamanation-olc.org>, "Thompson, Jonathan C (ATG)" <jonathan.thompson@atg.wa.gov>, "Stavitsky, Ariel H." <ariel.stavitsky@stoel.com>
Subject: Deposition of Dave Kobus

Mr. McMahan:

I write to reschedule the deposition of Mr. Kobus, who was unavailable for deposition on the previously noted date of June 5, 2023. I would like to take Mr. Kobus deposition on 10 am on June 22, 2023 in a virtual format, but I am also available to take his

deposition on Friday, June 23. I will be asking him questions about the original and amended ASC.

In this email, I am only copying party representatives.

Should you have any questions, please contact me.

Rick Aramburu
Law Offices of J. Richard Aramburu
705 2nd Ave #1300
Seattle, Washington 98104
Telephone: (206) 625-9515
Email: rick@aramburu-eustis.com

This email may be protected by the Attorney-Client Privilege; if received in error, please discard and notify this office. Thank you.

From: McMahan, Tim <tim.mcmahan@stoel.com>
Sent: Tuesday, May 30, 2023 12:03 PM
To: adamtorem@writeme.com
Cc: Bumpus, Sonia (EFSEC) <sonia.bumpus@efsec.wa.gov>; Moon, Amy (EFSEC) <amy.moon@efsec.wa.gov>; adjudication@efsec.wa.gov; aramburulaw@gmail.com; Aziza Foster <zfoster@mjbe.com>; Dolloff, Julie K (ATG) <julie.dolloff@atg.wa.gov>; Ethan Jones <Ethan@yakamanation-olc.org>; Jessica Houston <jessica@yakamanation-olc.org>; Julie Kihn <Julie@mjbe.com>; Ken Harper <kharper@mjbe.com>; Masengale, Lisa (EFSEC) <lisa.masengale@efsec.wa.gov>; Reyneveld, Sarah (ATG) <sarah.reyneveld@atg.wa.gov>; Schimelpfenig, Emily K. <emily.schimelpfenig@stoel.com>; Shona Voelckers <shona@yakamanation-olc.org>; Thompson, Jonathan C (ATG) <jonathan.thompson@atg.wa.gov>; Stavitsky, Ariel H. <ariel.stavitsky@stoel.com>
Subject: Horse Heaven Wind Farm Docket #EF-210011; Response to TCC's Demand for Deposition

Hello Judge Torem – Please find attached a letter responding to TCC regarding TCC's demand to take the deposition of Dave Kobus. Thank you for your attention to this matter. Best, TLM

Tim McMahan | Partner
STOEL RIVES LLP | 760 SW Ninth Ave, Suite 3000 | Portland, OR 97205
Direct: (503) 294-9517 | Mobile: (503) 504-8693
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RE: Deposition of Dave Kobus. June 22, 2023 at 10 am

Rick Aramburu <Rick@aramburulaw.com>

Fri 6/23/2023 2:46 PM

To:Perlmutter, Willa B. <willa.perlmutter@stoel.com>;Ken Harper <kharper@mjbe.com>

Cc:Doloff, Julie K (ATG) <Julie.Doloff@atg.wa.gov>;ethan@yakamanation-olc.org
<ethan@yakamanation-olc.org>;jessica@yakamanation-olc.org <jessica@yakamanation-olc.org>;Julie Kihn <Julie@mjbe.com>;Masengale, Lisa (EFSEC)

<lisa.masengale@efsec.wa.gov>;Reyneveld, Sarah (ATG)
<Sarah.Reyneveld@atg.wa.gov>;shona@yakamanation-olc.org <shona@yakamanation-olc.org>;Thompson, Jonathan C (ATG) <jonathan.thompson@atg.wa.gov>;McMahan, Tim
<tim.mcmahan@stoel.com>;Stavitsky, Ariel H. <ariel.stavitsky@stoel.com>;Schimelpfenig, Emily K. <emily.schimelpfenig@stoel.com>

Ms. Perlmutter:

Quite frankly we are tired of the applicant's delay in producing its long standing project manager for deposition.

