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

9 In the Matter of the Application of:

10 Scout Clean Energy, LLC, for
11 Horse Heaven Wind Farm, LLC,
12 Applicant.
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DOCKET NO. EF-210011

MOTION TO DISMISS
APPLICATION: FAILURE TO
COMPLY WITH WAC 463-60-165
REGARDING WATER SUPPLY

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18 **I. MOTION.**

19 Intervener TRI-CITIES C.A.R.E.S. (TCC) moves the Council for an order
20 dismissing the Updated Application for Site Certification (UASC) in this matter for
21 failure to provide information required by WAC 463-60-165 concerning water supply for
22 the project.

23 **II. BACKGROUND FACTS.**

24 Addressing the requirements of WAC 463-60-165, at pages 2-86 to 2-88 of the
25 UASC, the applicant discusses water supply needs for the project. As indicated on
26 page 2-87: "Construction activities are conservatively estimated to generate an
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MOTION TO DISMISS APPLICATION: FAILURE TO COMPLY
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1 average water demand of 220,000 gallons per day.” The Applicant also states that:
2 “Based on . . . the anticipated schedule presented in Section 2.15, the total
3 construction water demand for the proposed Project is estimated to be 120 million
4 gallons.” *Id.* Operational water use will include washing solar panels and the Applicant
5 indicates: “an estimated 2,025,000 gallons of water per year at a maximum would be
6 required for solar panel washing across all three solar areas.” *Id.*

7 The applicant admits that there are no public water supplies within the Project
8 Lease Boundary. UASC at 3-64. The Applicant states that: “As discussed in Section
9 2.6, water used during construction is planned to be sourced from the potential local
10 off-site suppliers close to the construction activity.”

11 In the original application, the Applicant stated that construction and operational
12 water would be supplied by “Wind Air” and it “would obtain this water from the City of
13 Kennewick.” However, in the UASC, it was indicated that Kennewick would not supply
14 municipal water outside its Urban Growth Area (UGA), and the references to “Wind Air”
15 are deleted.¹ Now the Applicant says:

16 As an alternative to the City of Kennewick, the Project may source water from
17 either another local off-site public utility, private irrigator, or wells. As an
18 example, refer to the Port of Walla Walla Availability of Water for Hire letter in
Appendix J.

19 UASC at 2-88. Appendix J indicates that water is available, but indicates that the
20 Applicant must enter into a Water Service Agreement (a contract) for water delivery.
21 There is no statement from the Applicant in the UASC nor in prefiled testimony that the
22 applicant has applied for a water service agreement or has a valid and binding contract
23 with the Port.²

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25 ¹A “Google” search fails to identify “Wind Air” as a contractor or business in Benton County or otherwise.

26 ²The Port of Walla Walla operates solely within Walla Walla County. The Wallula-Dodd Road Water
27 System is located in Walla Walla County just north of the Oregon State line and is about 38 miles, and more
28 than a one hour travel time, from the western end just south of Benton City on Webber Canyon Road.

1 **III. EFSEC REGULATIONS REQUIRE A WRITTEN CONTRACT FOR WATER**
2 **SUPPLY AS A PART OF THE REQUIRED APPLICATION.**

3 As noted above, under WAC 463-60-165 (3) Water rights and authorizations, an
4 applicant proposing to use surface or groundwater for the facility shall describe the
5 source and the amount of water required during construction and operation of the
6 energy facility and shall do one or more of the following:

- 7 (a) Submit a water use authorization or a contractual right to use water
8 supplied by a municipal corporation or other water purveyor; or
9 (b) Submit a water right permit or water right certificate issued by the
10 department of ecology for the proposed facility in an amount sufficient to
11 meet the need of the facility. If the permit and/or certificate has been
12 issued five years prior to the submittal date, the applicant shall provide
13 evidence that the water right permit is in good standing, or that the
14 certificate has not relinquished through nonuse; or

15 This regulation requires that an applicant provide a firm commitment for provision of its
16 water needs as a part of the application process.³ The applicant concedes it does not
17 have either a ground or surface water permit or certificate, much less one that provides
18 the volumes required for construction and operation of the project. In addition, the
19 application is silent on any water source or supply for providing water for fire-fighting,
20 or minimum fire flows for elements of the proposal, including the large battery energy
21 storage facilities (BESS).

22 The Applicant has not submitted “a water use authorization or a contractual right
23 to use water” from a public water purveyor. Moreover, the applicant has apparently not
24 even submitted an application to any water purveyor (the Port of Walla Walla or
25 otherwise) for a “contractual right to use water,” which would be a water service
26 agreement. The Applicant’s prefiled testimony is silent on this subject.

27 Testimony indicates this project has been under development since 2016, with
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29 ³If an applicant intends to use surface or ground water, Subsection 3(b) similar requires that the applicant
30 “submit a water right permit or water right certificate issued by the department of ecology for the proposed
31 facility in the amount sufficient to meet the need of the facility.” Vague assurances of future water service
32 do not suffice for either a public water purveyor or a ground or surface water source.

1 the original ASC filed in February, 2021, nearly two and half years ago. The Applicant
2 has had more than enough time to survey, investigate, and secure the minimum water
3 supply necessary for construction, operation or fire flows for its Project. .

4 The Project site is in an arid locale (less than nine inches of rain a year) with
5 limited sources of ground or surface water. Moreover, the project is massive, with wind
6 turbines stretching 25 miles along the Horse Heaven Hills. In light of the foregoing, a
7 water source capable of meeting Project water supply needs is an essential element of
8 this proposal. The UASC should be dismissed, or suspended, until the applicant can
9 demonstrate it can meet the water supply requirements of WAC 463-60-165.

10 **IV. CONCLUSION AND REQUEST FOR RELIEF.**

11 EFSEC regulations are clear: an applicant "shall . . . submit a water use
12 authorization or a contractual right to use water supplied by a municipal corporation or
13 other water purveyor. . . ." WAC 463-60-165(3). The Applicant has had more than two
14 years to provide evidence of a contractual right to water necessary for the project.
15 Accordingly, the UASC should be dismissed for failure to comply with the regulation.

16 Respectfully submitted this 7th day of July, 2023.



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