

Concise Explanatory Statement  
(RCW 34.05.325.6a)

Of

Chapter 463-61 WAC – Electrical Transmission  
Facilities



Washington State  
Energy Facility  
Site Evaluation Council

October 2008



## Executive Summary

The legislature through Substitute House Bill (SHB) 1037<sup>1</sup> amended Chapter 80.50 RCW to allow developers of electrical transmission facilities that were 115 kilovolts (kV) to “opt in” to the Energy Facility Site Evaluation Council’s (EFSEC) review process. SHB 1037 also prescribed a “preapplication” process to require electrical transmission facility developers and local jurisdictions to work together to identify the corridors where the transmission facility would be located.

EFSEC’s enabling legislation is Chapter 80.50 RCW. The legislation authorizing the council is unique to state government in that it grants sole responsibility for siting certain energy facilities to the Council. This includes the provision that EFSEC preempts the authorities of both state and local entities when it comes to siting energy facilities under its jurisdiction. Within Chapter 80.50 RCW certain types of facilities are allowed to choose to come under EFSEC’s authority to address environmental and ecological and related impacts resulting from siting energy facilities. RCW 80.50.040(1) gives EFSEC the authority to adopt rules to carry out the provisions of the law.

EFSEC filed a Preproposal Statement of Inquiry (CR-101) on September 12, 2007 to initiate this rulemaking. In October 2007 EFSEC convened a stakeholder group consisting of representatives of local government and utilities to discuss development of the rule. Several draft versions of a rule were developed and reviewed by the stakeholders. The Electrical Transmission Facility rule development was discussed at EFSEC’s monthly meetings.

On August 5, 2008 EFSEC filed Form CR 102 Proposed Rulemaking with the Code Reviser Office with the September 9, 2008 public comment hearing in Olympia. A notice of proposed rulemaking was sent to EFSEC’s rulemaking mail list and extensive list of those who follow EFSEC issues. A deadline of 5:00 p.m. on September 9, 2008 was set for all comments.

The council held a public comment hearing during its September 9, 2008 monthly meeting. No comments were made at the public hearing. Two written comments were received by the September 9, 2008 deadline.

Based on the comments and Council review no substantive changes to the proposed rules were made.

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<sup>1</sup> Chapter 325, Laws of 2007

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## Authority to Adopt Rules

The Washington State Energy Facility Site Evaluation Council (EFSEC or Council) is authorized in Chapter 80.50 RCW<sup>2</sup>. RCW 80.50.040 (4) gives the council the power to “To prescribe the form, content, and necessary supporting documentation for site certification...” and “To adopt, promulgate, amend, or rescind suitable rules and regulations, pursuant to chapter 34.05 RCW, to carry out the provisions of this chapter, and the policies and practices of the council in connection therewith.”

RCW 80.50 was originally enacted in the 1970’s (1970 ex.s. c 45 § 2) and has been amended several times over the years including amendments in 2007, 2006, 2004, 2001, 1995, 1977 and 1975-76.<sup>3</sup> The council as it exists today is the result of legislation and the operating rules and regulations it established during this period.

RCW 34.05.328 requires state agencies adopting “significant legislative rules” to prepare what is known as a Concise Explanatory Statement. This is intended to provide a clear understanding of rules proposed for adoption by providing sufficient documentation as to the extent of the rules revisions so as to “persuade a reasonable person that the determinations are justified.”<sup>4</sup> Although EFSEC is not one of the agencies required by RCW 34.05.328(5) to go through this process to document its rule revisions, it determined that the extent of the changes being considered warranted preparing this document.

The legislation authorizing EFSEC is unique to state government in that it grants sole responsibility for siting certain energy facilities to the council. This includes the provision that EFSEC legislation preempts the authorities of both state and local entities when it comes to siting energy facilities under its jurisdiction.<sup>5</sup> EFSEC enabling legislation states clearly the purpose of the council and its powers and responsibilities.

