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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

TCC'S MOTION TO COMPEL  
PRODUCTION OF DOCUMENTS

9  
10 **I. INTRODUCTION.**

11 Following the authorization of the Presiding Administrative Law Judge (PALJ)  
12 Torem on May 18, 2023, Intervenor Tri-Cities C.A.R.E.S (TCC) filed discovery  
13 requests, including Requests for Production of Documents (RFPs) for certain  
14 documents concerning this proceeding. See Appendix A. On May 24, 2023, the PALJ  
15 issued his "Protective Order with Provisions Governing Confidential information and  
16 Information Exempt from Public disclosure under RCW 42.36." (Protective Order). See  
17 Appendix A.1. On June 8, 2023, Applicant Scout Clean Energy (SCE) provided  
18 responses to the RFPs and refused to provide any of the requested documents.  
19 Appendix B. On June 30, 2023, SCE filled rebuttal testimony of Mr. Gregory Poulos.  
20 See Appendix C. July 7, 2023, TCC again requested that SCE provide the requested  
21 documents. Appendix D. On July 14, 2023, SCE provided additional responses, but  
22 this time informing TCC that it did not have any documents responsive to certain RFPs  
23 (including Numbers 4, 7 and 8) or that such information had already been provided in  
24 testimony. See Appendix E. On July 19, 2023, a final letter was sent confirming that  
25 there was an impasse as to the responses to RFPs 1, 2, 3, and 5 and that TCC would  
26 be filing a motion to compel. Appendix F.

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TCC'S MOTION TO COMPEL  
PRODUCTION OF DOCUMENTS - 1

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

1 The foregoing paragraph documents efforts made by TCC to secure information  
2 regarding recordings of meteorological information on the site, communications with  
3 BPA and estimates of production for wind turbines proposed by SCE. As will be  
4 described in more detail below, this information is sought to assist the Council in its  
5 obligation to balance power needs with other adverse impacts, including economic,  
6 environmental, societal and visual. SCE obdurately refuses to provide this information,  
7 claiming that it is propriety. Whether the latter proposition is correct or not, TCC will  
8 sign any standard non-disclosure document for any permits or other documentation that  
9 might reveal the data. Under these circumstances, the PALJ should issue the  
10 necessary orders for production of the requested documentation.

11 **II. MOTION.**

12 Intervenor TCC moves the PALJ for an order compelling the Applicant to  
13 produce the documents requested in Requests for Production numbers 1, 2, 3, and 5,  
14 found in Appendix A, subject to the delivery of the confidentiality and nondisclosure  
15 agreements specified in the Protective Order.

16 **III. DISCOVERY SHOULD BE LIBERALLY ALLOWED SO THAT ALL PARTIES  
17 HAVE EQUAL ACCESS TO DATA AND INFORMATION.**

18 As noted, the presiding ALJ has previously authorized discovery measures in  
19 the Second Prehearing Conference Order, dated May 19, 2023. In his recent "ORDER  
20 GRANTING TCC MOTION TO COMPEL ATTENDANCE OF SENIOR PROJECT  
21 MANAGER DAVID KOBUS AT A DEPOSITION; GRANTING (IN PART) TCC MOTION  
22 FOR SANCTIONS; DENYING APPLICANT'S MOTION FOR PROTECTIVE ORDER  
23 ("Kobus Dep Order"), the PALJ found that TCC "has the same rights to conduct  
24 discovery as any of the other four parties in this proceeding." Page 2. Moreover, the  
25 Kobus Dep Order confirmed that "TCC is not precluded from inquiring into background  
26 or foundational issues in its attempts to obtain relevant information that it can present  
27 at the adjudicative hearing." *Id.*

1 In the instant case, even though the PALJ had issued his Protective Order on  
2 May 24, 2023, SCE refused to provide the requested documentation, claiming that the  
3 discovery requests: “called for the disclosure of information and materials that  
4 constitute confidential propriety commercial information and data.” See its objections to  
5 the discovery on June 8, 2023,<sup>1</sup> Appendix B, Response at pages 4, 5, 6 and 7. SCE  
6 did not explain why the Protective Order of May 24, 2023, did not provide adequate  
7 protection of these materials or why these materials should be treated differently.  
8 Moreover, SCE did not file a motion for an additional, or more restrictive, protective  
9 order than the one in effect at the time of its response. Ordinarily, a party must file for  
10 a protective order rather than just refuse to provide information.

11 Though relevancy is ordinarily the basis for refusal to provide documents, the  
12 materials requested have been put at issue by SCE itself.

13 Early in these proceedings, SCE contended that the commercial viability of this  
14 site and its project were supported by its wind data. In its original ASC (February 8,  
15 2021) under “Site Selection,” SCE claimed that:

16 The site represents a commercially viable wind resource area that is favorable  
17 for regional utilities as it is coincident with peak loading demand.  
18 UASC at 2-118. SCE plainly claims that its site is “commercially viable” and “favorable  
19 for regional utilities” based on data and analysis it already possessed. This sentence  
20 was not modified in the December 1, 2022 “update” of its earlier ASC. An additional  
21 factor here is the vast size of this project: 244 turbines, stretching 25 miles over vistas  
22 seen by thousands of local residents in Benton County and costing about \$2 Billion.

23 This contention was further discussed in the rebuttal testimony of SCE’s Gregory  
24 Poulos filed on June 30, 2023, a month after the Protective Order was entered. See  
25 Appendix C (Poulos Testimony). Mr. Poulos, at pages 1-9, testifies regarding his

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26  
27 <sup>1</sup> SCE did not object to the terms or sufficiency of the May 24 Protective Order.

1 analysis of the project and makes reference to Meteorological Evaluation Tower  
2 (“MET”) calculations in assessing the value of the project. See especially pages 4-5.  
3 Indeed, Mr. Poulos contends that this information confirms the application statement  
4 that the proposal is a “worthy investment.” Page 8, lines 22-25. As noted above, Scout  
5 already claimed that the site is “favorable for regional utilities as it is coincident with  
6 peak loading demand.” This is a clear reference that the data from the MET Towers  
7 supports wind velocities and durations during peak load times (in the Northwest, winter  
8 peaks).

9 Again, the testimony of Mr. Poulos directly references cost issues. Responding  
10 to the suggestion from Dean Apostol, TCC’s visual impacts witness, that the Council  
11 ought to consider mitigation by removing wind turbines along the ridge line, Mr. Poulos  
12 says such mitigation “would be highly non-standard and is incompatible with industry  
13 practice.” Testimony at 13, lines 1-4. He describes “industry practice” as follows:

14 wake losses from a wind farm-atmosphere interaction energy losses are  
15 minimized to maximize energy production, within given constraints, and while  
16 seeking the lowest cost of energy.

17 *Id.* at lines 5-8. He goes on to say that:

18 While I agree that visual impacts are unavoidable, it is also true that the area in  
19 which wind turbines can be placed is limited to the Project land and the wind  
20 speeds within those lands, given the need to create a viable Project. The wind  
21 turbines locations chosen are optimized within those constraints.

22 *Id.* at line 9-13.

23 Mr. Poulos makes his claims based upon wind analysis and data in his  
24 possession and not available to other parties. In addition, Mr. Poulos identifies possible  
25 alternative project configurations, set out in his testimony at pages 15-16. These  
26 include two Phase 2 alternatives to approve: “Phase 2A” with 250 MW each of wind  
27 and solar or all-wind “Phase 2B” with 500 MW of turbines. *Id.* The data requested will  
28 assist the Council in assessing these alternatives.

1 While Mr. Poulos is entitled to his opinions, he is not entitled to have exclusive  
2 possession to the data on which these options are based. Will the project be viable  
3 even if some turbines, in some locations, are removed? The answer must be based  
4 upon facts and analysis available to all parties, not just SCE.

5 **IV. AN ORDER COMPELLING PRODUCTION OF EACH OF THE FOUR RFPS**  
6 **REMAINING SHOULD BE GRANTED.**

7 In the following portion of this motion, TCC will describe why an order to compel  
8 is appropriate for each of the four disputed Requests for Production. As to each, TCC  
9 agrees to the execution and delivery of confidentiality and nondisclosure agreements  
10 as to each person reviewing the materials as set forth in the May 24 Protective Order.

11 4.1 Communications Concerning the Bonneville Power Administration.

12 Request for Production #1 requests the production of communications and  
13 documentation between the Applicant and the Bonneville Power Administration (BPA).  
14 As indicated in Request for Production #1, this material is related to the various  
15 references in the Updated Application for Site Certification (UASC) that discuss  
16 “generation interconnection requests” and the “allowable authorized grid injection  
17 capacity.” See UASC at pages 2-15, 2-16, 2-49.

18 As the PALJ<sup>2</sup> is aware, the BPA is a federal agency created by an act of  
19 Congress in 1937. BPA markets and provides wholesale energy to customers in  
20 Washington and other states from the Columbia River Dams. In addition, BPA  
21 transmits power on the Federal Columbia River Power System (FCRPS) from private  
22 electrical generators and utilities to purchasers of such power. SCE makes clear its  
23 plans to connect to the FCRPS to distribute its power, if the current application is  
24 granted.

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27 <sup>2</sup> This motion and its request to the PALJ should not be construed in any manner to be a waiver of  
28 TCC’s request that the PALJ recuse himself from these proceedings.

1 As a federal agency, BPA is subject to the Freedom of Information Act (FOIA)  
2 which “grants the public a judicially-enforceable right to access the records of federal  
3 agencies.” See <https://www.bpa.gov/about/who-we-are/freedom-of-information-act>.  
4 Though there are several statutory exemptions to information available under FOIA  
5 requests, none apply here and none are cited by SCE. SCE does not contend that the  
6 BPA considers this information confidential or objects to its disclosure.

7 Request for Production #1 is relevant to information contained in SCE’s UASC  
8 and is otherwise public information. The PALJ should issue an order compelling  
9 disclosure of this information.

10 4.2 Meteorological Evaluation Tower Information.

11 Request for Production #2 requests information concerning data from  
12 meteorological evaluation towers (MET) installed for the project. Again, receipt of this  
13 information would be subject to the procedures outline in the Protective Order entered  
14 on May 24, 2023, in this proceeding, including the execution and delivery of  
15 confidentiality and nondisclosure agreements for those who would review the  
16 information.

17 As described above, the MET data is of importance to a determination of which  
18 wind turbines may be candidates for removal as part of the balancing process for  
19 visual, land use, wildlife, cultural or other environmental or societal impacts referenced  
20 in the disputed issues for adjudication. To the extent that data indicates variability in  
21 actual production of turbines, it could assist in the selection of which turbines could be  
22 removed. Indeed, Mr. Poulos is specific in his representation about wind turbine data:

23 Examination of the on-site wind data for a meteorological tower with five years of  
24 data on the escarpment, shows that on the coldest 1% of days, the overall wind  
25 speeds are reduced by 10% from the annual average and strong enough to  
26 produce energy, and are by no means calm.

27 Poulos Testimony at page 15, lines 8-16. Having actual data will assist in TCC’s  
28 response to these unsubstantiated statements.

1           Moreover, the data requested is measurements of natural phenomena not  
2 owned by the applicant, i.e. wind speed and direction.

3           The PALJ should order the production of the data gathered from the MET  
4 Towers. Once again, concerns about confidentiality are resolved by appropriate  
5 confidentiality agreements, as has been done for other aspects of the disputed issues  
6 in the matter.

7           4.3 Studies of Expected Production from Wind Turbines.

8           Request for Production #3 requests the production of studies or reports that  
9 assess the production of the wind turbines proposed for the site as shown on UASC  
10 pages 2-16 to 2-10.

11           Much of the discussion found in Section III of this brief and for Request for  
12 Production #2 and applies here. These studies assess the value of the wind turbines,  
13 a subject that SCE witnesses describe extensively in its testimony current application  
14 and testimony.

15           Once again, the Applicant will be protected by confidentiality and nondisclosure  
16 agreements. Under these circumstances, the motion to compel the reporting and data  
17 requested should be granted.

18           4.4. Power Costs.

19           Request for Production #5 requests any studies of estimates of the costs of  
20 power from the Project to utilities or potential customers. Again, this information relates  
21 to the scope and scale of the project and to information and materials discussed above.

22           As described above, Applicant contends that the project represents a  
23 “commercially viable wind resource area” and presumably will request a finding on that  
24 subject from the EFSEC Council. Moreover, the statutory authorization for EFSEC in  
25 RCW 80.50.010(4) sets as a premise for Council “To provide abundant clean energy at  
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1 reasonable cost.” Indeed, the Applicant contends that it is “seeking the lowest costs  
2 energy” at page 13, lines 10-13 of the Poulous testimony.

