



Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

May 24, 2023

Sent via Electronic Mail

Adam Torem, Administrative Law Judge
ENERGY FACILITY SITE EVALUATION COUNCIL
adamtorem@writeme.com

Re: Scope of Protective Order in Docket No. EF-210011

Dear Judge Torem:

I write in response to your verbal request during the May 2, 2023 Prehearing Conference in EF-210011 for a letter regarding the scope of your pending Protective Order. Pursuant to WAC 463-30-190 and RCW 34.05.446, the presiding officer may enter protective orders which are enforceable by the agency under RCW 34.05.578.

Counsel for the Confederated Tribes and Bands of the Yakama Nation (“Yakama Nation”) respectfully requests a protective order that includes the following protections of all written and verbal information provided by witnesses and legal counsel for any party throughout the course of all proceedings in Docket No. EF-210011:

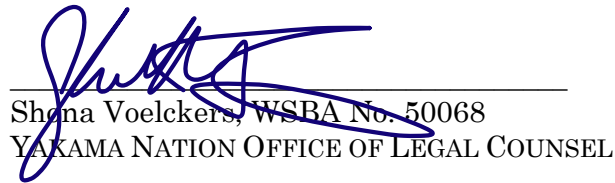
1. **Scope.** Protected materials shall include: all pre-filed testimony, citations to pre-filed testimony, any oral testimony during the hearing, hearing transcripts containing testimony regarding Traditional Cultural Property / Traditional Cultural Places¹ (“TCP”) impacts or other culturally sensitive information, and any decision by the Energy Facility Site Evaluation Council (“EFSEC”), which discusses or cites to TCP impacts or other culturally sensitive information.
2. **Publishing.** EFSEC shall be prohibited from publicly publishing any materials related to Docket EF-210011 that discuss or cite to TCP impacts or other culturally sensitive information.

¹ While RCW 42.56.300(3)(c) includes an exemption from the Public Records Act for materials relating to traditional cultural places, Yakama Nation’s Cultural Resource Program has developed a methodology for identifying and evaluating impacts to Yakama Nation’s Traditional Cultural Properties that will be discussed in depth by Yakama Nation’s witnesses. For purposes of the protective order, TCPs should be construed broadly to invoke all available protections regarding sensitive information.

3. **Dissemination.** Dissemination of any materials that discuss or cite to TCP impacts or other culturally sensitive information shall be restricted, with the protections of all applicable public records regulations. This shall include a prohibition against any sharing of such information by EFSEC, EFSEC staff, and all parties to the adjudication in Docket No. EF-210011 with any person or entity that is not a party.

In addition to the above-listed parameters, all portions of the “live” hearing in Docket EF-210011 that will contain testimony or discussion of TCPs or other culturally sensitive information should be conducted as a closed record hearing. Under the Administrative Procedure Act, hearings open to public observation may nevertheless be closed under protective orders entered by a presiding officer. RCW 34.05.449(5). Counsel for Yakama Nation requests that any and all portions of the EF-210022 hearings that involve witness testimony, by any party, regarding culturally sensitive information or TCPs be conducted as a closed record hearing and exempt from public disclosure. When transcripts from any such hearing are published, public copies of those transcripts should also be redacted accordingly.

Sincerely,



Shona Voelckers, WSBA No. 50068
YAKAMA NATION OFFICE OF LEGAL COUNSEL