**RCW 80.50.010 Legislative finding--Policy--Intent.** The legislature finds that the present and predicted growth in energy demands in the state of Washington requires the development of a procedure for the selection and utilization of sites for energy facilities and the identification of a state position with respect to each proposed site. The legislature recognizes that the selection of sites will have a significant impact upon the welfare of the population, the location and growth of industry and the use of the natural resources of the state.

It is the policy of the state of Washington to recognize the pressing need for increased energy facilities, and to ensure through available and reasonable methods, that the location and operation of such facilities will produce minimal adverse effect on the

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<sup>2</sup> RCW, Revised Code of Washington

<sup>3</sup> 2007 c 325 § 1, 2007 c 325 § 2, 2007 c 325 § 3, 2007 c 325 § 4, 2006 c 205 § 1, 2006 c 196 § 1, 2004 c 224 § 7; 2001 c 214 § 3; 1995 c 69 § 1; 1977 ex.s. c 371 § 2; 1975-'76 2<sup>nd</sup> ex.s. c 108 § 30.

<sup>4</sup> RCW 34.05.328(2)

<sup>5</sup> RCW 80.50.110

environment, ecology of the land and its wildlife and the ecology of state waters and their aquatic life.

It is the intent to seek courses of action that will balance the increasing demands for energy facility location and operation in conjunction with the broad interests of the public. Such action will be based on these premises:

- (1) To assure Washington state citizens that, where applicable, operational safeguards are at least as stringent as the criteria established by the federal government and are technically sufficient for their welfare and protection.
- (2) To preserve and protect the quality of the environment; to enhance the public's opportunity to enjoy the esthetic and recreational benefits of the air, water and land resources; to promote air cleanliness; and to pursue beneficial changes in the environment.
- (3) To provide abundant energy at reasonable cost.
- (4) To avoid costs of complete site restoration and demolition of improvements and infrastructure at unfinished nuclear energy sites, and to use unfinished nuclear energy facilities for public uses, including economic development, under the regulatory and management control of local governments and port districts.
- (5) To avoid costly duplication in the siting process and ensure that decisions are made in a timely fashion and without unnecessary delay. [2001 c 214 § 1; 1996 c 4 § 1; 1975-'76 2nd ex.s. c 108 § 29; 1970 ex.s. c 45 § 1.]

The full extent of EFSEC authority to adopt rules is described in:

**80.50.040 Energy facility site evaluation council--Powers enumerated.**

The council shall have the following powers:

- (1) To adopt, promulgate, amend, or rescind suitable rules and regulations, pursuant to chapter 34.05 RCW, to carry out the provisions of this chapter, and the policies and practices of the council in connection therewith;
- (2) To develop and apply environmental and ecological guidelines in relation to the type, design, location, construction, and operational conditions of certification of energy facilities subject to this chapter;
- (3) To establish rules of practice for the conduct of public hearings pursuant to the provisions of the Administrative Procedure Act, as found in chapter 34.05 RCW;
- (4) To prescribe the form, content, and necessary supporting documentation for site certification;
- (5) To receive applications for energy facility locations and to investigate the sufficiency thereof;
- (6) To make and contract, when applicable, for independent studies of sites proposed by the applicant;
- (7) To conduct hearings on the proposed location of the energy facilities;
- (8) To prepare written reports to the governor which shall include: (a) a statement indicating whether the application is in compliance with the council's guidelines, (b) criteria specific to the site and transmission line routing, (c) a council recommendation as to the disposition of the application, and (d) a draft certification agreement when the council recommends approval of the application;