3 With a condition of the execution and delivery of confidentiality and  
4 nondisclosure agreements, the PALJ should order the production of estimates of cost  
5 of power from the project.

6 **V. CONCLUSION.**

7 TCC respectfully requests that the PALJ issue an order requiring the Applicant  
8 to deliver the documents and materials requested by Request for Productions 1, 2, 3,  
9 and 5 and to do so within five working days of the issuance of the order.

10 DATED this 28<sup>th</sup> day of July, 2023.

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12 /s/  
13 J. Richard Aramburu, WSBA #466  
14 Attorney for Tri-Cities C.A.R.E.S.  
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BEFORE THE STATE OF WASHINGTON  
ENERGY FACILITY SITING EVALUATION COUNCIL

In the Matter of the Application of:

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

DOCKET NO. EF-210011

INTERVENER TRI-CITIES  
C.A.R.E.S. DISCOVERY  
REQUESTS

**To: Scout Clean Energy, LLC, the applicant referenced above**

**To: Tim McMahan, its Attorney**

In accordance with RCW 34.05.446, WAC 463-30-190 and Civil Rule 33, you are to answer, in writing under oath, each of the following interrogatories fully and serve a completed set of interrogatories and answers upon the undersigned attorney within ten days (10) of the date of service of these interrogatories upon you. You may use the blank spaces provided, inserting additional pages where necessary, and verify your answers on the form provided after the last interrogatory.

These interrogatories are to be treated as continuing. If additional information is discovered between the time of making these answers and the time of trial, these interrogatories are directed to that information. If such information is not furnished, Intervenor Tri-Cities C.A.R.E.S (TCC) will move, at the time of trial, to exclude from evidence any information requested but not provided.

Each interrogatory is required to be answered on the basis of your entire knowledge, including all information in the possession of you, your directors, officers, employees, agents, representatives and attorneys. If any of the following

1 interrogatories cannot be answered in full, you are to answer to the extent possible,  
2 specifying the reason for your inability to answer the remainder, and stating whatever  
3 information or knowledge you have concerning the unanswered portion. If your answer  
4 is qualified in any particular, please set forth the details of such qualification.

#### 5 DEFINITIONS

6 1. "Project." As used herein the word "Project" refers to the application for the  
7 Horse Heaven Wind Project, currently filed with EFSEC.

8 2. "Person." The word "person" shall mean any individual, business, or  
9 government entity including, without limiting the generality of the foregoing, any  
10 individual, sole proprietorship, association, company, partnership, joint venture,  
11 corporation, trust, estate, and government agency, or division thereof

12 3. "Writing" or "Document." As used herein, "writing" or "document" means any  
13 document or writing and includes any printed, typewritten or handwritten matter of  
14 whatever character, including without limitation, letters, memoranda, telegrams, cables,  
15 reports, charts, business records, personal records, accountants' statements, bank  
16 statements, handwritten notes, minutes of meetings, notes of meetings or  
17 conversations, catalogs, written agreements, checks, receipts, invoices, bills, computer  
18 printouts, financial statements, and any other carbon or photographic copies of such  
19 material.

20 4. "Discuss" or "Discussed." As used herein, the term "discuss" or "discussed"  
21 when applied to the content of any writing, or oral conversation or oral argument,  
22 should be understood to apply if that writing, conversation or agreement contains or  
23 contained any reference to, or in any other way deals or relates to the subject matter  
24 described in the interrogatory in which any such term appears.

1           5. "Identify." As used in relation to a person, "identify" shall be understood to  
2 require the name, occupation, employer, business and residence addresses, and  
3 telephone numbers of that person.

4           As used in relation to a writing, "identify" shall be understood to require the  
5 name of the persons who authorized, prepared, and signed the writing, the date on  
6 which it was prepared, the names and business addresses of all recipients of the  
7 original or copies thereof, the name and address of the present custodian of the writing,  
8 and a brief description of its contents.

9           As used in relation to a conversation, "identify" shall be understood to require  
10 the names of the parties to such conversation, the date on which such conversation  
11 took place, the location at which said conversation took place, the identity of each  
12 person present at the time it took place, and a brief description of the subject matter of  
13 the conversation.

14           As used in relation to an object, "identify" shall be understood to require the  
15 name of the persons who authorized and prepared, the date on which it was prepared,  
16 the names and business addresses of all recipients of the original or copies thereof, the  
17 name and address of the present custodian of the object.

18           6. "Identify." As used in relationship to a business or to anything other than a  
19 human being, including, without limitation, a corporation, partnership, joint venture,  
20 association, labor union or other business, social or legal entity of any kind, means to  
21 state:

- 22           (a) Full lawful name, and all other DBA's, names, or styles used, at any time,  
23           and for any purpose whether or not registered.
- 24           (b) Principal business address and telephone number.
- 25           (c) Registered office and name and address of registered agent.
- 26           (d) All business addresses and telephone numbers in this state.
- 27           (e) State and date of incorporation.

- 1 (f) Name and address of Washington agent for service of process.  
2 (g) Names of any controlling corporations.  
3 (h) Names of any subsidiary corporations.  
4 (i) Name and address of all persons owning a controlling interest, and a  
5 description of the extent of such interest.

6 7. "You." As used herein shall be understood to mean the party to whom these  
7 interrogatories are addressed, and your attorneys, directors, agents, employees,  
8 officers, representatives, adjusters, investigators, and any other person who is in  
9 possession of, or who has obtained, information on your behalf.

10 **THIS IS ALSO A REQUEST FOR PRODUCTION, PURSUANT TO CIVIL RULE**  
11 **34**, of all photographs, statements, technical reports, investigative reports, drawings,  
12 sketches, studies, memos, letters, e-mails, notes or other documents mentioned in the  
13 answers to Interrogatories or specifically requested in the Requests for Production. It is  
14 requested that you produce these items for inspection and copying at the office of the  
15 undersigned attorney, 705 2<sup>nd</sup> Avenue, Suite 1300, Seattle, Washington, within ten (10)  
16 days after this Request for Production is served on you. This request may be satisfied  
17 by providing copies of those items to the undersigned prior to that date.

18 This request encompasses not only the items in Applicant's possession, but also  
19 those within the possession, custody, and/or control of any agent, officer, servant,  
20 employee, attorney or other representative of the applicant.

21 If any document sought by these requests has been destroyed, and no copy  
22 exists within the applicant's possession, custody or control, please identify the  
23 document, the date of its destruction, the reason for its destruction, the person  
24 responsible for ordering its destruction and produce any policy that called for the  
25 destruction.

26 If applicant believes documents requested to be produced may be withheld on  
27 the grounds of either privilege or work product please provide a list of these documents  
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1 with a brief description of each document, including: date, title, type of document,  
2 number of pages, subject matter without revealing privilege, and a statement of the  
3 basis for withholding the document.

4 **INTERROGATORIES AND REQUESTS FOR PRODUCTION**

5 **INTERROGATORY 1:** Please identify by name, title, address, telephone  
6 number and relationship to defendant each person who prepared or participated in the  
7 preparation of the answers to the following Interrogatories and Requests for Production  
8 as well as the full name, title, address and relationship to defendant of the individual  
9 signing said Interrogatories and Requests of Production on behalf of defendant.

10 ANSWER:

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13 **REQUESTS FOR PRODUCTION**

14 **RFP No. 1.** At pages 2-15, 2-16 and page 2-49 of the "Updated" Application for Site  
15 Certification, there is discussion of communications with the Bonneville Power  
16 Administration (BPA) concerning a "generation interconnection request" and the  
17 "allowable authorized grid injection capacity." Please provide any and all  
18 communications and documentation of any type by and between the Applicant, BPA or  
19 any third parties regarding or concerning the foregoing matters.

20 **RESPONSE:**

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23 **RFP No. 2.** Concerning meteorological evaluation towers ("MET towers") described at  
24 pages 2-80 and 2-81 of the Amended Application for Site Certification to "obtain wind  
25 data for performance" of the wind project, or other wind measurement locations and  
26 types, please provide the following information for any and all currently installed MET  
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1 towers or facilities, including those owned and operated by third parties, used to  
2 assess performance of the site for wind turbine installation:

3 A. All tower commissioning documents, including, but not limited to, listing  
4 of locations and coordinates, of sensor types and heights, sensor boom lengths  
5 and orientations from the tower, sensor calibration documents and any available  
6 photographs.

7 B. Any and all meteorological raw data collected from such towers.

8 C. Any and all wind energy assessment studies, including as available  
9 annual wind speed estimates, extrapolations to hub heights, wind roses, extreme  
10 winds, and turbulence information.

11 D. Any third party wind resource reports.

12 **RESPONSE:**

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16 **RFP No. 3.** Any and all reports or studies that assess the expected production from  
17 wind turbines on the site, including the expected production pattern on a time and  
18 seasonal basis, including hourly, daily monthly information.

19 **RESPONSE:**

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22 **RFP No. 4.** Any and all reports, documentation or other information, concerning  
23 wake losses to adjacent wind turbine projects, including the Nine Canyon Project that  
24 might occur due to installation of wind turbines as a part of the proposed project.

25 **RESPONSE:**

1 **RFP No. 5.** Studies or estimates of the costs to potential consumers, utilities and/or  
2 purchasers of power from this project on a per kilowatt hour or other basis.

3 **RESPONSE:**  
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6 **RFP No. 6.** Any and all communications with publicly owned utilities concerning sale  
7 or transfer of any electric energy from the proposed project.

8 **RESPONSE:**  
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12 **RFP No. 7.** Any and all communications, documentation or data developed or  
13 acquired concerning the impacts of the project on property values, real estate, tourism,  
14 or the local economies.

15 **RESPONSE:**  
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17 **RFP No. 8.** Any information describing the scope of work conducted for the Visual  
18 Assessments in the ASC, the Updated ASC and the DEIS addressing the statements of  
19 work for the contractors who did the work, including the detailed specifications,  
20 personnel, equipment used in the photography, computer and photographic simulations  
21 and Viewshed Analyses including specifications, Autocad and GPS files on the  
22 proposed location of all new facilities; turbines, transmission towers, solar arrays,  
23 substations, buildings (including battery storage).

24 **RESPONSE:**  
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1 Interrogatories and Requests for Production submitted this 18th day of May  
2 2023.

3 /s/  
4 J. Richard Aramburu, WSBA #466  
5 Attorney for Tri-Cities C.A.R.E.S.  
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CERTIFICATION OF PARTY

I certify under penalty of perjury under the laws of the State of Washington (RCW 9A.72.085) that I am \_\_\_\_\_, the \_\_\_\_\_ of the defendant herein and authorized to make this certificate on its behalf. That I have read the foregoing document, believe that the answers to interrogatories and responses to request for production are true and correct.

\_\_\_\_\_  
Typed Name:

CERTIFICATION OF ATTORNEY

The undersigned attorney for the Applicant has read the foregoing Responses to Interrogatories and Requests for Production and they are in compliance with CR 26(g).

DATE: \_\_\_\_\_

\_\_\_\_\_  
Typed Name:  
Attorney for \_\_\_\_\_



**BEFORE THE STATE OF WASHINGTON  
ENERGY FACILITY SITE EVALUATION COUNCIL**

In the Matter of the Application of:

Scout Clean Energy, LLC, for  
Horse Heaven Wind Farm, LLC,  
Applicant

DOCKET NO. EF-210011

PROTECTIVE ORDER WITH  
PROVISIONS GOVERNING  
CONFIDENTIAL INFORMATION AND  
INFORMATION EXEMPT FROM PUBLIC  
DISCLOSURE UNDER RCW 42.56

**Procedural Setting.** On May 2, 2023, ALJ Torem conducted a Third Pre-Hearing Conference in this matter. On that date, the parties were given permission to initiate discovery and were also provided a schedule for submitting pre-filed testimony. The Council finds that the parties reasonably anticipate that discovery or evidentiary filings will likely require information to be designated by its owner as “confidential” and/or exempt from public disclosure pursuant to the Public Records Act, Chapter 42.56 RCW.<sup>1</sup> The Council further finds that disclosure of such information to other parties in the absence of a protective Order should not be authorized. Therefore, a protective Order governing disclosure of information designated as confidential and/or exempt from disclosure is necessary to protect all such information while promoting the free exchange of information and development of the evidentiary record. Finally, the Council finds that in accordance with RCW 35.05.449(5), some portions of the adjudicative hearing may be closed to public observation in accordance with applicable law protecting confidential and/or exempt information.

