

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

PETITION FOR INTERVENTION BY
THE CONFEDERATED TRIBES AND
BANDS OF THE YAKAMA NATION

The Confederated Tribes and Bands of the Yakama Nation (“Yakama Nation”) files this Petition for Intervention pursuant to this Council’s December 15, 2022 Order Commencing Agency Adjudication in Docket No. EF-210011, RCW 34.05.443, and WAC 463-30-091. Yakama Nation has direct interests in the subject matter of the above-captioned proceeding and Yakama Nation’s ability to protect those interests will be critically impaired or impeded if Yakama Nation is not allowed to participate as a party in the adjudication.

Yakama Nation’s participation in this administrative adjudicatory process is not a waiver or partial waiver of Yakama Nation’s sovereign immunity from suit, counterclaim, discovery, or process, nor does Yakama Nation, through this petition or its participation as intervenor, alter or otherwise diminish its sovereign and Treaty-reserved rights, privileges, or remedies.

I. Identification of Petitioner

Yakama Nation is a sovereign Native Nation, federally recognized by the United States, and retains possession of all inherent sovereign rights, privileges, and remedies not expressly ceded by treaty. Treaty with the Yakama, U.S. - Yakama Nation, June 9, 1855, 12 Stat. 951 [hereinafter “Treaty of 1855”]. Yakama Nation has never ceded or otherwise relinquished its rights and interest in protecting its sacred cultural resources. Yakama Nation also expressly reserved, within the Treaty of 1855, certain rights and resources necessary to maintain Yakama

Nation and its People's way of life, customs and traditions, and economic well-being. *Id.* Among those reserved rights is the right to hunt and gather traditional foods, roots, and medicine. *Id.* Yakama Nation petitions to intervene in the above-captioned proceeding to protect its inherent and Treaty-reserved rights and the rights of its individual members.

II. Identification of Petitioner's Legal Counsel

Yakama Nation is represented in this matter by:

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III. Statement of Interest

The proposed Horse Heaven Wind Farm (the "Project") threatens significant and irreparable direct and indirect impacts to Yakama Nation and its members, including but not limited to direct adverse impacts to Yakama Nation's inherent and Treaty-reserved rights. The Project lies wholly within Yakama Nation's Treaty Territory, where Yakama Nation maintains all inherent sovereign rights not explicitly ceded within the Treaty of 1855. 12 Stat. 951-52. *United States v. Winans*, 198 U.S. 371, 381 (1905). Yakama Nation has never ceded its rights to protect and care for its cultural resources in and around the Project's proposed site. The Project also encompasses land where Yakama Nation explicitly reserved the ". . . privilege of hunting, gathering roots and berries . . . upon open and unclaimed land." 12 Stat. 953.

As documented in this Council's December 19, 2022 Draft Environmental Impact Statement ("DEIS"), the Project will likely have the following negative environmental impacts:

- Historic and Cultural Resources
 - Archaeological Resources: The Project will have direct or indirect impacts on the partial or complete loss of archeological resources and will meaningfully contribute to cumulative impacts on the partial or complete loss of archeological resources that exist from past and present actions and reasonably foreseeable developments. (“RFDs”). *Id.* at 3-149, § 3.9.2.1; *Id.* at 4-280, § 4.9.2.
 - Traditional Cultural Properties (“TCPs”): The Project will have direct or indirect impacts on the partial or complete loss of TCPs and resources and will meaningfully contribute to the cumulative impacts on the partial or complete loss of TCPs and resources that exist from past and present actions and RFDs. *Id.* at 3-155, § 3.9.4; *Id.* at 4-280, § 4.9.2.
- Vegetation
 - Priority Habitat: The Project will meaningfully contribute to cumulative impacts on the loss and degradation of Priority Habitat that exist from past and present actions and RFDs. DEIS at 3-78, § 3.5.2.4; *Id.* at 4-95, § 4.5.2; *Id.* at 4-317, Tables 4.5-12a, 4.5-12b, 4.5-12c.
 - Special Status Plant Species: The Project will meaningfully contribute to cumulative impacts on the loss and isolation of special plant species that exist from past and present actions and RFDs. *Id.* at 3-81, §3.5.3; *Id.* at 4-95, § 4.5.2; *Id.* at 4-317, Tables 4.5-12a, 4.5-12b, 4.5-12c.