- (9) To prescribe the means for monitoring of the effects arising from the construction and the operation of energy facilities to assure continued compliance with terms of certification and/or permits issued by the council pursuant to chapter 90.48 RCW or subsection (12) of this section: PROVIDED, that any on-site inspection required by the council shall be performed by other state agencies pursuant to interagency agreement: PROVIDED FURTHER, that the council may retain authority for determining compliance relative to monitoring;
- (10) To integrate its site evaluation activity with activities of federal agencies having jurisdiction in such matters to avoid unnecessary duplication;
- (11) To present state concerns and interests to other states, regional organizations and the federal government on the location, construction, and operation of any energy facility which may affect the environment, health, or safety of the citizens of the state of Washington;
- (12) To issue permits in compliance with applicable provisions of the federally approved state implementation plan adopted in accordance with the Federal Clean Air Act, as now existing or hereafter amended, for the new construction, reconstruction or enlargement or operation of energy facilities: PROVIDED, that such permits shall become effective only if the governor approves an application for certification and executes a certification agreement pursuant to this chapter: AND PROVIDED FURTHER, that all such permits be conditioned upon compliance with all provisions of the federally approved state implementation plan which apply to energy facilities covered within the provisions of this chapter; and
- (13) To serve as an interagency coordinating body for energy-related issues.

The legislative intent established in RCW 80.50.010 and the fact that the legislature, throughout RCW 80.50 and specifically in RCW 80.50.040, used the broadest possible terms to describe the powers and duties conveyed to EFSEC is the basis of the rule-making authority granted to EFSEC. As one example, the broad language used in RCW 80.50.040(2) indicates that it is not the legislature's intent to enumerate every possible environmental concern that it believes EFSEC should address in the siting process.

To fulfill its mandate, EFSEC is required to establish an array of procedural and operational rules to carry out legislative intent, in particular the charge to“

- balance the increasing demands for energy facility location and operation in conjunction with the broad interests of the public<sup>6</sup>;
- adopt, promulgate, amend, or rescind suitable rules and regulations, pursuant to chapter 34.05 RCW, to carry out the provisions of this chapter, and the policies and practices of the council<sup>7</sup>;
- develop and apply environmental and ecological guidelines in relation to the type, design, location, construction, and operational conditions of certification of energy facilities.<sup>8</sup>

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<sup>6</sup> RCW 80.50.010.

<sup>7</sup> RCW 80.50.040(1).

<sup>8</sup> RCW 80.50.040(2).

All of these dictate the need for EFSEC to promulgate and from time to time update or propose new rules for the purpose of implementing the provisions of Chapter 80.50 RCW. With the promulgation of RCW 80.50.330 rules were needed to set a preapplication process for the siting of Electrical Transmission Facilities.

The rules under which EFSEC currently operates and the results of this rule review process are in direct response to the requirements of Chapter 80.50 RCW. These include establishing:

- (1) Agency operational and public record-handling rules per RCW 80.50.040(1) “To adopt, promulgate, amend, or rescind suitable rules and regulations, pursuant to chapter 34.05 RCW, to carry out the provisions of this chapter, and the policies and practices of the council...”;
- (2) Terms and conditions for operating energy facilities and establishing performance standards and mitigation requirements per RCW 80.50.040(2) “To develop and apply environmental and ecological guidelines in relation to the type, design, location, construction, and operational conditions of certification of energy facilities...”;
- (3) Requirements for public meetings per RCW 80.50.040(3) “To establish rules of practice for the conduct of public hearings pursuant to the provisions of the Administrative Procedure Act, as found in Chapter 34.05 RCW...”;
- (4) Guidelines for Applications for Site Certification per RCW 80.50.040(4), “To prescribe the form, content, and necessary supporting documentation for site certification...”;
- (5) Review of applications for completeness and if necessary, hiring consultants to conduct necessary studies and report on proposals to site energy facilities per RCW 80.50.040(5-6), “To receive applications for energy facility locations and to investigate the sufficiency thereof and to make and contract, when applicable, for independent studies of sites proposed by the applicant...”;
- (6) Process and procedures for conducting adjudicative hearings on proposed energy facilities per 80.50.040(7), “To conduct hearings on the proposed location of the energy facilities...”;
- (7) Preparation of recommendations to approve or deny site certification for approval by the governor per RCW 80.50.040(8), “To prepare written reports to the governor...”;
- (8) Conducting compliance monitoring and determining compliance per 80.50.040(9), “To prescribe the means for monitoring of the effects arising from the construction and the operation of energy facilities to assure continued compliance with terms of certification and/or permits issued by the council...”;
- (9) Rules consistent with and comparable to the requirements of other state and federal agencies per RCW 80.50.040(10), “To integrate its site evaluation activity with activities of federal agencies having jurisdiction in such matters to avoid unnecessary duplication”;
- (10) Coordination with and consideration of concerns over siting of energy facilities with state and interstate organizations per RCW 80.50.040(11), “To present state concerns and interests to other states, regional organizations, and the federal government on the location, construction, and operation of any energy facility which may affect the environment, health, or safety of the citizens of the state of Washington; and
- (11) Maintain rules pertaining to the issuance of permits required under the Federal Clean Air Act and National Pollution Discharge Elimination System per RCW 80.50.040(12), “To