We originally scheduled his deposition by notice on May 26 for June 5 so it would be available for use for the first round of testimony due June 12. You refused to make him available, and we missed the June 12 deadline. Following an exchange of communication regarding his testimony, on June 15, we asked you to make Mr. Kobus available for deposition on June 22, so we could use his testimony for the rebuttal round of testimony due June 30. Scout continued its obdurate refusal to make him available and now his testimony will not be available for the June 30 testimony. Your suggestion that we meet next week means it is likely we will not have his testimony even for the final round of testimony due July 12. The Applicant's behavior is contrary to the terms of the Civil Rules and the Examiner prior orders. Regrettably, we have no choice but to promptly file our motion to compel.

Your email states the Applicant wants undescribed "guardrails" for testimony, but PHO#2 has already set those guardrails coming after a lengthy prehearing conference on May 2. The Applicant did not ask for more restrictions or "guardrails" after receiving PHO#2, which specifically allowed for discovery under the Civil Rules.

If the Applicant has objections on relevance grounds, limited as they are by CR 26, they can be made at the deposition. I am still willing to consider whatever "guardrails" you propose, but I must have them by the end of the day given the need to promptly set Mr. Kobus deposition.

Rick Aramburu
Law Offices of J. Richard Aramburu
705 2nd Ave #1300
Seattle, Washington 98104
Telephone: (206) 625-9515

Email: rick@aramburu-eustis.com

This email may be protected by the Attorney-Client Privilege; if received in error, please discard and notify this office. Thank you.

From: Perlmutter, Willa B. <willa.perlmutter@stoel.com>

Sent: Friday, June 23, 2023 8:57 AM

To: Ken Harper <kharper@mjbe.com>; Rick Aramburu <Rick@aramburulaw.com>

Cc: Dolloff, Julie K (ATG) <Julie.Dolloff@atg.wa.gov>; ethan@yakamanation-olc.org; jessica@yakamanation-olc.org; Julie Kihn <Julie@mjbe.com>; Masengale, Lisa (EFSEC) <lisa.masengale@efsec.wa.gov>; Reyneveld, Sarah (ATG) <Sarah.Reyneveld@atg.wa.gov>; shona@yakamanation-olc.org; Thompson, Jonathan C (ATG) <jonathan.thompson@atg.wa.gov>; McMahan, Tim <tim.mcmahan@stoel.com>; Stavitsky, Ariel H. <ariel.stavitsky@stoel.com>; Schimelpfenig, Emily K. <emily.schimelpfenig@stoel.com>

Subject: RE: Deposition of Dave Kobus. June 22, 2023 at 10 am

Good morning to you both.

Here's a suggestion that might help us move forward with regard to Mr. Kobus's deposition. We'd propose a call among the three of us to see if we can't iron out an agreement regarding the permissible scope of questioning. As we've indicated in previous emails, we're happy to make him available as long as we can put reasonable guardrails on the subjects for deposition. It seems to me that rather than trying to fight it out by email, our clients might be well served if we just get on the phone and try to talk it out.

What's your thought? Today isn't good for me, but next week I have pretty good availability. On Monday I can be available until about 3:30, and later in the week I have some flexibility and could make time to talk. If you tell me what works, I can set up a call on Zoom or Teams, as you prefer.

I hope we can get things back on track so we can get Mr. Kobus deposed and move on from there.

Many thanks,

Willa.

Willa Perlmutter | Of Counsel

STOEL RIVES LLP | 760 SW Ninth Ave, Suite 3000 | Portland, OR 97205

Direct: (503) 294-9462 | Mobile: (202) 441-0531

willa.perlmutter@stoel.com | [Bio](#) | [vCard](#) | www.stoel.com



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From: Ken Harper <kharper@mjbe.com>
Sent: Wednesday, June 21, 2023 10:53 AM
To: Perlmutter, Willa B. <willa.perlmutter@stoel.com>; Rick Aramburu <Rick@aramburulaw.com>
Cc: Dolloff, Julie K (ATG) <Julie.Dolloff@atg.wa.gov>; ethan@yakamanation-olc.org; jessica@yakamanation-olc.org; Julie Kihn <Julie@mjbe.com>; Masengale, Lisa (EFSEC) <lisa.masengale@efsec.wa.gov>; Reyneveld, Sarah (ATG) <Sarah.Reyneveld@atg.wa.gov>; shona@yakamanation-olc.org; Thompson, Jonathan C (ATG) <jonathan.thompson@atg.wa.gov>; McMahan, Tim <tim.mcmahan@stoel.com>; Stavitsky, Ariel H. <ariel.stavitsky@stoel.com>; Schimelpfenig, Emily K. <emily.schimelpfenig@stoel.com>
Subject: RE: Deposition of Dave Kobus. June 22, 2023 at 10 am

Ms. Perlmutter:

I write to point out that the County may also have questions for Mr. Kobus. Your statement from the below email chain ("Moreover, we will not agree to allow Mr. Kobus to respond to any questions regarding land use topics, as Judge Torem affirmatively identified Benton County as the lead for those issues. *Id.*, p. 5") is not well-taken because we do not agree that Mr. Aramburu's deposition is limited to only questions he asks. The County plans to attend the deposition and may ask questions of its own. Nor do we agree that Judge Torem's ruling has the preclusive effect you claim in any event.