Accordingly, the Council enters this protective Order pursuant to RCW 34.05.446(1) and WAC 463-30-190 to govern discovery and the use of information designated as confidential or exempt from public disclosure in this adjudication.

**Confidential Information.** “Confidential Information” means information protected from inspection or copying under an exemption from disclosure under Chapter 42.56 RCW or any other provisions of law providing an exemption from public disclosure. All access, review, use and disclosure of any material designated by a party to this adjudication as confidential or exempt from disclosure under the Public Records Act is governed by this Order. Only information that meets the definitions of “Confidential Information” as set out herein may be so designated.

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<sup>1</sup> For example, records, maps, or other information identifying the location of archaeological sites are exempt from public disclosure in order to avoid possible looting or depredation (RCW 42.56.300(1)) and information received by a government agency that discusses or references traditional cultural places is also exempt from disclosure (RCW 42.56.300(3)(c)). Additionally, sensitive fish and wildlife data cannot typically be released without a confidentiality agreement (RCW 42.56.430(2)). Similarly, RCW 42.56.645 contemplates protection of information being released as part of a quasi-judicial proceeding, allowing that information to be used solely in that proceeding.

**Designating Confidential Information.** Parties must designate Confidential Information in all evidentiary filings in writing at the time of submission to the Council. The providing party must also simultaneously state the basis for the claim of confidentiality. Any such documents must be submitted to the Council in both a redacted and unredacted version, using the marking conventions set out in WAC 480-07-160 (4)(c) and WAC 480-07-160(5)(c) <sup>2</sup> and in harmony with the filing and naming conventions to be adopted by the Council for this adjudication. The Council may reject any filing that fails to properly designate or mark Confidential Information or that erroneously designates clearly public information as Confidential Information.

**Limitation on Use.** A party or a party's counsel or expert may review, use, or disclose information designated as Confidential Information by another party only for purposes of this adjudication. The Council may refer to Confidential Information in its Orders or its Recommendation to the Governor in accordance with the terms of this Order.

**Persons Permitted Access to Confidential Information.** No person bound by this Order may disclose information designated by another party as Confidential Information to anyone other than the Council, Council Staff, the presiding administrative law judge (ALJ), and, subject to the requirements set out below, counsel for each of the parties to the adjudication, each such counsel's administrative staff, and persons designated by the parties as their experts in this adjudication. Any dispute concerning persons entitled to access Confidential Information must be brought before the presiding ALJ for resolution.

**Confidential Information Non-Disclosure Agreement.** Before being allowed access to any Confidential Information disclosed in this adjudication, each counsel or expert must agree to comply with and be bound by this Order by executing, filing, and serving Exhibit A (for counsel) or Exhibit B (for experts) attached to this Order. A counsel's administrative staff need not execute a separate Non-Disclosure Agreement if counsel agrees to be responsible for any violation of this Order that results from their staff's conduct.

**Access to Confidential Information.** Parties must comply with the requirements of this Order when providing documents containing Confidential Information to the Council or to persons who have executed a Non-Disclosure Agreement. Persons who have executed a Non-Disclosure Agreement agree that they will exercise all reasonable diligence to protect Confidential Information from disclosure to unauthorized persons.

**Reference to Confidential Information.** Any public reference to Confidential Information during any part of this adjudication including, but not limited to, in motions, briefs, arguments, direct testimony, cross-examination, rebuttal, and proposed offers of proof, must not disclose the content or substance of that information, directly or indirectly. To the extent not addressed in this Order, the parties must negotiate how best to prevent unauthorized disclosure of Confidential Information with the goal of protecting each party's rights with respect to that information while allowing all parties the latitude to present the evidence necessary to support their respective cases

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<sup>2</sup> EFSEC has not yet adopted its own procedural rules regarding protection of confidential information. Therefore, this protective order is modeled on those used by the Washington Utilities and Transportation Commission and its adopted rules contained in Chapter 480-07 WAC (e.g., WAC 480-07-160).

and to maximize the information available to the public. If the parties cannot reach agreement about how to use or refer to Confidential Information without disclosing it in violation of this Order, they must notify the presiding ALJ, who will determine the arrangements to protect the subject Confidential Information to ensure that all parties are afforded the opportunity to cross-examine witnesses.

Counsel or other representative(s) of any party that intends to disclose Confidential Information during oral testimony, cross-examination, or argument must give such prior notice as is feasible to the provider of that information and to the presiding ALJ. That notice, at a minimum, must permit the presiding ALJ an opportunity to schedule a closed session of the adjudicative hearing in accordance with RCW 34.05.449(5) and/or to clear the virtual hearing room of persons not bound by the non-applicable Non-Disclosure Agreement or to take other action as is appropriate under the circumstances. Transcripts from any hearing session closed per RCW 34.05.449(5) shall be redacted in accordance with this Protective Order.

**Right to Challenge Admissibility.** Nothing in this Order may be construed to restrict any party's right to challenge the admissibility or use of any Confidential Information on any ground other than confidentiality, including but not limited to competence, relevance, or privilege.

**Right to Challenge Confidential Designation.** Any party by motion or the Council or presiding ALJ on their own initiative may challenge a party's designation of information as Confidential under this Order. The presiding ALJ will conduct an *in-camera* hearing to determine the propriety of the designation. The burden of proof to show that such information is properly designated as confidential is on the party that made that designation. Pending a determination, the challenged Confidential Information shall be treated in all aspects as protected under the terms of this Order. The presiding ALJ will make their determination orally on the record or in a written Order.

If the presiding ALJ determines the challenged information is not entitled to any protection under this Order or the Public Records Act, Chapter 42.56 RCW, or any other applicable statute, the information will continue to be protected under this Order for ten days from the date of the presiding ALJ's determination in order to allow the providing party an opportunity to seek judicial review to protect the information. If no reviewing court enters an Order protecting the challenged information from disclosure within ten days, the Council and presiding ALJ will require the challenged information to be refiled without any confidential designation or otherwise treated as public information.

**Admission of Confidential Information Under Seal.** The portions of the record of this adjudication containing Confidential Information will be sealed for all purposes, including judicial review, unless such Confidential Information is released from the restrictions of this Order, either through the agreement of the parties or pursuant to a lawful Order of the Council or of a court having jurisdiction to do so.

**Return of Confidential Information.** Within 30 days following the conclusion of this adjudication, including any judicial review of the Governor's ultimate action, every person who has executed a Non-Disclosure Agreement and possesses or controls any Confidential

Information disclosed by another party (including personal notes that make substantive reference to that Confidential Information), either must return all such protected information to the party that provided it or must certify in writing that all copies and substantive references to that information in notes have been destroyed, including electronic copies; PROVIDED, that counsel may retain exhibits that contain Confidential Information as counsel records subject to the terms and conditions of this Order.

**Modification.** The Council may modify this Order on motion of a party or on its own motion upon reasonable prior notice to the parties and an opportunity for hearing.

**Enforcement and Violation of this Order.** This Order shall be enforced by EFSEC pursuant to RCW 34.05.578. Other parties to this adjudication or others with sufficient standing to obtain judicial review may seek to enforce this Order pursuant to RCW 34.05.582. Violation of this Order by any party to this adjudication or by any other person bound by this Order via unauthorized use or unauthorized disclosure of Confidential Information may subject such party or person to liability for damages and shall subject such party to penalties as generally provided by law.

DATED and effective at Olympia, Washington, on the 24th day of May, 2023.

WASHINGTON ENERGY FACILITY  
SITE EVALUATION COUNCIL

A handwritten signature in black ink, appearing to read 'Adam E. Torem', is written over a horizontal line.

Adam E. Torem, Administrative Law Judge

**ATTORNEY AGREEMENT**

AGREEMENT CONCERNING CONFIDENTIAL INFORMATION  
IN DOCKET EF-210011 – HORSE HEAVEN WIND FARM  
BEFORE THE  
ENERGY FACILITY SITE EVALUATION COUNCIL

I, \_\_\_\_\_, as attorney in this adjudication for \_\_\_\_\_ (a party to this adjudication) agree to comply with and be bound by the Protective Order entered by the Washington Energy Facility Site Evaluation Council in Docket EF-210011, and acknowledge that I have reviewed the Protective Order and fully understand its terms and conditions. I further agree to be responsible for any violations of the Protective Order that result from the conduct of administrative staff whom I allow to have access to Confidential Information.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Address

**EXPERT AGREEMENT**

AGREEMENT CONCERNING CONFIDENTIAL INFORMATION  
IN DOCKET EF-210011 – HORSE HEAVEN WIND FARM  
BEFORE THE  
ENERGY FACILITY SITE EVALUATION COUNCIL

I, \_\_\_\_\_, as an expert witness in this adjudication for \_\_\_\_\_ (a party to this adjudication) agree to comply with and be bound by the Protective Order entered by the Washington Energy Facility Site Evaluation Council in Docket EF-210011, and acknowledge that I have reviewed the Protective Order and fully understand its terms and conditions.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Employer

\_\_\_\_\_  
Address

\_\_\_\_\_  
Position and Responsibilities

\* \* \*

The following portion is to be completed by the responding party and filed with the Council within 10 days of receipt; failure to do so will constitute a waiver and the above-named person will be deemed an expert having access to Confidential Information under the terms and conditions of the Protective Order.

\_\_\_\_\_ No objection

\_\_\_\_\_ Objection. The responding party objects to the above-named expert having access to Confidential Information. The objecting party shall file a motion setting forth the basis for objection and asking for exclusion of the expert from access to the Confidential Information.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

BEFORE THE STATE OF WASHINGTON  
ENERGY FACILITY SITING EVALUATION COUNCIL

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In the Matter of the Application of:  
  
Scout Clean Energy, LLC, for Horse Heaven  
Wind Farm, LLC,  
  
Applicant.

DOCKET NO. EF-210011  
  
APPLICANT’S RESPONSES TO  
INTERVENOR TRI-CITIES C.A.R.E.S.’  
DISCOVERY REQUESTS

Pursuant to RCW 34.05.446, WAC 463-30-190 and the Second Pre-Hearing  
Conference Order in this matter, Applicant Horse Heaven Wind Farm, LLC and indirect  
owner Scout Clean Energy, LLC (hereafter, collectively, “Applicant”) object, answer, and  
respond to Intervenor Tri-Cities C.A.R.E.S.’ (hereafter “TCC”) formal Discovery Requests  
as follows:

**GENERAL OBJECTIONS**

1. To the extent the formal Discovery Requests may be construed as calling for  
documents or information subject to a claim of privilege, including without limitation, the  
attorney-client privilege or work product privilege, Applicant hereby claims such privilege  
and objects to the discovery on that basis. Information subject to these privileges will be  
withheld or redacted. To the extent that Applicant produces documents that may be subject  
to the attorney/client privilege or the work product doctrine, it does so expressly reserving its  
right to claim the said privilege and/or doctrine as to other documents. Applicant does not, by  
responding to these discovery requests, waive any claim of privilege or right to assert  
attorney work product.

2. Applicant objects to the formal Discovery Requests to the extent they request  
production of documents and/or information that contain proprietary and confidential

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760 SW Ninth Avenue, Suite 3000, Portland, OR 97205  
Main 503.224.3380 Fax 503.220.2480

1 business, trade secret, or financial information, or information concerning individual  
2 customers, disclosure of which would be harmful to legitimate expectations or rights of  
3 privacy pursuant to applicable law.

4           3. Applicant objects to the formal Discovery Requests to the extent they are  
5 overbroad, unduly burdensome, seek information that is not relevant to the subject matter of  
6 this proceeding, and are not reasonably calculated to lead to the discovery of admissible  
7 evidence. Where appropriate, Applicant will respond with a reasonable limitation in time  
8 and/or scope.

9           4. Applicant objects to the formal Discovery Requests to the extent they are  
10 vague, ambiguous, duplicative, and/or subject to multiple interpretations.

11           5. Applicant objects to the formal Discovery Requests to the extent they call for  
12 information that is not in Applicant's possession, or information that is a matter of public  
13 record or otherwise equally available to TCC, including publicly available documents found  
14 on public Internet sites or elsewhere, or which call for Applicant to supply information  
15 generated by other persons and/or entities.

16           6. Applicant reserves the right to amend or supplement these responses in  
17 accordance with applicable rules and any pretrial orders in this matter.