- Wildlife and Habitat
 - Habitat Loss: The Project will meaningfully contribute to cumulative impacts on habitat loss that exist from past and present actions and RFDs. *Id.* at 3-88, §3.6; *Id.* at 4-147, § 4.6.2; *Id.* at 4-205, Tables 4.6-11a, 4.6-11b, 4.6-11c.
 - Barriers to Movement and Fragmentation: Project fencing will meaningfully contribute to cumulative impacts on barriers to movement and fragmentation of habitat due to the Project footprint, cumulative impacts exist from past and present actions, and RFDs. *Id.*
 - Wildlife Mortality: The Project will meaningfully contribute to cumulative impacts on wildlife mortality from vehicle collisions and turbine strikes, cumulative impacts from past and present actions and RFDs. *Id.*
 - Special Status Species: The Project will meaningfully contribute to loss of special status species from mortality, loss or degradation of habitat, cumulative impacts from past and present actions, and RFDs. *Id.* The Project will impact Pronghorn Antelope, which is of “specific importance to the Yakama Nation and is part of a regional re-introduction program.” DEIS, 3-98.
- Visual Aspects, Light and Glare
 - Visual Aspects: The Project will have direct or indirect impacts on the visual aspects as turbines will dominate the existing landscape and viewshed, and will meaningfully contribute to cumulative impacts on the

existing landscape and viewshed that exist from past and present actions and RFDs. *Id.* at 3-161, § 3.10.1; *Id.* at 4-336, § 4.10.2.

- Recreation
 - Land Use: The Project will meaningfully contribute to the cumulative impact on recreational land use, including a reduction in access to available recreational land, that exist from past and present actions and RFDs. *Id.* at 3-189, § 3.12; *Id.* at 4-430, § 4.12.2.
- Transportation
 - Traffic Volume: The Project will meaningfully contribute to cumulative impacts on increased traffic from construction and decommissioning that exist from past and present actions and RFDs. *Id.* at 3-214, § 3.14; *Id.* at 4-474, § 4.13.2.
 - Roadway Safety: The Project will meaningfully contribute to cumulative impacts on motorist safety, due to the presence and movement of heavy vehicles, that exist from past and present actions and RFDs. *Id.*

These likely impacts are a non-exclusive list of impacts to Yakama Nation’s inherent and Treaty-reserved rights that, because they have been identified in the DEIS, should be considered to have a “. . . reasonable likelihood that [they] may exist, at least to the degree necessary to support a petition for intervention.” *Council Order No. 804, Prehearing Order No. 1: Prehearing Order Granting, On Condition, Petitions for Intervention, In the Matter of Application No. 2004-01 (December 14, 2004).*

In addition to the above-listed impacts identified in the DEIS, Yakama Nation also asserts and is prepared to present evidence regarding the Project’s likely impacts that are not accurately

reflected within the DEIS and the scope of those impacts. The project will directly harm a complex and irreplaceable TCP landscape, inclusive of legendary, monumental and traditional use resources. These are living resources that, in part, represent the continued use and exercise of Yakama Nation's rights secured by the Treaty of 1855.

IV. Full Participation Requested

Yakama Nation respectfully requests to be heard and to be afforded the right to fully participate in the above-captioned proceeding. Intervention shall be allowed, at the Council's discretion, to ". . . any person having an interest in the subject matter and whose ability to protect such interest may be otherwise impaired or impeded." WAC 463-30-091. As listed in Section III above, Yakama Nation's interests extend to all legal, procedural, environmental, health, safety and socioeconomic issues related to the Project. Yakama Nation is the only entity requesting intervention that can proffer witness testimony regarding the complex and potentially grievous impacts of the Project upon Yakama Nation's cultural resources.