I will continue to monitor your and Mr. Aramburu's efforts to reach an accommodation so that Mr. Kobus' deposition may be scheduled, but wanted to state our position clearly.

K

Kenneth W. Harper
Menke Jackson Beyer, LLP
807 North 39th Avenue

Yakima, WA 98902 USA

509-575-0313

509-575-0351 (fax)

kharper@mjbe.com

www.mjbe.com

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From: Perlmutter, Willa B. <willa.perlmutter@stoel.com>

Sent: Tuesday, June 20, 2023 1:53 PM

To: Rick Aramburu <Rick@aramburulaw.com>

Cc: Dolloff, Julie K (ATG) <Julie.Dolloff@atg.wa.gov>; ethan@yakamanation-olc.org; jessica@yakamanation-olc.org; Julie Kihn <Julie@mjbe.com>; Ken Harper <kharper@mjbe.com>; Masengale, Lisa (EFSEC) <lisa.masengale@efsec.wa.gov>; Reyneveld, Sarah (ATG) <Sarah.Reyneveld@atg.wa.gov>; shona@yakamanation-olc.org; Thompson, Jonathan C (ATG) <jonathan.thompson@atg.wa.gov>; McMahan, Tim <tim.mcmahan@stoel.com>; Stavitsky, Ariel H. <ariel.stavitsky@stoel.com>; Schimelpfenig, Emily K. <emily.schimelpfenig@stoel.com>

Subject: RE: Deposition of Dave Kobus. June 22, 2023 at 10 am

Good afternoon, Mr. Aramburu.

Here's what we suggest as a possible way to break our current impasse. If you'll submit the questions you'd like to ask Mr. Kobus, we'll undertake to have Mr. Kobus answer them in good faith, in writing and under oath, subject to the objections we're raising as to scope.

If that won't work for you and your client, it would appear the parties might need to ask Judge Torem to weigh in with direction as to the limits, if any, to be put on your lines of questioning for Mr. Kobus. We still hope you'll voluntarily agree to limit the scope of Mr. Kobus's deposition to something less than the entire universe of issues the original and amended applications might touch upon, in which case none of this will be necessary and we can get the deposition scheduled in short order. In the alternative, as noted, we'd be happy to submit your questions to Mr. Kobus for written answers. Failing that, we'll wait for the motion you seem to feel is necessary.

That said, however, if you have another solution, we'd be happy to discuss it with you in an effort to get this moving forward again.

Many thanks,

Willa Perlmutter | Of Counsel

STOEL RIVES LLP | 760 SW Ninth Ave, Suite 3000 | Portland, OR 97205

Direct: (503) 294-9462 | Mobile: (202) 441-0531

willa.perlmutter@stoel.com | [Bio](#) | [vCard](#) | www.stoel.com



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From: Rick Aramburu <Rick@aramburulaw.com>
Sent: Monday, June 19, 2023 1:54 PM
To: Perlmutter, Willa B. <willa.perlmutter@stoel.com>
Cc: Dolloff, Julie K (ATG) <Julie.Dolloff@atg.wa.gov>; ethan@yakamanation-olc.org; jessica@yakamanation-olc.org; Julie@mjbe.com; kharper@mjbe.com <kharper@mjbe.com>; Masengale, Lisa (EFSEC) <lisa.masengale@efsec.wa.gov>; Reyneveld, Sarah (ATG) <Sarah.Reyneveld@atg.wa.gov>; shona@yakamanation-olc.org; Thompson, Jonathan C (ATG) <jonathan.thompson@atg.wa.gov>; McMahan, Tim <tim.mcmahan@stoel.com>; Stavitsky, Ariel H. <ariel.stavitsky@stoel.com>; Schimelpfenig, Emily K. <emily.schimelpfenig@stoel.com>
Subject: RE: Deposition of Dave Kobus. June 22, 2023 at 10 am

Dear Ms. Perlmutter:

You contend that the Judge Torem has established a “narrow range of issues” identified in PHO#2. That is not the case. As Judge Torem stated at page 3 of PHO#2:

The scope and intent of these approved issues will be broadly construed to allow parties to present their individual case for and against the project, subject to motions to strike irrelevant evidence or witness testimony that is clearly outside the scope of EFSEC’s review process.