18           Each of the preceding General Objections is incorporated by reference as though fully  
19 set forth in each of the specific responses below.  
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1 **RESPONSES TO DISCOVERY REQUESTS**

2 **ANSWERS TO INTERROGATORIES**

3 **INTERROGATORY NO. 1:**

4 Please identify by name, title, address, telephone number and relationship to  
5 defendant each person who prepared or participated in the preparation of the answers to the  
6 following Interrogatories and Requests for Production as well as the full name, title, address  
7 and relationship to defendant of the individual signing said Interrogatories and Requests of  
8 Production on behalf of defendant.

9 **ANSWER:**

10 Applicant objects to Interrogatory No. 1 to the extent that it refers to a  
11 “defendant,” as there is no defendant in this administrative proceeding. Applicant also  
12 objects to the extent Interrogatory No. 1 calls for the disclosure of information that is subject  
13 to the attorney/client privilege or work product doctrine or otherwise privileged and  
14 confidential. Without waiving these objections, Applicant states that Dave Kobus, Senior  
15 Project Manager for Scout Clean Energy, LLC; and Pat Landess, Senior Manager -  
16 Development for Scout Clean Energy, LLC assisted counsel in drafting this discovery  
17 response. Both Mr. Landess and Mr. Kobus can be contacted in care of counsel at Stoel  
18 Rives LLP, 760 SW 9<sup>th</sup> Ave, Ste. 3000, Portland, OR 97205.

19 **RESPONSES TO REQUESTS FOR PRODUCTION**

20 **REQUEST NO. 1:**

21 At pages 2-15, 2-16 and page 2-49 of the “Updated” Application for Site  
22 Certification, there is discussion of communications with the Bonneville Power  
23 Administration (BPA) concerning a “generation interconnection request” and the “allowable  
24 authorized grid injection capacity.” Please provide any and all communications and  
25 documentation of any type by and between the Applicant, BPA or any third parties regarding  
26 or concerning the foregoing matters.

1           **RESPONSE:**

2           Applicant objects to this request to the extent it calls for information beyond the  
3 limited scope of TCC’s intervention in this proceeding. *See* WAC 463-30-092; Second  
4 Pre-Hearing Conference Order (May 19, 2023) (“Second Pre-Hearing Conference Order”) at  
5 4-5. Applicant further objects to this request to the extent it calls for the disclosure of  
6 information or materials that constitute confidential proprietary commercial information and  
7 data. Applicant further objects to this request to the extent it is overbroad and calls for the  
8 disclosure of information or materials are not identified or within the scope of any issues as  
9 defined by the operative prehearing conference order, Second Pre-Hearing Conference Order  
10 at 4 (discovery beyond pre-filed testimony “must seek only information that is relevant to the  
11 approved issues for the adjudication”), and therefore are irrelevant to this proceeding.  
12 Applicant further objects to this request to the extent that it calls for the disclosure of  
13 information that is subject to the attorney/client privilege or work product doctrine. The  
14 Applicant further objects to this request on the grounds that the phrase “communications and  
15 documentation of any type” is vague and ambiguous.

16           Without waiving these objections, Applicant notes that the content on the cited pages  
17 from the amended site certification application about which TCC appears to inquire does not  
18 represent a material change from the original application. Further, as Bonneville Power  
19 Administration (BPA) is the authority for grid interconnection for the Horse Heaven Clean  
20 Energy Center, communications regarding BPA interconnection requests are outside the  
21 scope of the EFSEC proceedings.

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1 **REQUEST NO. 2:**

2 Concerning meteorological evaluation towers (“MET towers”) described at pages  
3 2-80 and 2-81 of the Amended Application for Site Certification to “obtain wind data for  
4 performance” of the wind project, or other wind measurement locations and types, please  
5 provide the following information for any and all currently installed MET towers or facilities,  
6 including those owned and operated by third parties, used to assess performance of the site  
7 for wind turbine installation:

8 A. All tower commissioning documents, including, but not limited to, listing of  
9 locations and coordinates, of sensor types and heights, sensor boom lengths and orientations  
10 from the tower, sensor calibration documents and any available photographs.

11 B. Any and all meteorological raw data collected from such towers.

12 C. Any and all wind energy assessment studies, including as available annual  
13 wind speed estimates, extrapolations to hub heights, wind roses, extreme winds, and  
14 turbulence information.

15 D. Any third party wind resource reports.

16 **RESPONSE:**

17 Applicant objects to this request to the extent it calls for the disclosure of information  
18 or materials that constitute confidential proprietary commercial information and data.  
19 Applicant further objects to this request to the extent that it calls for the disclosure of  
20 information that is subject to the attorney/client privilege or work product doctrine. Applicant  
21 further objects to the extent this request is overbroad and calls for the disclosure of  
22 information and materials that are not identified or within the scope of any issues as defined  
23 by the operative prehearing conference order, Second Pre-Hearing Conference Order at  
24 4 (discovery beyond pre-filed testimony “must seek only information that is relevant to the  
25 approved issues for the adjudication”), and therefore are irrelevant to this proceeding.

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1 **REQUEST NO. 3:**

2 Any and all reports or studies that assess the expected production from wind turbines  
3 on the site, including the expected production pattern on a time and seasonal basis, including  
4 hourly, daily monthly information.

5 **RESPONSE:**

6 Applicant further objects to this request to the extent it calls for the disclosure of  
7 information and materials that constitute confidential proprietary commercial information  
8 and data. Applicant further objects to this request to the extent that it is overbroad and calls  
9 for the disclosure of information that is not identified or within the scope of any issues as  
10 defined by the operative prehearing conference order, Second Pre-Hearing Conference Order  
11 at 4 (discovery beyond pre-filed testimony “must seek only information that is relevant to the  
12 approved issues for the adjudication”), and therefore are irrelevant to this proceeding.

13 **REQUEST NO. 4:**

14 Any and all reports, documentation or other information, concerning wake losses to  
15 adjacent wind turbine projects, including the Nine Canyon Project that might occur due to  
16 installation of wind turbines as a part of the proposed project.

17 **RESPONSE:**

18 Applicant objects to this request on the grounds that the phrase “the Nine Canyon  
19 Project that might occur due to installation of wind turbines as a part of the proposed project”  
20 is vague and ambiguous. Applicant further objects to this request to the extent it calls for the  
21 disclosure of information or materials that constitute confidential proprietary commercial  
22 information and data. Applicant further objects to this request to the extent it is overbroad  
23 and calls for the disclosure of information and materials that are not identified or within the  
24 scope of any issues as defined by the operative prehearing conference order, Second  
25 Pre-Hearing Conference Order at 4 (discovery beyond pre-filed testimony “must seek only  
26 information that is relevant to the approved issues for the adjudication”), and therefore are

1 irrelevant to this proceeding. Applicant further objects to this request to the extent it calls for  
2 information beyond the limited scope of TCC’s intervention in this proceeding. *See* WAC  
3 463-30-092; Second Pre-Hearing Conference Order at 4-5. The Applicant further objects to  
4 this request to the extent that it calls for the disclosure of information that is subject to the  
5 attorney/client privilege or work product doctrine. The Applicant further objects to this  
6 request to the extent that it calls for the production of information or materials that are not in  
7 its possession or constructive possession.

8 **REQUEST NO. 5:**

9 Studies or estimates of the costs to potential consumers, utilities and/or purchasers of  
10 power from this project on a per kilowatt hour or other basis.

11 **RESPONSE:**

12 Applicant objects to this request to the extent it calls for the disclosure of information  
13 and materials that constitute confidential proprietary commercial information and data.  
14 Applicant further objects to this request to the extent that it calls for the disclosure of  
15 information that is subject to the attorney/client privilege or work product doctrine.  
16 Applicant further objects to this request to the extent it is overbroad and calls for the  
17 disclosure of information and materials that are not identified or within the scope of any  
18 issues as defined by the operative prehearing conference order, Second Pre-Hearing  
19 Conference Order at 4 (discovery beyond pre-filed testimony “must seek only information  
20 that is relevant to the approved issues for the adjudication”), and therefore are irrelevant to  
21 this proceeding.

22 **REQUEST NO. 6:**

23 Any and all communications with publicly owned utilities concerning sale or transfer  
24 of any electric energy from the proposed project.

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1           **RESPONSE:**

2           Applicant objects to this request to the extent that it calls for the disclosure of  
3 information that is subject to the attorney/client privilege or work product doctrine.  
4 Applicant further objects to this request to the extent that it calls for the disclosure of  
5 information and materials that constitute confidential proprietary commercial information  
6 and data. Applicant further objects to this request to the extent that it is overbroad and calls  
7 for the disclosure of information and materials and that are not identified or within the scope  
8 of any issues as defined by the operative prehearing conference order, Second Pre-Hearing  
9 Conference Order at 4 (discovery beyond pre-filed testimony “must seek only information  
10 that is relevant to the approved issues for the adjudication”), and therefore irrelevant to this  
11 proceeding.

12           **REQUEST NO. 7:**

13           Any and all communications, documentation or data developed or acquired  
14 concerning the impacts of the project on property values, real estate, tourism, or the local  
15 economies.

16           **RESPONSE:**

17           Applicant objects to this request to the extent it calls for information beyond the  
18 limited scope of TCC’s intervention in this proceeding. *See* WAC 463-30-092; Second  
19 Pre-Hearing Conference Order at 4-5. Applicant further objects to this request to the extent it  
20 is overbroad and calls for the disclosure of information and materials and that are not  
21 identified or within the scope of any issues as defined by the operative prehearing conference  
22 order, Second Pre-Hearing Conference Order at 4 (discovery beyond pre-filed testimony  
23 “must seek only information that is relevant to the approved issues for the adjudication”), and  
24 therefore irrelevant to this proceeding. Applicant further objects to this request to the extent  
25 that it calls for the disclosure of information and materials that constitute confidential  
26 proprietary commercial information and data. Applicant further objects to this request to the

1 extent that it calls for the disclosure of information that is subject to the attorney/client  
2 privilege or work product doctrine.

3 Without waiving these objections, Applicant responds that documentation and data  
4 developed and collected concerning impacts of the project on property values and local  
5 economies can be found in the application for site certification, Section 4.4.2.3, Housing and  
6 Property Values. Any additional information regarding property value impacts will be  
7 presented in pre-filed testimony. *See* Second Pre-Hearing Conference Order at 4 (“[P]re-filed  
8 testimony shall serve as the chief source of discovering each party’s principal position(s) and  
9 supporting evidence.”).

10 **REQUEST NO. 8:**

11 Any information describing the scope of work conducted for the Visual Assessments  
12 in the ASC, the Updated ASC and the DEIS addressing the statements of work for the  
13 contractors who did the work, including the detailed specifications, personnel, equipment  
14 used in the photography, computer and photographic simulations and Viewshed Analyses  
15 including specifications, AutoCAD and GPS files on the proposed location of all new  
16 facilities; turbines, transmission towers, solar arrays, substations, buildings (including battery  
17 storage).

18 **RESPONSE:**

19 Applicant objects to this request to the extent it is overbroad and calls for information  
20 beyond the scope of issues as defined by the operative prehearing conference order, Second  
21 Pre-Hearing Conference Order at 4. Applicant further objects to this request to the extent  
22 that it calls for the disclosure of information and materials that constitute confidential  
23 proprietary commercial information and data. Applicant further objects to this request to the  
24 extent that it calls for the disclosure of information that is subject to the attorney/client  
25 privilege or work product doctrine.

26

1 Without waiving these objections, Applicant responds that documentation associated  
2 with the viewshed analysis, including detailed specifications of equipment and technology  
3 used, and methodology around representative viewpoints and photographic simulations, can  
4 be found in the application for site certification Section 4.2.3.2 - Visual Impact Analysis  
5 Methodology. Photographic simulations are provided in Appendix Q, and Table  
6 4.2.3-1 provides a list of selected representative viewpoints, which are shown on Figure  
7 4.2.3-7.

8 Any additional information regarding visual impacts will be presented in pre-filed  
9 testimony. *See* Second Pre-Hearing Conference Order at 4 (“[P]re-filed testimony shall serve  
10 as the chief source of discovering each party’s principal position(s) and supporting  
11 evidence.”).