Yakama Nation's request includes, but is not limited to, the right to have notice and appear at all hearings or proceedings, to produce evidence and cross-examine witnesses, to be heard through counsel by written and oral argument, to be served as a party with copies of all pleadings and other materials filed with EFSEC, and to participate in any other way as may be appropriate.

Yakama Nation's participation in these proceedings will not prejudice any party to these proceedings. Yakama Nation's participation will not unduly delay these proceedings nor disrupt the Council's ability to conduct these proceedings in an orderly fashion. To the contrary, Yakama Nation's participation as a party to the adjudication, including but not limited to Yakama Nation's presentation of witness testimony by its members, is necessary to ensure that the Council's deliberation regarding the Project is fully informed.

V. Conclusion

Yakama Nation respectfully requests full participation in Docket No. EF-210011 due to the Project's likely impacts to Yakama Nation's inherent and Treaty-reserved rights and resources. Yakama Nation's unique interests in this proceeding will be critically impaired or impeded if Yakama Nation is not allowed to fully participate as a party in the adjudication.

Dated this 3rd day of February, 2023.



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Counsel for Petitioner

VERIFICATION

I, Gerald Lewis, do swear that: i) I am an agent of Petitioner Confederated Tribes and Bands of the Yakama Nation, ii) I am authorized to make this Verification on behalf of Petitioner, iii) I have reviewed the foregoing Petition for Intervention and know the contents thereof, and iv) I believe the same to be true to the best of my knowledge.

Signed at the Yakama Nation Agency in Toppenish, Washington this 3rd day of February, 2023.

Gerald Lewis

Name: Gerald Lewis

Position: Chairman, Yakama Nation Tribal Council

SUBSCRIBED AND SWORN TO before me this 3rd day of February, 2023.

Angela Spooone

Notary Public – State of Washington



CERTIFICATE OF SERVICE

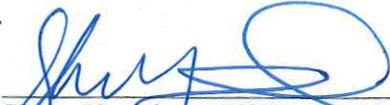
I, Shona Voelckers, certify that on February 3, 2023 I electronically filed the foregoing document with the Energy Facility Site Evaluation Council at Adjudication@efsec.wa.gov and caused the same to be transmitted via U.S. Postal Service to the following address:

Energy Facility Site Evaluation Council
ATTN: Horse Heaven Adjudication
P.O. Box 43172, Olympia, WA 98503-3172

I further certify that on February 3, 2023 I caused the foregoing document to be served upon all parties of record in this proceeding, by authorized method of service pursuant to WAC 463-30-120(3) as follows:

Party	Address
Scout Clean Energy, LLC	Tim McMahan Stoel Rives, LLP 760 SW Ninth Avenue, Suite 3000, Portland, OR 97205
Counsel for the Environment	AAG Sarah Reyneveld Attorney General's Office 800 5 th Avenue, Suite 2000 (TB/14), Seattle, WA 98104-3188
The Department of Agriculture	Washington Department of Agriculture P.O. Box 42560, Olympia, WA 98504-2560
The Department of Commerce	Washington Department of Commerce P.O. Box 42525, Olympia, WA 98504-2525
The Department of Ecology	Washington Department of Ecology P.O. Box 47600, Lacey, WA 98504-7600
The Department of Fish and Wildlife	Washington Department of Fish & Wildlife 1111 Washington St. SE, Olympia, WA 98501
The Department of Natural Resources	Washington Department of Natural Resources 1111 Washington St. SE Olympia, WA 98504
Utilities and Transportation Commission	WA State Utilities & Transportation Commission 621 Woodland Square Loop SE, Lacey, WA 98503
Benton County	Benton County Prosecuting Attorney ATTN: Ryan Brown 7211 West Okanogan Place, Building A, Kennewick, WA 99336

Dated this 3rd day of February, 2023.



Shona Voelckers, WSBA No. 50068
Legal Counsel for Petitioner