(Emphasis supplied). Judge Torem identified other issues also on page 3 of this order, stating that:

Although the approved issued list (sic) above will be broadly construed, the following issues will *not* be taken up during the adjudication unless specifically authorized by subsequent order

(Underline supplied, italics in original). We do understand that, though we disagree with the ruling and have noted our objections, issues in the second category are off limits.

Discovery has been authorized in this case and the choice of discovery to be employed is generally up to the inquiring party. Judge Torem has stated the identified issues will be “broadly construed” and objection can be made if you think questions are improper. However, there is no basis for a broad exclusion of testimony. It is well-settled law that if a party seeks to avoid discovery, it must move for a protective order, not just unilaterally decide matters are not subject to discovery based on its interpretation of the legal issues. See *Taylor v Cessna Aircraft Co.*, 39 Wn App 828, 836 (1985) (1985).

We request for the third time that the project manager, Mr. Kobus appear for this deposition at the time previously requested.

Rick Aramburu
Law Offices of J. Richard Aramburu
705 2nd Ave #1300
Seattle, Washington 98104
Telephone: (206) 625-9515
Email: rick@aramburu-eustis.com

This email may be protected by the Attorney-Client Privilege; if received in error, please discard and notify this office. Thank you.

From: Perlmutter, Willa B. <willa.perlmutter@stoel.com>
Sent: Sunday, June 18, 2023 3:42 PM
To: Rick Aramburu <Rick@aramburulaw.com>
Cc: Dolloff, Julie K (ATG) <Julie.Dolloff@atg.wa.gov>; ethan@yakamanation-olc.org; jessica@yakamanation-olc.org; Julie@mjbe.com; kharper@mjbe.com <kharper@mjbe.com>; Masengale, Lisa (EFSEC) <lisa.masengale@efsec.wa.gov>; Reyneveld, Sarah (ATG) <Sarah.Reyneveld@atg.wa.gov>; shona@yakamanation-olc.org; Thompson, Jonathan C (ATG) <jonathan.thompson@atg.wa.gov>; McMahan, Tim <tim.mcmahan@stoel.com>; Stavitsky, Ariel H. <ariel.stavitsky@stoel.com>; Schimelpfenig, Emily K. <emily.schimelpfenig@stoel.com>
Subject: RE: Deposition of Dave Kobus. June 22, 2023 at 10 am

Good afternoon, Mr. Aramburu.

As I hope my previous email made clear, we are not refusing to make Mr. Kobus available for a deposition. We are, however, unwilling to make him available for questioning if TCC will not agree in advance to limit the scope of the deposition to the fairly narrow range of issues that Judge Torem has identified as the scope of your client’s involvement in this matter. We trust you will understand that simply reminding us of our right to object to improper questioning is not a helpful solution to our concern that your plan to question Mr. Kobus “about the original

and amended ASC,” without reasonable limitations, will result in a fishing expedition not contemplated either by the orders in this case or by the rules of discovery.

We would be happy to talk with you in an attempt to arrive at an agreement on a reasonable scope for the deposition you seek. If you continue to insist on conducting a free-ranging deposition without regard to the defined scope of the adjudication or of TCC’s identified role therein, however, you may need to file your threatened motion and at that point we can all ask for Judge Torem’s input. Once more, however, please understand that we hope that will not be necessary and that we can reach a reasonable accommodation that gets you what you need – while still respecting the appropriate statutory and procedural status of this matter and TCC’s narrowly defined role in it.