12 DATED: June 6, 2023.

STOEL RIVES LLP



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TIMOTHY L. MCMAHAN  
tim.mcmahan@stoel.com  
ARIEL STAVITSKY  
[ariel.stavitsky@stoel.com](mailto:ariel.stavitsky@stoel.com)  
EMILY K. SCHIMELPFENIG  
emily.schimelpfenig@stoel.com  
WILLA B. PERLMUTTER  
[willa.perlmutter@stoel.com](mailto:willa.perlmutter@stoel.com)  
Telephone: (503) 294-9517  
*Attorneys for Applicant*

1 **CERTIFICATE OF FILING AND SERVICE**

2 I hereby certify that on June 6, 2023, I served a true and correct copy of the foregoing  
3 **APPLICANT’S RESPONSES TO INTERVENOR TRI-CITIES C.A.R.E.S**  
4 **DISCOVERY REQUESTS** on the following party to the adjudicative proceeding at the  
5 addresses listed below (with a copy sent via email where an email address is indicated).

6  
7 J. Richard Aramburu ([Rick@aramburulaw.com](mailto:Rick@aramburulaw.com); [aramburulaw@gmail.com](mailto:aramburulaw@gmail.com))  
8 Carol Cohoe ([carol@aramburulaw.com](mailto:carol@aramburulaw.com))  
9 Law Offices of J. Richard Aramburu, PLLC  
10 705 Second Ave., Suite 1300  
11 Seattle, WA 98104-1797

12 DATED: June 6, 2023.

13 STOEL RIVES LLP

14 

15 TIMOTHY L. MCMAHAN  
16 tim.mcmahan@stoel.com  
17 Telephone: (503) 294-9517  
18 *Attorney for Applicant*

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STOEL RIVES LLP  
760 SW Ninth Avenue, Suite 3000, Portland, OR 97205  
Main 503.224.3380 Fax 503.220.2480

BEFORE THE STATE OF WASHINGTON  
ENERGY FACILITY SITING EVALUATION COUNCIL

TCC 7-28-23  
Appendix C

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In the Matter of the Application of:  
  
Scout Clean Energy, LLC, for Horse Heaven  
Wind Farm, LLC,  
  
Applicant.

DOCKET NO. EF-210011  
  
REBUTTAL TESTIMONY AND  
ATTACHMENTS OF GREGORY  
POULOS ON BEHALF OF SCOUT  
CLEAN ENERGY

**REBUTTAL TESTIMONY AND ATTACHMENTS OF GREGORY POULOS  
ON BEHALF OF  
SCOUT CLEAN ENERGY  
EXH-1031\_R**

**JUNE 30, 2023**

**STOEL RIVES LLP**  
760 SW Ninth Avenue, Suite 3000, Portland, OR 97205  
Main 503.224.3380 Fax 503.220.2480

1 **I. INTRODUCTION AND QUALIFICATIONS:**

2 Q. Please state your name, occupation, and business address.

3 A. Gregory Steve Poulos, CEO and Principal Atmospheric Scientist, ArcVera  
4 Renewables, 1301 Arapahoe Street, Suite 105, Golden, CO 80401.

5 Q. What are your job duties and responsibilities in that role?

6 A. Aside from the administrative and leadership duties of the CEO position, I oversee  
7 the technical and scientific aspects of our professional advisory services related to  
8 wind energy resource assessment of wind farms, globally. I have direct knowledge of  
9 the details of scientific, technical, analysis, and quantitative aspects of wind energy  
10 resource assessment, and have, and continue to, work on wind energy resource  
11 assessment and advancing new methods within the field of wind energy resource  
12 assessment.

13 Q. What is your educational and professional background?

14 A. I have worked as a technical expert in wind farm analysis for 15 years, working on  
15 several hundred wind farms, globally, including prospecting, data analysis,  
16 measurement placement and configuration, siting optimization, energy analysis,  
17 scenario analysis and recommendations, performance benchmarking, advanced wind  
18 flow modeling, due diligence, third-party certification, bankable energy assessment  
19 and operational forensic analysis of wind farm performance. This includes personal  
20 experience with tens of thousands of megawatts of utility scale wind plants within a  
21 firm that has worked on over 60% of the operating wind turbines in the United States.  
22 I hold a BS in Meteorology from Cornell University, and a MS and PhD in  
23 Atmospheric Science from Colorado State University, having worked at Los Alamos  
24 National Laboratory and the National Center for Atmospheric Research, including a  
25 10-year period as an entrepreneur and research scientist. I am currently on the  
26 International Electrotechnical Commission committee (61400-15) which determines

1 industry standards for wind energy resource assessment. A summary of my education  
2 and professional experience is included as an exhibit to my testimony.

3 Q. When were you first engaged in this matter?

4 A. I originally encountered the Horse Heaven project in 2007, when it was part of the  
5 wind farm development portfolio of Clipper Windpower, and I had taken the role as  
6 the head of wind energy resource that same year.

7 Q. Are you familiar with the Horse Heaven project? If so, how?

8 A. I am very familiar with Horse Heaven, having been in charge of the installation of  
9 meteorology towers at the site at Clipper Windpower, including site visits, and  
10 subsequently after leaving Clipper Windpower doing reports for a technical  
11 consulting firm named V-Bar through 2012. The project was revived in 2016 by  
12 Scout Clean Energy for whom I, and others at ArcVera Renewables, have done  
13 independent technical consulting on the Project as requested since that time.

14 Q. For whom are you testifying and what is the purpose of your testimony?

15 A. My testimony is on behalf of Scout Clean Energy, intended to provide additional  
16 information or explanation related to the Project's layout and turbine configuration  
17 relative to industry standard and common processes. Specifically, I am testifying to  
18 provide a response to aspects of the testimony of Tri-Cities C.A.R.E.S. witnesses  
19 SimonWind (Richard Simon), Dean Apostol, and David Sharp.

20 **II. REBUTTAL TESTIMONY:**

21 Q. Can you provide a brief description of how a wind or solar project layout is  
22 developed?

23 A. Wind farm development differs from solar farm development in many ways, most  
24 generally because the areal footprint of most solar farms is smaller because the  
25 resource (solar radiation) is not impacted by the solar panels themselves; in a wind  
26 farm, because slower wind moves downstream behind a wind turbine, wind turbines

1 are spaced far enough apart to recover enough wind speed to optimize energy  
2 production. That being said, the development of a wind and solar farm layout has a  
3 number of similar steps including, in short:

- 4 • Determining that a particular location on the electricity grid has favorable  
5 attributes for development. This is part of a so-called “fatal flaw” analysis,  
6 including wind or solar resource, land availability, grid access or anticipated  
7 access, state and local policy incentives, environmental/wildlife/land-use  
8 constraints, etc.
- 9 • Leasing of lands or being granted permission to use lands.
- 10 • Taking at least one year of local on-site measurements (up to two  
11 measurement location for solar, and up to several or even tens of  
12 measurements locations for wind energy) and resource modeling and  
13 reporting. This part of the process is relevant to the technical analysis required  
14 to write industry standard bank-ready reports and for site optimization and  
15 technology selection, aiming for the lowest cost of energy (LCOE)  
16 Calculating LCOE requires financial modeling and is very sensitive due to the  
17 nature of competition and post-construction electricity market participation.  
18 All of these analyses are completed for a given target nameplate capacity of  
19 the entire complex e.g., for wind 300 MW; for solar 300 MW AC.
  - 20 ○ For wind, this nomenclature refers to the maximum possible output of  
21 the wind turbine or wind farm expressed in megawatts [MW] for  
22 utility scale projects, generally reached between 10 and 14 meters per  
23 second of wind speed at hub height and called “rated power”. For  
24 solar, this refers to the alternating current output of the solar modules  
25 after being inverted from direct current (DC) to alternating current  
26 (AC) expressed as kilowatts [kW AC “kWac”] or megawatts [MW AC

1 “MWac”]. Solar farms can be referred to in MW DC terms or MW AC  
2 terms, and typically the MW DC value is 1.1 to 1.3 times that of the  
3 MW AC value. Since the wind does not always blow and the sun does  
4 not always shine at sufficient intensity to operate at full capacity  
5 projects are characterized by their energy production (as would reach  
6 the grid at the point of interconnect or end user) as a percent of total  
7 possible capacity factor or so-called net capacity factor. The maximum  
8 value, which is seldom reached for a variety of technical reasons (e.g.,  
9 electrical transmission losses, wake losses, etc.), is 100% net capacity  
10 factor which, in the examples above would mean producing 300 MW  
11 of wind or solar energy every moment of every day on an annual basis.  
12 On an annualized basis wind farm net capacity factors are generally or  
13 can be economical in the range of 25% or higher, with a few  
14 exceptions. For solar energy, net capacity factors in the 20’s% are  
15 common. The economic feasibility of a given wind or solar farm  
16 depends on many factors, including energy production, cost of  
17 equipment and installation, operations and maintenance costs, power  
18 prices, financial incentives, the cost of capital, location on the grid and  
19 other factors.

- 20 • Environmental, waterways, construction, electrical engineering/grid,  
21 geotechnical/civil, terrain/soil/ground surface suitability, investigations and  
22 constraints from zoning ordinances
- 23 • Prepare a buildable area polygon within which wind turbines and solar panels  
24 can be sited based on information in previous steps (this is often completed  
25 early in the process, then refined many times as information is collected and  
26 different lands are utilized)

- 1 • Design a wind or solar array layout according to industry standards.
- 2 ○ For wind energy, based on the winds and constrained area, optimize
- 3 the wind turbine type and model, string orientation and positions, to
- 4 maximize energy production and minimize LCOE. For a 300-MW
- 5 nameplate capacity wind farm, and individual wind turbines of 3-MW,
- 6 100 turbines would be placed optimally. If the wind turbines are 5-
- 7 MW, then only 60 turbines are required.
- 8 ○ For solar energy, based on the solar radiation characteristics and
- 9 constrained area optimize the module and inverter type, racking
- 10 system, tilt angle (fixed, single-axis, dual-axis), ground cover ratio
- 11 etc.) to maximize energy production and minimize LCOE. For a 300-
- 12 MW AC (three hundred million watts) nameplate capacity solar farm,
- 13 several hundred thousand solar panels would be placed optimally.
- 14 • Array designs for wind turbines are commonly between two and four rotor
- 15 diameters side-by-side within wind turbine strings and between seven and 16
- 16 rotor diameters string-to-string, with some variation. The Horse Heaven array
- 17 conforms to these norms, with 2+ rotor diameter side-by-side spacing and 10-
- 18 12 rotor diameter string spacing.

19 Q. Was the Horse Heaven project developed in this same way?

20 A. Yes. All of these steps have been performed by Scout Clean Energy in concert with  
21 cross-checking and analysis by myself as part of ArcVera Renewables, other third-  
22 party consultants, and prior to 2007, with respect to the proposed wind energy portion  
23 of Horse Heaven. I have not been directly involved in the solar energy or battery  
24 storage portion of the Project.

25 Q. Based on your existing knowledge of the project and review of the application  
26 materials, is there anything unusual about how the Horse Heaven project layout and

1 wind turbine configuration has been proposed, or any deviation from industry best  
2 practices?

3 A. No.

4 Q. Have you reviewed the direct testimony of Richard Simon submitted by Tri-Cities  
5 C.A.R.E.S.?

6 A. Yes, I have.

7 Q. Do you agree with the conclusions in Mr. Simon's analysis? Why or why not?

8 A. In several instances, no, and I believe his analysis omits several important points. I'll  
9 take them in the order presented in Mr. Simon's pre-filed direct testimony.

10 On page 3, lines 4-6, of Mr. Simon's testimony, regarding wind turbine  
11 technology, it is proposed that it would be unprecedented for permitting agencies to  
12 issue open ended permits for a wind farm, if multiple turbine positions are under  
13 consideration. I am aware of numerous instances where permitting agencies, such as  
14 the Federal Aviation Administration, have issued authorizations for a variety of wind  
15 turbine array positions within a given project envelope. As noted earlier, wind turbine  
16 positions are chosen to optimize the energy production and economics (LCOE) based  
17 on the specific characteristics of a given turbine model (its rotor diameter being very  
18 critical, as spacing depends on norms based on rotor diameter). Given the competitive  
19 nature of energy development, procurement of expensive equipment, and of post-  
20 construction operations in the energy markets, it is not unusual whatsoever for  
21 numerous wind turbine models, and therefore wind turbine array configurations, to be  
22 under consideration within a given project envelope until permitting is complete and  
23 the projects are financed. A final decision regarding the purchase of the wind turbines  
24 for this Project, of course depends on getting EFSEC approval, an approach which I  
25 do not find unusual.

