

**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

ORDER DENYING YAKAMA NATION
MOTION TO ENFORCE
PROTECTIVE ORDER

Procedural Background and Party Positions:

On February 22, 2024 the Confederated Tribes and Bands of the Yakama Nation (“Yakama Nation”) filed a *Motion to Enforce Protective Order*. The Yakama Nation alleged “it appears that the Applicant provided sensitive and confidential wildlife data to the Seattle Times in violation of” the Protective Order issued on May 24, 2023. The Yakama Nation referred to an article published by the Seattle Times on February 21, 2024 regarding the Horse Heaven Wind Farm Project and a map purporting to show approximate locations of historic ferruginous hawk nests near the proposed Project. The Seattle Times listed Scout Clean Energy as one of its sources for the article and map. According to the Yakama Nation, the Applicant had “seemingly violated” the terms of the Protection Order by disclosing confidential information regarding ferruginous hawk nests to the Seattle Times.

On March 4, 2024, Scout Clean Energy, LLC (Scout or Applicant), filed its *Opposition* to the Yakama Nation *Motion*. Scout’s *Opposition* argued that the Protective Order does not apply in this situation because the map the Applicant provided to the Seattle Times was not presented or considered during the adjudication. Scout also argued that the map it provided to the Seattle Times was not confidential because of its scale. Finally, Scout contends that the map published in the Seattle Times article was independently created by Seattle Times staff and did not disclose confidential information due to its scale as well as the errors and inaccuracies it contained.

On March 15, 2024, the Yakama Nation filed its *Reply*. The Yakama Nation argues that the Protective Order covers nest locations because RCW 42.56.430(2)(a) protects this type of data. The Yakama Nation further contends Scout’s consultant violated the sensitive information release agreement he signed with the Washington Department of Fish and Wildlife (WDFW). Finally, the Yakama Nation raises the impact on future disclosures of sensitive information if the Protective Order issued in this adjudication is not broadly construed and strictly enforced.

Discussion:

The Protective Order issued in this matter addressed submissions of “confidential information” designated as such by a party during the course of the adjudication. Much of the wildlife data submitted and discussed during the adjudication was marked and considered as confidential.

Information regarding the location of ferruginous hawk nests contained in witness testimony and supporting exhibits was afforded confidential status and discussed in closed hearing sessions.

The Seattle Times contacted Scout for information regarding the potential effect on the Project if the Council required a 2-mile buffer zone around historical ferruginous hawk nest locations. Scout provided a map created by its biologist consultant illustrating such a buffer's impact on the Project's proposed wind turbine locations. This map's scale was 1:1,600,000, showing only very generalized location information for both the wind turbines and historical hawk nests.

Yakama Nation did not identify any specific document submitted, marked as an exhibit, or used during the adjudication that was disclosed to the Seattle Times. The Council's own review of the adjudicative record did not identify any map resembling that published by the Seattle Times or what the Applicant provided to the newspaper. Per Scout's *Opposition*, the map it provided to the Seattle Times was not submitted during the course of the adjudicative proceeding.

The Protective Order applies only to confidential information submitted during the adjudication. The map provided by Scout to the Seattle Times is not part of the adjudicative record. If that map discloses confidential information about historical nest sites, WDFW may choose to initiate its own action to enforce the Sensitive Fish and Wildlife Information Release agreement under which Scout's consultant apparently obtained the nest location data. The question of whether Scout's consultant breached the provisions of his release agreement with WDFW is not for EFSEC to decide.

The Council finds the Protective Order does not apply to this situation. We do not reach any other arguments presented in Scout's *Opposition* to the *Motion* or the Yakama Nation's *Reply*.

Decision:

The Protective Order issued during the adjudication does not apply to the concerns raised in the Yakama Nation's *Motion to Enforce Protective Order*. Therefore, the *Motion* is **DENIED**.

DATED and effective at Olympia, Washington, on the 25th day of March, 2024.

WASHINGTON ENERGY FACILITY
SITE EVALUATION COUNCIL



Adam E. Torem, Administrative Law Judge