Many thanks,

Willa Perlmutter | Of Counsel

STOEL RIVES LLP | 760 SW Ninth Ave, Suite 3000 | Portland, OR 97205

Direct: (503) 294-9462 | Mobile: (202) 441-0531

willa.perlmutter@stoel.com | [Bio](#) | [vCard](#) | www.stoel.com



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From: Rick Aramburu <Rick@aramburulaw.com>

Sent: Friday, June 16, 2023 2:42 PM

To: Perlmutter, Willa B. <willa.perlmutter@stoel.com>

Cc: Dolloff, Julie K (ATG) <Julie.Dolloff@atg.wa.gov>; ethan@yakamanation-olc.org; jessica@yakamanation-olc.org; Julie@mjbe.com; kharper@mjbe.com <kharper@mjbe.com>; Masengale, Lisa (EFSEC) <lisa.masengale@efsec.wa.gov>; Reyneveld, Sarah (ATG) <Sarah.Reyneveld@atg.wa.gov>; shona@yakamanation-olc.org; Thompson, Jonathan C (ATG) <jonathan.thompson@atg.wa.gov>; McMahan, Tim <tim.mcmahan@stoel.com>; Stavitsky, Ariel H. <ariel.stavitsky@stoel.com>; Schimelpfenig, Emily K. <emily.schimelpfenig@stoel.com>

Subject: RE: Deposition of Dave Kobus. June 22, 2023 at 10 am

Ms. Perlmutter:

The applicant's continuing efforts to delay and impede discovery are entirely inconsistent with the Examiner's orders and determinations, as well as the Civil Rules on discovery, CR 26-37.

We are cognizant of the Examiner's rulings and well aware of the "disputed issues for adjudication." If you think during the course of Mr. Kobus deposition that questions are improper, you may exercise your right to object. Regarding the "coordination" of TCC with those of Benton County, please be advised that we are fully following the Examiner's direction and communicating and cooperating with the County.

To date, we have attempted to engage in informal means of settlement of discovery issues as provided in PHO#2. However, further delay and unwarranted interference with TCC's right to engage in discovery are entirely inappropriate. If the Applicant continues to refuse to make its project manager Mr. Kobus available for deposition, we will seek orders to compel his attendance and appropriate relief, including additional time for presentation of testimony.

(We have deleted Judge Torem from the email string as he is not a party to these discussions.)

Rick Aramburu
Law Offices of J. Richard Aramburu
705 2nd Ave #1300
Seattle, Washington 98104
Telephone: (206) 625-9515
Email: rick@aramburu-eustis.com

This email may be protected by the Attorney-Client Privilege; if received in error, please discard and notify this office. Thank you.

From: Perlmutter, Willa B. <willa.perlmutter@stoel.com>
Sent: Thursday, June 15, 2023 4:51 PM
To: Rick Aramburu <Rick@aramburulaw.com>; Rick Aramburu <Rick@aramburulaw.com>
Cc: Adam Torem (adamtorem@writeme.com) <adamtorem@writeme.com>;
zfoster@mjbe.com <zfoster@mjbe.com>; Dolloff, Julie K (ATG) <Julie.Dolloff@atg.wa.gov>;
ethan@yakamanation-olc.org; jessica@yakamanation-olc.org; Julie@mjbe.com;
kharper@mjbe.com <kharper@mjbe.com>; Masengale, Lisa (EFSEC)
<lisa.masengale@efsec.wa.gov>; Reyneveld, Sarah (ATG) <Sarah.Reyneveld@atg.wa.gov>;
shona@yakamanation-olc.org; Thompson, Jonathan C (ATG)
<jonathan.thompson@atg.wa.gov>; McMahan, Tim <tim.mcmahan@stoel.com>; Stavitsky,
Ariel H. <ariel.stavitsky@stoel.com>; Schimelpfenig, Emily K.
<emily.schimelpfenig@stoel.com>
Subject: FW: Deposition of Dave Kobus

Good afternoon, Mr. Aramburu.

I am responding to your email this afternoon to my colleague Tim McMahan, regarding your proposal to take Dave Kobus's deposition next week. We are checking with Mr. Kobus about his availability and we will circle back to you on that shortly.