26

1           On page 3 of his testimony, Mr. Simon makes several statements about the  
2 large size of the Project. The size of the Project is above average and consistent with  
3 the trend toward larger wind farms as the desire to transition to clean electricity  
4 production accelerates. Larger wind farms generate more clean energy with added  
5 economy of scale. So, contrary to Mr. Simon’s statement, Shepards Flat wind farm,  
6 near Arlington, Oregon, is 50 miles away, nearly 1,000 MW and has been operating  
7 for many years. Pattern Energy is currently constructing the 3,500-MW SunZia wind  
8 farm in New Mexico. Our firm is engaged with numerous clients in the US and  
9 globally that are pursuing onshore wind farms of 500-2,000 MW nameplate capacity.  
10 There are numerous wind farm clusters near or above the size of Horse Heaven. In  
11 addition, many wind farms or clusters of wind farms overlook or are in the vicinity of  
12 large populations. The heavily built-out Altamont Pass wind farm complex in  
13 California, for example, overlooks the city of Livermore. Similarly, the San Geronio  
14 Pass wind farm and nearby wind farms, with hundreds of wind turbines collectively,  
15 are situated near Palm Springs and North Palm Springs, California (nearly 500,000  
16 population).

17           On page 3, line 19, Mr. Simon discusses the wind resource potential of the  
18 Project. In this section it is unclear to what “data” Mr. Simon is referring within the  
19 Project footprint as I don’t believe he has authorization to utilize any of the  
20 proprietary data now owned by the Applicant to make such calculations.  
21 Nevertheless, we (consistent with my experience with this and other renewable  
22 energy developers) can be assured that the Applicant would not be seeking EFSEC  
23 approval for a > \$1 Billion dollar project unless its analysis deemed it a worthy  
24 investment, as with any renewable energy developer-owner-type client of our  
25 company. In all my years of experience, I have never heard of a developer investing  
26 in and seeking project approval for a project that it did not consider, by way of

1 proprietary and customary financial modeling, financially viable. Moreover, given  
2 the extremely sensitive nature of project economics in the industry, it would be  
3 inappropriate to share information of this nature unless authorized by the Applicant.  
4 The Applicant owns the data from which all such analyses as in this section are  
5 created, and all derived products for which they paid. Mr. Simon confirms here that  
6 the escarpment is a high wind resource location within the Project footprint. I concur  
7 with that assessment and that is why wind turbines are sited primarily on or near the  
8 escarpment.

9 Mr. Simon notes that his projected energy for the Project is lower than wind  
10 farms located in Montana, Wyoming, and the Upper Midwest. Mr. Simon neglects to  
11 mention that there is a corresponding cost for long-distance transmission from those  
12 distant locations to this part of the electricity grid that increases project expenses and  
13 that would reduce economic viability despite higher wind speed. This is to be  
14 expected given that the wind resource is lower. Nevertheless, there are many wind  
15 farms in Washington and Oregon with similar or lower energy production as  
16 measured by capacity factor (these data are available for free on the Department of  
17 Energy, Energy Information Administration website). I conclude that the energy  
18 productivity of the Project is consistent with expectations for the region.

19 Similarly, on page 8, line 10, Mr. Simon asserts that the Project may not be  
20 economically viable. The economics of wind farm development are highly protected  
21 by wind farm owners due to the competitive nature of the energy business. Unless it  
22 is within the purview of EFSEC to judge the financial decisions on behalf of a private  
23 entity, I don't believe comment on this aspect is warranted in the case where it is out  
24 of a given expert's area of expertise.

25 On page 9, line 1, Mr. Simon makes contentions about limited grid  
26 availability. I understand that the Project has completed studies that ensure that its

1 power can be absorbed by the grid following standards and requirements of generator  
2 interconnection processes. I know that the Project comprises a significant solar and  
3 battery storage component; taken together the wind profile alone will not define the  
4 energy generation profile because solar and battery storage are also present and alter  
5 the energy output profile by season substantially. If the Project is producing more  
6 than 850 MW of energy at any given time, the batteries can absorb the excess, only to  
7 inject it at a later time, when needed by the grid. Thus, with batteries and solar  
8 energy, the Project energy production will project a much different annual energy  
9 generation profile than if it were only wind.

10 On page 9, line 18, Mr. Simon discusses the potential impact of the Project on  
11 Nine Canyon. It is common for new wind farms to produce wakes and many clusters  
12 of wind farms have been built over time across the United States and in the Pacific  
13 Northwest. I do not find the building of one wind farm that impacts another unusual.

14 Q. Have you reviewed the direct testimony of Dean Apostol submitted by Tri-Cities  
15 C.A.R.E.S.?

16 A. Yes, I have.

17 Q. Do you agree with the conclusions in Mr. Apostol's analysis? Why or why not?

18 A. Most of Mr. Apostol's testimony is outside my area of expertise, so I am unable to  
19 comment on whether his analysis adheres to industry standards for most of the  
20 document. However, in some instances, Mr. Apostol testifies about certain aspects of  
21 the wind turbine layout or would impact the wind turbine layout, which is within my  
22 expertise and I will comment on those areas.

23 Pages 1-4 of Mr. Apostol's testimony consist mainly of general information  
24 regarding scenery and visual impact. This is a helpful list and may or may not be  
25 applicable to the Project, depending on the observer. I have observed in my time in  
26 the industry that many people prefer wind turbines over smoke stacks, and consider

1           them beautiful and elegant – a hopeful sign of progress and a visual sign that they are  
2           participating in actions that make the world a better place. That is not so say that  
3           some individuals do not share this sentiment.

4           On page 5, line 20, Mr. Apostol “recommend[s]” that “[w]hile it is not likely  
5           possible to avoid all visual impacts given the size and nature of the proposed  
6           facilities, it is probable that a design could be done that retains significant renewable  
7           energy production, while reducing visual/scenic impacts to a level that most of the  
8           community would find to be acceptable.” I agree with the statement that it is not  
9           possible to avoid all visual impacts. And then, by logic, there will always be some  
10          visual impact if any wind farms are built. The Nine Canyon wind project began  
11          operations in 2008 with even closer proximity to the Tri-Cities. It seems logical that  
12          another wind farm or several wind farms could also be built without undue impact on  
13          the local populace if situated at a similar or further distance away as Nine Canyon,  
14          even accounting for the fact that modern day wind turbines have somewhat larger  
15          dimensions. A sole focus on visual impact seems undue, given early points herein  
16          regarding the careful analysis that must also be undertaken in many different  
17          technical areas, including ensuring that the array design meets industry standards and  
18          is optimized on the lands of the participating landowners, to make a successful  
19          project. It is my understanding that issues related to economic viability are not a  
20          factor in EFSEC’s decision process.

21          On page 22, Mr. Apostol suggests Scout did not consider topography or  
22          “cluster[ing] or group[ing]” turbines to “create visual order.” As stated earlier in this  
23          rebuttal, the process of determining where to place wind turbines on the landscape is  
24          definitively focused on topography and its relationship to the local meteorology,  
25          specifically the wind speed on a given topographic feature or within a given area. So  
26          yes, topography was crucially considered, as wind speed patterns are almost always

1 strongly related to topography relative to the frequency of the wind rose and site-  
2 specific meteorological details (wind speed variations of 0.1 m/s are important, so  
3 small topographic variations affect the energy production and therefore economics of  
4 the wind farm substantially), among many other factors. Mr. Simon points out that  
5 best resource is along the escarpment and that is why the majority of the wind  
6 turbines are located there. For its winds, the escarpment is in the heart of the Project,  
7 in the sense that the windier the location the more energy production on a per wind  
8 turbine basis.

9 The wind farm itself is a cluster of wind turbines, organized in a clear manner  
10 that follows the contours of topography and highest wind speed, with varied wind  
11 turbine strings of different length, breaking up long strings, unlike Nine Canyon  
12 which has tightly spaced near-linear organization. The use of white colored wind  
13 turbines is most common in the industry. Given the rather uniform dominant west to  
14 southwesterly (or northeasterly) wind direction 2/3 of the time it is expected that the  
15 wind turbines will present a common profile as they spin and generate energy.

16 On page 23, Mr. Apostol provides his opinion of the “most obvious” way to  
17 reduce the visual impacts by “build[ing] fewer turbines, removing those closest to the  
18 most viewers.” I note from the maps in the ASC that there are only 4 wind turbines  
19 sited unobstructed on the escarpment near Benton City, which is the closest area with  
20 residents, while the remainder of the wind turbines are behind the escarpment further  
21 out of view in that area. All other wind turbines are further from populated areas than  
22 the Nine Canyon wind project, with the exception of the wind turbines in the  
23 immediate vicinity of Nine Canyon wind project itself. Removing wind turbines that  
24 have been carefully sited based on wind resource and other factors would only serve  
25 to reduce the energy production of the Project, impacting financial calculations and  
26 feasibility.

1 Mr. Apostol then suggests that “[d]esigners could take their cues from the  
2 high and low areas along the ridgeline, leaving the higher places undeveloped, while  
3 clustering turbines (perhaps more densely) in the lower places or gaps.” This  
4 approach would be highly non-standard and is incompatible with industry practice,  
5 whereby wake losses and wind farm-atmosphere interaction energy losses are  
6 minimized to maximize energy production, within given constraints, and while  
7 seeking the lowest cost of energy (see also the earlier brief description of the  
8 process). Wind speeds are less favorable in such locations, and clustering wind  
9 turbines increases wake losses, reducing energy production. While I agree that visual  
10 impacts are unavoidable, it is also true that the area in which wind turbines can be  
11 placed is limited to the Project lands and the wind speeds within those lands, given  
12 the need to create a viable Project. The wind turbine locations chosen are optimized  
13 within those constraints.

14 Q. Have you reviewed the direct testimony of David Sharp submitted by Tri-Cities  
15 C.A.R.E.S.?

16 A. Yes, I have.

17 Q. Do you agree with the conclusions in Mr. Sharp’s analysis? Why or why not?

18 A. Most of Mr. Sharp’s testimony is outside my area of expertise, and it is unclear to  
19 what degree Mr. Sharp has expertise in wind farm technical analysis and wind turbine  
20 siting thus I am unable to comment on how his analysis adheres to industry standards  
21 for most of the document. However, in some instances, Mr. Sharp testifies about  
22 certain aspects of the wind turbine layout or factors that would impact the wind  
23 turbine layout, which is within my expertise and I will comment on those areas.

24 As to his contention at page 2, lines 10-16, the wind turbine layouts  
25 represented in the ASC adhere to industry practice and were designed to optimize the  
26 wind farm for viability within lands and constraints. I know this because our firm,

1 among other third-party consultants with similar expertise, were employed in this  
2 regard. Presenting detailed energy production (and or related financial information or  
3 modeling) information would be highly unusual in a competitive landscape, and is  
4 closely held information for all developers and their investors that I work with  
5 worldwide.

6 On page 2, line 17, Mr. Sharp includes a litany of complaints. In my view the  
7 complaints are unfounded, for the following reasons:

- 8 • Revealing specific details and point measured data that shows proprietary  
9 wind speed information is not an accepted practice in the profession due to its  
10 critical role in understanding energy production from a complex, and therefore  
11 its competitive position in the industry.
- 12 • The 1,150-MW wind farm is clearly described and mapped, showing  
13 individual turbine locations on maps within the ASC.
- 14 • Capacity applications have been applied for separately and are unnecessary  
15 for the EFSEC application to the best of my knowledge. A developer would  
16 not spend the money required to develop a near \$2 billion wind/solar/battery  
17 facility unless they had clear guidance that the power could access and be sold  
18 at a competitive price on the grid, in my experience.
- 19 • If the goal of the legislature includes generating clean electricity, then this  
20 Project fits that requirement.

21 On page 2 at line 25 through page 3, Mr. Sharp conveys that wind speed  
22 considerations are paramount in the development of a wind farm. That is true. The  
23 Project was designed with that notion squarely in mind, along with many other  
24 factors, as described earlier in this document. Mr. Sharp apparently does not consider  
25 the fact that wind turbine technology has evolved and become more efficient over  
26 time, rendering large swaths of the United States, that 10-15 years ago were not

1 economical to develop, now economical. Such is the case here, and around the world.  
2 With this in mind, even though the wind speed of Washington in general, and this  
3 location in particular, is lower than other parts of the United States (e.g., much of the  
4 Midwest), it is also true that many areas, due to advancing technology and innovation,  
5 are now economic (that is, they can be designed to generate electricity at a low  
6 enough levelized cost of energy to be competitive within a given market while also  
7 remaining economically viable).