In the meantime, however, please understand that your extremely broad and vague statement that you intend to ask Mr. Kobus "about the original and amended ASC" is unacceptable as we determine whether to make Mr. Kobus available for deposition. As you know, Judge Torem directed that "the parties' pre-filed testimony shall serve as the chief source of discovering each party's principal positions" and "**any additional discovery must seek only information that is relevant to the approved issues for the adjudication.**" Second Pre-Hearing Conference Order, p. 4 (May 19, 2023). Your representation about the intended scope of Mr. Kobus's deposition clearly falls very wide of Judge Torem's unambiguous instruction. Any questions you plan to ask Mr. Kobus have to be limited to those that are consistent with TCC's role as an intervenor in this case: specifically, "the organization's significant interest in wildlife and ecosystem conservation as well as local decision-making to preserve the community's uniquely picturesque natural landscapes." Mr. Kobus will answer questions on those limited subjects. Moreover, we will not agree to allow Mr. Kobus to respond to any questions regarding land use topics, as Judge Torem affirmatively identified Benton County as the lead for those issues. *Id.*, p. 5

We hope that we can agree to these limitations without the need to involve Judge Torem any more than necessary. Please confirm in writing that you will agree to limit your questions to the areas identified by the judge and we will work with you to get Mr. Kobus's deposition scheduled for next week. Absent your confirmation we do not intend to produce Mr. Kobus voluntarily – but of course we hope that it will not be necessary for us to refuse to produce him or to ask the judge to weigh in.

Additionally, as a housekeeping matter, please note that as we previously advised you, I'll be working with Tim McMahan and with the rest of the Horse Heaven team as litigation counsel. To that end, I'd appreciate it if you would include me on all correspondence going forward.

We look forward to your agreement to the approach we've outlined. Once we get your confirmation we'll firm up a date and time for Mr. Kobus's deposition.

Many thanks,

Willa Perlmutter | Of Counsel

STOEL RIVES LLP | 760 SW Ninth Ave, Suite 3000 | Portland, OR 97205

Direct: (503) 294-9462 | Mobile: (202) 441-0531

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Begin forwarded message:

From: Rick Aramburu <Rick@aramburulaw.com>
Date: June 15, 2023 at 3:22:23 PM PDT
To: "McMahan, Tim" <tim.mcmahan@stoel.com>, adamtorem@writeme.com
Cc: Aziza Foster <zfooster@mjbe.com>, "Dolloff, Julie K (ATG)" <julie.dolloff@atg.wa.gov>, Ethan Jones <Ethan@yakamanation-olc.org>, Jessica Houston <jessica@yakamanation-olc.org>, Julie Kihn <Julie@mjbe.com>, Ken Harper <kharper@mjbe.com>, "Masengale, Lisa (EFSEC)" <lisa.masengale@efsec.wa.gov>, "Reyneveld, Sarah (ATG)" <sarah.reyneveld@atg.wa.gov>, "Schimelpfenig, Emily K." <emily.schimelpfenig@stoel.com>, Shona Voelckers <shona@yakamanation-olc.org>, "Thompson, Jonathan C (ATG)" <jonathan.thompson@atg.wa.gov>, "Stavitsky, Ariel H." <ariel.stavitsky@stoel.com>
Subject: Deposition of Dave Kobus

Mr. McMahan:

I write to reschedule the deposition of Mr. Kobus, who was unavailable for deposition on the previously noted date of June 5, 2023. I would like to take Mr. Kobus deposition on **10 am on June 22, 2023** in a virtual format, but I am also available to take his deposition on Friday, June 23. I will be asking him questions about the original and amended ASC.

In this email, I am only copying party representatives.

Should you have any questions, please contact me.

Rick Aramburu
Law Offices of J. Richard Aramburu

705 2nd Ave #1300
Seattle, Washington 98104
Telephone: (206) 625-9515
Email: rick@aramburu-eustis.com

This email may be protected by the Attorney-Client Privilege; if received in error, please discard and notify this office. Thank you.

From: McMahan, Tim <tim.mcmahan@stoel.com>
Sent: Tuesday, May 30, 2023 12:03 PM
To: adamtorem@writeme.com
Cc: Bumpus, Sonia (EFSEC) <sonia.bumpus@efsec.wa.gov>; Moon, Amy (EFSEC) <amy.moon@efsec.wa.gov>; adjudication@efsec.wa.gov;
aramburulaw@gmail.com; Aziza Foster <zfoster@mjbe.com>; Dolloff, Julie K (ATG) <julie.dolloff@atg.wa.gov>; Ethan Jones <Ethan@yakamanation-olc.org>; Jessica Houston <jessica@yakamanation-olc.org>; Julie Kihn <Julie@mjbe.com>; Ken Harper <kharper@mjbe.com>; Masengale, Lisa (EFSEC) <lisa.masengale@efsec.wa.gov>; Reyneveld, Sarah (ATG) <sarah.reyneveld@atg.wa.gov>; Schimelpfenig, Emily K. <emily.schimelpfenig@stoel.com>; Shona Voelckers <shona@yakamanation-olc.org>; Thompson, Jonathan C (ATG) <jonathan.thompson@atg.wa.gov>; Stavitsky, Ariel H. <ariel.stavitsky@stoel.com>
Subject: Horse Heaven Wind Farm Docket #EF-210011; Response to TCC's Demand for Deposition