8 On page 4, Mr. Sharp states the Northwest utilities need the power when  
9 demand is highest, such as on very cold days, stating: “very cold days are generally  
10 calm”. The data do not support this view. Examination of the on-site wind data from a  
11 meteorological tower with five years of data on the escarpment, shows that on the  
12 coldest 1% of days, the overall wind speeds are reduced by 10% from the annual  
13 average and strong enough to produce energy, and are by no means calm. Thus, the  
14 Horse Heaven wind farm can be productive on very cold days, and will be further  
15 supplemented by solar energy and battery storage, improving the timeliness and  
16 dispatchability of the energy produced at Horse Heaven.

17 On page 5, at line 23 (and repeated on page 14, line 6), Mr. Sharp claims the  
18 Project’s nameplate capacity of 1,150 MW is unsupported. This statement is not  
19 supported by the record. The Project nameplate capacity is clearly described in  
20 Section 2.15 of the ASC and tabulated and described in Table 2.15.1. Phases 1 and 2  
21 comprise 1150 MW of nameplate capacity of wind turbines and solar modules.

- 22 The nameplate capacities are:
- 23 • Phase 1: 650 MW (comprising 350 MW of wind turbine nameplate, and 300  
24 MW (ac) of solar nameplate.
  - 25 • Phase 2 (alternative A): 500 MW (comprising 250 MW of wind turbine  
26 nameplate, and 250 MW (ac) of solar nameplate.

- Phase 2 (alternative B): 500 MW of wind turbine nameplate.

Phases 1 & 2 also would be supplemented with a total of 300 MW (1200 MW-hr) of battery storage. This is not considered energy generation as it is energy storage, and batteries to not count toward nameplate capacity.

In total, if both phases were completed, the Project would comprise a cumulative nameplate capacity of 1,150-MW, comprising either (Phase 1 and Phase 2, alternative A) 600-MW of wind and 550-MWac of solar nameplate capacity or (Phase 1 and Phase 2, alternative B) 850-MW of wind nameplate and 300-Mwac of solar nameplate. This information is consistent with the work our firm has completed as a third-party independent technical firm.

Since nameplate capacity of 1150 MW represents the maximum power that could be produced at any time by a given wind turbine or solar module, and the sun does not always shine and the wind does not always blow sufficiently fast to generate full power, it is not true that less nameplate could be built in this region with the given wind and solar resource, and meet the desired injection limit. Thus, the combined wind, solar, and battery storage approach taken has merit with respect to seeking to maximize clean energy production and the timeliness of that energy delivery, while ensuring economic viability.

Sharp returns to statements regarding the unnecessary nature of 1,150 MW total nameplate capacity when the injection limit is 850 MW frequently throughout the testimony; but what he apparently doesn't realize is that greater nameplate capacity can be installed and its output controlled (by battery storage and other means) so as not to exceed injection limits. Overbuilding nameplate capacity is a common renewable energy development strategy to help ensure project viability. In addition, it is my understanding that the Applicant can always build less generation capacity than is permitted.

1           Much of the rest of Mr. Sharp’s testimony repeats his prior points, which have  
2           been addressed above, or are in areas that are outside of my area of expertise.  
3           There are some subsequent comments however, that I can comment on.  
4           Mr. Sharp’s testimony at pages 36-46 addresses the fact that wind turbine parts break  
5           (like all mechanical devices), that fires will need to be fought among the wind  
6           turbines, that humans will at times pass by or operate farms around the wind turbines,  
7           that the wind turbines are placed in favorable areas for wind energy production, that  
8           the part of the Horse Heaven Project is in the vicinity of the Nine Canyon wind  
9           project, that the wind turbines could generate extra dust, that they will have visual  
10          impact, and that ice can build up on the blades and be thrown. These are common  
11          issues throughout the wind industry and rarely negatively affect human health.  
12          Compared with other cold season locations, the Horse Heaven icing frequency is low,  
13          and I note that Nine Canyon has operated since 2008 in this very environment. This  
14          list is hardly new and has not prevented the installation of thousands of wind turbines  
15          in the United States.

17 DATED: June 30, 2023.

STOEL RIVES LLP



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TIMOTHY L. MCMAHAN  
tim.mcmahan@stoel.com  
WILLA B. PERLMUTTER  
willa.perlmutter@stoel.com  
ARIEL STAVITSKY  
ariel.stavitsky@stoel.com  
EMILY K. SCHIMELPFENIG  
emily.schimelpfenig@stoel.com  
Telephone: (503) 294-9517

*Attorneys for Applicant*

LAW OFFICES OF J. RICHARD ARAMBURU PLLC

705 Second Avenue, Suite 1300  
Seattle, WA 98104-1797  
Telephone 206.625.9515  
Facsimile 206.682.1376

www.aramburulaw.com  
www.aramburu-eustis.com

July 7, 2023

Tim McMahan  
Stoel Rives  
Delivery by email to tim.mcmahan@stoel.com

Re: Interrogatories to Applicant Scout Energy

Tim:

I'm writing today concerning TCC's Discovery Requests dated May 18, 2023. Following service of these DRs, on May 24, 2023, the PALJ issued the "Protective Order with Provisions Governing Confidential Information and Information Exempt from Public Disclosure Under RCW 42.56" (the PO). On June 6, 2023, the Applicant provided its responses to the DRs, refusing to provide any of the documents sought by the Requests for Production (RFP). Our reply to the Applicant's lack of responses to our RFPs has been delayed by the need to review and provide testimony based on the compressed time schedule for this adjudication.

I write today to engage in a discovery conference regarding the Applicant's refusal to provide answers to our discovery in the anticipation that we can arrange for their disclosure without the need for a formal motion to compel.

In addition to the foregoing, on June 30, 2023, the Applicant submitted the rebuttal testimony of Gregory Poulos, whose testimony related to several of the RFPs submitted.

Consistent with the May 24, 2023, PO, TCC agrees that the documents requested will be subject to the terms of the May 24 PO and each party having access to the information will execute the appropriate agreements as set forth at pages 5 and 6 thereof.

Subject to the foregoing, we again ask that the Applicant provide responses to the RFPs, based on the following.

**RFP #1.** This requests documentation of the communications with the BPA, a public agency, as it relates to content of the Updated Application for Site Certification (UASC). We note that the material concerning BPA was recently added in the December 1, 2022

July 7, 2023  
Page 2

UASC. We do not understand from your response why BPA would consider this information confidential or have an objection to its disclosure. This information relates in part to the reference to the statement that:

Consequently, a generation facility may have a greater nameplate generating capacity than grid injection capacity by installing more Turbines or solar modules.

UASC at 2-15. Mr. Poulos' testimony indicates states that: "Overbuilding nameplate capacity is a common renewable energy development strategy to help ensure project viability." Page 16, lines 23-16. If this project is "overbuilt," the overbuilt portions may be considered during the adjudication as part of EFSEC's balanced review of the application. Consideration and review of possible elimination of turbines in the overbuilt category is necessary in order to fulfill the balancing requirements of RCW 80.050.010 and take into account protection of environmental quality, the safety of energy facilities, and concern for energy availability.

We ask again that the BPA material requested in RFP #1 be provided, subject to the confidentiality agreement if necessary.

**RFP #2.** This requests information concerning meteorological data and assessment. As indicated above, any such information would be considered pursuant to the confidentiality agreements in the PO.

Again, this material is directly related to the testimony of Mr. Poulos. At page 11, lines 22-26, Mr. Poulos indicates:

*the process of determining where to place wind turbines on the landscape is definitely focused on topography and its relationship to local meteorology, specifically the wind speed on a given topographic feature of a given area.*

Based on his review of the data, Mr. Poulos testifies that:

*For its winds, the escarpment is the heart of the Project, in the sense that the windier the location the more energy production on a per wind turbine basis.*

Page 12, lines 5-8. Finally, he states:

*Removing wind turbines that have been carefully sited on a wind resource and other factors would only serve to reduce the energy production of the Project, impacting financial calculations and feasibility.*

Page 12, lines 23-26.

Indeed, at page 15, lines 10-13, Mr. Poulos' testimony directly references wind

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data:

*Examination of the on-site wind data from a meteorological tower with five years of data on the escarpment, shows that on the coldest 1% of days, the overall wind speeds are reduced by 10% from the annual average and strong enough to produce energy, and are by no means calm.*

Given that Mr. Poulos's testimony is based on his knowledge of wind analysis, it is appropriate to assure that all parties, and the Council, have equal access to this information. Such information will allow the Council to engage in balancing the output of a project with its environmental and technical impacts. As noted above, this decision is also informed by what portions of the project may be overbuilt, which could be the basis for project mitigation.

We again ask that the meteorology information requested in RFP #2 be provided, subject to the already established PO and confidentiality agreements.

**RFP #3.** This RFP requests reports that assess production of the project wind turbines. Again, this information would be subject to compliance with the PO.

Most of the above discussion for RFP #2 applies here. The Applicant provides testimony, and conclusions therefrom, based on wind data. Indeed, at page 15, lines 10-13, Mr. Poulos expressly references the expected production of wind turbines on a seasonal basis, precisely the information requested by this RFP.

We again ask that this information requested in RFP #2 and 3 be provided, subject to the already established PO and confidentiality agreements.

**RFP #4.** This RFP requests information regarding potential wake losses to the existing Nine Canyon Wind Project, which is immediately adjacent to the Horse Heaven proposed project. Again, Mr. Poulos addresses the issue in response to testimony from TCC's witness Rich Simon at page 10 lines 10-14. He does not dispute the wake loss impact, but dismisses the testimony because: "I do not find the building of one wind farm that impacts another unusual." *Id.* Whether "unusual" or not, the impacts of the current Project on another renewable project are relevant to the merit of the project and inform whether project elements can be removed to address environmental and other concerns. If Applicant has this information, debate over this issue can be quickly resolved.

If not, we again ask that the meteorology information requested in RFP #2, 3 and 4 be provided, subject to the already established PO and confidentiality agreements.

**RFP #5.** This interrogatory requests that studies of the estimated costs of power for this project be provided.

One of the premises of EFSEC review is "(4) To provide abundant clean energy at reasonable cost." RCW 80.50.020. Indeed, earlier in that statute, the legislature has identified: "the state's objectives in providing affordable electricity . . . ." An inquiry into the costs to consumers and the affordability of that energy are clearly within the purview of EFSEC. Indeed, Mr. Poulos directly responds to concerns about visual impacts of the project components located on ridgelines that were raised by TCC witness Dean Apostol; Poulos states that mitigation for such visual impacts would be "incompatible with industry practice" including "seeking the lowest cost of energy." Testimony at page 13, lines 1-13.

Furthermore, if the project is "overbuilt" that information may impact the Council's review on this critical element . Once again, this information will be considered as confidential. If such documentation does not exist, then the Applicant can say so. This information is also relevant to whether certain turbines can be removed and what impacts that will have as to whether the project will provide affordable energy.

The documents provided would be subject to the PO previously entered.

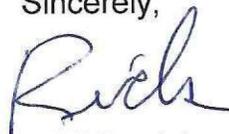
**RFP #7.** This interrogatory references information regarding property values and the local economy. Again, this information would be kept confidential if need be, though we don't see anything proprietary about it. Property values and local economy issues are explicitly stated in PHO#2 as relevant to this proceeding.

Please provide this information requested in RFP #7.

**RFP #8.** This interrogatory requests background information concerning the visual assessments prepared by the application. We do understand that the Applicant has included information on this subject in the original and amended ASC, but this request concerns background on how the information was prepared. While we see that you have made a claim the material is within the work product or attorney client privilege, this RFP calls for technical detail. As technical information is sought we do not believe it comes within the definition of work product. If there are specific documents that implicate the attorney client privilege, then those materials can be redacted from the response.

Thank you for your attention to this emailed letter. If you would like to schedule a conference by phone or Zoom, let me know.

Sincerely,



J. Richard Aramburu

July 14, 2023

Willa B. Perlmutter  
760 SW Ninth Avenue, Suite 3000  
Portland, OR 97205  
D. 503.294.9462  
willa.perlmutter@stoel.com

**VIA EMAIL**

J. Richard Aramburu  
Law Offices of J. Richard Aramburu PLLC  
705 Second Ave  
Suite 1300  
Seattle, WA 98104

**Re: Response to July 7, 2023 Letter to Tim McMahan re Discovery Responses (Scout Clean Energy)**

Dear Mr. Aramburu:

This will respond to your July 7, 2023 letter seeking supplemental responses to Scout Clean Energy's May 18, 2023 discovery responses.

As a threshold matter, Scout continues to assert its established right to withhold confidential and proprietary data from disclosure. We understand your position that Gregory Poulos's rebuttal testimony opened the door for TCC to obtain this information, but we respectfully disagree. In his testimony, Mr. Poulos was careful to avoid any references to the confidential information you now seek. While drafting, he intentionally refrained from using materials that are confidential and proprietary and thus the testimony he supplied does not offer TCC an opportunity to seek further information.

Additionally, as you know, EFSEC has previously recognized an applicant's significant interest in protecting confidential information from disclosure. *See, e.g., Whistling Ridge Energy Project*, Prehearing Order Nos. 11 and 12. As discussed more specifically below, the Applicant has a right to protect its confidential data, which holds commercial value that would be lost if the materials become public knowledge.

RFP No. 1

As indicated in Scout's initial responses to your discovery requests, Request No. 1 asked for the disclosure of information that is immaterial to the proceeding, and is not identified or within the scope of any issues as defined by prehearing orders, and it sought information that is confidential and proprietary. We continue to assert those positions. The information you seek is plainly outside the scope of these EFSEC proceedings. As a threshold matter, the commercial viability of the Project, including the feasibility of connecting to the grid, does not fit into any of the disputed issues in the adjudication, which focus on land use consistency and impacts on various resources. Second Prehearing Conference Order, p. 2. Further, as a general matter, we would

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note that the existence or non-existence of a Protective Order does not change the fundamental fact that the information TCC seeks goes well beyond the scope of EFSEC's review criteria and the subject matter of this adjudication.

That said, and without waiving those objections, we can provide you with some additional information. The pages you've cited from the revised Application for Site Certification (ASC) do not represent a change from the original ASC. As you know, the Bonneville Power Administration (BPA) is the authority for grid interconnection for the Horse Heaven Clean Energy Center. BPA's's Technical Requirements for Interconnection to the BPA Transmission Grid STD-N-000001 REVISION08, as updated on June 7, 2022, require specific interconnection practices for generation and storage with the BPA grid according to established business practice. The intent of the change in the revised ASC dated December 2022 was to establish consistency with the BPA business practice document for limiting the nameplate capacity rating of wind and solar generators. As stated in the Revised ASC, Section 2.3,

The nameplate generating capacity, which is the aggregate nameplate capacity in MW for the Project based on the nameplate rating of each generator at its rated power factor multiplied by the total number of generators installed, was being limited to the aggregate nameplate capacity requested (generation interconnection request) consistent with Bonneville Power Administration (BPA) business practices. BPA has since allowed interconnection requests that facilitate greater installed aggregate nameplate generating capacity, provided the instantaneous generation is controlled to not exceed the grid injection capacity, which is the maximum energy in MW that can be injected into the transmission grid at any instant in time without exceeding the allowable authorized grid injection capacity set by BPA (the transmission provider). Consequently, a generation facility may have a greater nameplate generating capacity than grid injection capacity by installing more Turbines or solar modules. This change by BPA does not alter the facility components proposed for the Project.

The effect of this change was to clarify that the aggregate nameplate capacity rating of installed wind generation in megawatts (MW) can exceed the grid injection capacity, provided the instantaneous generation is controlled to not exceed the grid injection capacity authorized by BPA. As the designated overbuild for the Project relative to a point of interconnection with the electric grid will not add wind turbines to the scope, the design change for this allowance by BPA does not alter the facility components proposed for the Project nor add additional impact.

With respect to solar generation, as stated in the revised ASC dated December 2022, Section 2.3.2,

[t]he nameplate generation capacity of the solar arrays may be greater than the maximum grid injection capacity, but will be limited to the maximum grid

injection capacity as a function of the AC rating of the inverters associated with current interconnection requests. Accordingly, there may be greater direct current (DC) nameplate generation capacity as a function of the optimization in the number of solar modules installed per inverter. However, the actual solar array equipment and layouts selected would not exceed the footprint acreage or impacts described in this ASC.

This change clarified the aggregate nameplate capacity rating of installed solar arrays (also in megawatts) can exceed the grid injection capacity, since the instantaneous generation is controlled by the design rating of the inverters that are the physical interconnection to the electric grid, which in the aggregate cannot exceed the grid injection capacity authorized by BPA. As the designated overbuild for the Project relative to a point of interconnection with the electric grid will not add solar arrays, and their associated footprint impact to the scope, the design change for this allowance by BPA does not alter the facility components proposed for the Project nor add additional impact.

The changes in the ASC are consistent with the Applicant's recognition that EFSEC's review focuses on the environmental impacts of the proposed Project and associated infrastructure, including but not limited to wind turbine generators, solar modules, inverters, electrical collection and access roads, electrical substations, and other Project infrastructure identified in Section 2.0 of the Revised ASC. The generation nameplate rating is fundamentally unique and an important value for generator interconnection as administered by BPA – but distinct from EFSEC process. Documentation associated with interconnection requests submitted to BPA is outside the scope of the EFSEC proceedings.

We hope that this additional detail gives you the clarity you need regarding the manner in which BPA evaluates the nameplate rating of a Project while at the same time underscoring the fact that BPA's consideration is separate and distinct from what EFSEC is addressing.

#### RFP No. 2

As noted at the outset, Mr. Poulos's statements were general and they intentionally avoided implicating confidential data or materials. You have requested meteorological information that is proprietary and extremely sensitive from a commercial perspective, and therefore we must again respectfully decline to provide you with the information you seek. *See, e.g., Whistling Ridge Energy Project*, Prehearing Order No. 11, pp. 5-6 (“In conclusion, much of the requested information [specifically including meteorological information] appears to have little direct relevance to the issues in the proceeding. It is extremely sensitive proprietary information. We see little likelihood that the requested information would lead to the discovery of admissible information; while some may be available from other sources, the risk of damage by disclosure is great if it is provided, as statutes, rules and agency practice do not appear to ensure reasonable protection even if parties and the Council take time to formulate protective orders. On balance, we decline to exercise our discretion to allow discovery.”).

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### RFP No. 3

Request No. 3 seeks reports or studies that assess the expected production from wind turbines, which is not germane to these EFSEC proceedings. As you may know, the manufacturers of wind turbines only provide production details for their turbine models with the express, explicit understanding that those details will be kept confidential. The Applicant is bound by that confidentiality obligation and cannot disclose anything related to turbine production to third parties without their prior approval. *See also*, General Objection Nos. 2, 5. Additionally, as noted in the application, the Applicant has not yet selected the turbines for the Project. *See*, ASC Section 2.3.1 (“Turbines and Towers”) (“The final Turbine model that would be used for the Project would be a commercial choice based on Turbine availability and other factors present at the time of construction, and is not known at this time.”) We regret that we are unable to provide you with the information you seek in Request No. 3.

### RFP No. 4

As you know, wind projects are often built in proximity to other projects. Developers generally do not analyze the effects of a proposed project on projects that may lie downwind. That is true in this case: although the Applicant understands there may be some wake loss if and when the Project comes online, it is the downwind party and not the Applicant that would analyze and if appropriate, take steps to address any wake loss. For that reason, and after diligent search, the Applicant can report that there are no documents in its possession or constructive possession that are responsive to Request No. 4. In addition, we would note that the Project has been designed to minimize the wake impact to a negligible extent.

### RFP No. 5

With all respect, Request No. 5 is not germane to these EFSEC proceedings. As you know, the Applicant does not sell power directly to ratepayers, and it has no role in the regulatory processes that set power prices in the Northwest. Moreover, estimates of the impact the cost of the Project might have on purchasers entail extremely sensitive commercial information that if disclosed would undercut the Applicant’s position with the prospective off-takers with whom it is in negotiations. Finally, the information you request is both highly speculative and extremely volatile. Even if the Applicant were in a position to provide the requested information without jeopardizing its business interests, the information would be no more than a single, changeable data point that would be essentially meaningless to the EFSEC process. We respectfully decline to respond further to Request No. 5.

### RFP No. 7

TCC has also asked for materials that concern the impacts of the Project on property values and the local economy. On July 12, the Applicant filed the testimony of an expert economic analyst (Morgan Shook) and an expert appraiser (Andrew Lines), who together explain why the current academic literature, and site-specific property value data demonstrate that the Project will cause

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no negative impact to nearby property values. Once you have had a chance to review their testimony you will see that their statements contain detailed information about property value impacts for parcels in the vicinity of the Project. Specifically as to the Project's impact on tourism, we can represent that after diligent search, the Applicant has been unable to locate any documents in its possession or constructive possession that are responsive to Request No. 7.

RFP No. 8

Finally, with regard to Request No. 8, we refer you again to our previous response, which referenced the sections of the ASC pertaining to the viewshed analysis. Additionally, at the time we provided TCC with the Applicant's discovery responses we represented that additional information regarding visual impacts would be included with the Applicant's pre-filed testimony. We have since filed three rounds of testimony from our visual impacts expert, Brynn Guthrie that address the information you seek. *See* EXH-1000\_T\_REVISED, EXH-1001\_REVISED, EXH-1021\_R, EXH-1036\_R.

We regret that we cannot provide you with more information beyond what is contained herein, but we appreciate that you've given us the opportunity to provide further clarification as to the basis for the Applicant's objections to TCC's discovery requests. As always, if you have further questions or concerns, please don't hesitate to let us know.

Very truly yours,



Willa B. Perlmutter

LAW OFFICES OF J. RICHARD ARAMBURU PLLC

705 Second Avenue, Suite 1300  
Seattle, WA 98104-1797  
Telephone 206.625.9515  
Facsimile 206.682.1376

www.aramburulaw.com  
www.aramburu-eustis.com

~~June 23, 2023~~

Willa B. Perlmutter  
760 SW Ninth Avenue, Suite 3000  
Portland, OR 97205  
willa.perlmutter@stoel.com

Re: Requests for Production of Document (Our letter of July 7, 2023)

Dear Ms. Perlmutter:

Thank you for your letter of July 14, 2023, regarding discovery issues related to our request for production of documents. While issues remain, we appreciate your responses to RFPs #4, #7 and #8 that either Scout has no responsive documents or that what they have has been previously provided in written testimony. Thank you for these responses.

However, issues remain regarding RFPs #1, #2, #3 and #5. It appears that your objection to these requests is that the documents are either confidential or not relevant to these proceedings. We recognize that you contend these documents are confidential and accordingly we have made clear that confidentiality agreements will be provided for all witnesses that may review such documents. As to relevance, the standard is broad on whether the documents would lead to relevant testimony. As we explained in our letter, the BPA document and meteorological data clearly go to balancing obligations of the Council and Scout's position that it can, and is intending to, "overbuild" the project. In addition, Scout has indicated in the Updated ASC and the pre-filed testimony that it relies on certain meteorological data; all parties should have access to this data in presenting their case. Proprietary concerns are fully addressed by confidentiality agreements.

Regarding Request for Production #5, I have nothing further to add from our July 7, 2023 letter. Again, any existing documentation would be subject to confidentiality agreements.

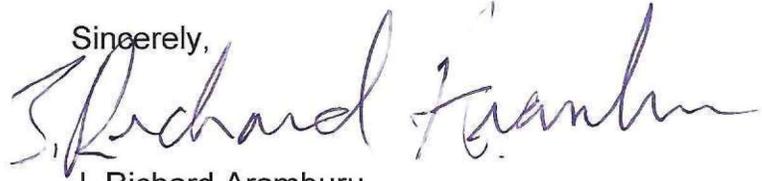
I think our exchange of views on the RFPs has been useful and resulted in progress on certain documents. However, it currently appears that continued discussion will not be

~~May 4, 2023~~  
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beneficial and we will need to file a motion to compel disclosure of the documents that are still at issue.

If you think more discussion would be beneficial, please let me know.

Sincerely,



J. Richard Aramburu

JRA:cc  
cc: Clients

## Carol Cohoe

---

**From:** Carol Cohoe  
**Sent:** Wednesday, July 19, 2023 1:46 PM  
**To:** willa.perlmutter@stoel.com  
**Cc:** Rick Aramburu; McMahan, Tim; Schimelpfenig, Emily K.; Stavitsky, Ariel H.; Newby, Peggy  
**Subject:** Horse Heaven Discovery  
**Attachments:** 20230718 RFPreply to WP.pdf

Ms. Perlmutter, please see Mr. Aramburu's reply regarding your discovery response.

Carol Cohoe  
Legal Assistant  
Law Offices of J. Richard Aramburu, PLLC  
*Please "REPLY ALL" to ensure that Mr. Aramburu also receives your response.*  
705 Second Ave Suite 1300  
Seattle, WA 98104-1797

Telephone (206) 625-9515 Facsimile (206) 682-1376

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