Hello Judge Torem – Please find attached a letter responding to TCC regarding TCC’s demand to take the deposition of Dave Kobus. Thank you for your attention to this matter. Best, TLM

Tim McMahan | Partner
STOEL RIVES LLP | 760 SW Ninth Ave, Suite 3000 | Portland, OR 97205
Direct: (503) 294-9517 | Mobile: (503) 504-8693
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7 BEFORE THE STATE OF WASHINGTON
8 ENERGY FACILITY SITING EVALUATION COUNCIL

9 In the Matter of the Application of:

10 Scout Clean Energy, LLC, for
11 Horse Heaven Wind Farm, LLC,
12 Applicant.

DOCKET NO. EF-210011

DECLARATION OF J. RICHARD
ARAMBURU IN SUPPORT OF
MOTION TO COMPEL
DEPOSITION

13
14 I, J. Richard Aramburu, declare as follows:

- 15 1. I am over the age of eighteen years and competent to testify.
16 2. I am the attorney for Tri-Cities C.A.R.E.S., Intervenor in this proceeding.
17 3. Exhibit A to this declaration is an excerpt from a 2020 news article in a

18 Portland, Indiana newspaper discussing project manager Dave Kobus and Scout's
19 intention to add solar panels to their Benton County proposal.

20 4. Exhibit B is a portion of Scout's website describing Kobus and his role in
21 the Horse Heaven proposed project:
22 [https://horseheavencleanenergy.com/meet-dave-kobus-senior-project-manager-with-ho](https://horseheavencleanenergy.com/meet-dave-kobus-senior-project-manager-with-horse-heaven-clean-energy-center/)
23 [rse-heaven-clean-energy-center/](https://horseheavencleanenergy.com/meet-dave-kobus-senior-project-manager-with-horse-heaven-clean-energy-center/).

24 5. Exhibit C is the May 26, 2023, TCC notice of deposition to Scout and
25 other parties in which the Kobus deposition was noted for June 5, 2023.
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6
7 BEFORE THE STATE OF WASHINGTON
8 ENERGY FACILITY SITING EVALUATION COUNCIL

9 In the Matter of the Application of:

10 Scout Clean Energy, LLC, for
11 Horse Heaven Wind Farm, LLC,
12 Applicant.

DOCKET NO. EF-210011

DECLARATION OF SERVICE

13
14
15 I hereby certify that I have this day served TCC's PreFiled Testimony upon all
16 parties of record in this proceeding listed on the following page(s), by authorized
17 method of service pursuant to WAC 463-30-120(3), simultaneous with electronic filing
18 to adjudication@efsec.wa.gov and to email for parties as provided. Parties receiving by
19 first class mail only will be mailed their copies on June 26, 2023.

20 Dated at Seattle, Washington this 25th day of June, 2023.

21
22 /s/
23 Carol Cohoe, Legal Assistant
24 Law Offices of J. Richard Aramburu, PLLC

PARTIES OF RECORD

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Kenneth Harper, Aziza Foster
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By Email: kharper@mjbe.com;
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Olympia, WA 98504-2560

Washington State Department of
Commerce
1011 Plum Street SE
P.O. Box 42525
Olympia, WA 98504-2525

Washington State Department of
Ecology
P.O. Box 47600
Olympia, WA 98504-7600

Washington State Department of Fish
and Wildlife
Natural Resources Building
1111 Washington St. SE
Olympia, WA 98501

Washington State Department of
Natural Resources
Natural Resources Building
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1111 Washington St. SE
Olympia, WA 98504

Washington State Utilities and
Transportation Commission
MAILSTOP/PO BOX: 431
(621 Woodland Sq Loop SE)
Lacey, WA 98503-0361

Original mailed to:

Energy Facility Site Evaluation Council
ATTN: Horse Heaven Adjudication
Mailstop 43172
Olympia, WA 98504-3172

EFSEC ALJ Adam Torem
adamtorem@write.me.com

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alex.shiley@efsec.wa.gov;
andrea.grantham@efsec.wa.gov;