issue permits in compliance with applicable provisions of the federally approved state implementation plan adopted in accordance with the Federal Clean Air Act and Clean Water Act.”

- (12) Develop a preapplication process for electric transmission facilities per RCW 8050.330(1). “...the council shall conduct a preapplication process pursuant to rules adopted by the council to govern such process, to receive applications as prescribed in RCW 80.50.071, and conduct public meetings pursuant to RCW 80.50.090.”

## **Goals and Objectives of Rulemaking**

The council is directed to provide a balance between increasing demands for energy, location of energy facilities, impacts on the environment and the broad interests of the public by providing and clear, definitive and understandable processes, procedures and requirements when siting new, expanding, or changing existing energy facilities. With the enactment of SHB 1037, rules for electrical transmission facilities, in particular for the preapplication process, development of this rule regarding electrical transmission facilities will enable a better and more clear process for: 1. initial consultation prior to a preapplication process, 2. negotiating and developing agreements between local jurisdictions and developers during a preapplication process, 3. a process public meetings, and 4. the requirements for submitting applications for electrical transmission facilities.

The proposed rule will provide the necessary guidance for preapplicants and local jurisdictions to ensure the needs of each are met and for protection of public health and safety and the environment.

It is the belief of the council that these goals can be achieved by the adoption of this rule for electrical transmission facilities at this time.

## **Basis for Developing Rule – Why Are We Doing This**

The Energy Facility Site Evaluation Council as it exists today was created in 1970. While the statute (Chapter 80.50 RCW) and various sections of the Administrative Procedure Act (RCW 34.05) have been amended, the council continues to find through time where existing rules may be changed to streamline and expedite its siting and compliance monitoring without impacting its ability to carry out the intent of Chapter 80.50 RCW.

The passage of SHB 1037 in 2007 allowed opt in of electrical transmission facilities, implementation and instituted a preapplication process prior to any submission of an application for site certification. SHB 1037 explicitly had an expectation that EFSEC would develop rules to govern the process<sup>9</sup>. With this rulemaking EFSEC is fulfilling that expectation.

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<sup>9</sup> Codified as RCW 80.50.330(1)

## ***Council Action to Prepare Final Draft of Proposed Rules***

The rulemaking process began with the issuance of a CR 101 in September 2007. Also in September a stakeholder process began when EFSEC identified persons representing local government and utilities that might help in development of the rules associated with SHB 1037. The first stakeholder meeting was held in October 2007 to identify and outline the issues to be addressed by these rules. Based on the discussion at that first stakeholder meeting a first draft of the rules were prepared by EFSEC staff and sent to the stakeholders for review and comment. Based on the comments received a second draft was prepared and sent for stakeholder review in March 2008.

As second stakeholder meeting was held in April 2008 to discuss the second draft rule. In June 2008 the EFSEC members reviewed a third draft rule sent out for stakeholder review for final comment prior to issuance of a CR 102.

Using comments from the third draft, a final draft rule was prepared by EFSEC staff and presented to the EFSEC members at its July monthly meeting. At that meeting EFSEC authorized the issuance of a CR 102 based on the final draft rule.

## ***Final Council Rule Adoption***

The Proposed Rule-making notice, Form CR 102, was filed with the Coder Reviser Office on August 5, 2008. That notice established a comment period to end at 5:00 p.m. on September 9, 2008 and public hearing at 2:00 p.m. on September 9, 2008. An October 14, 2008 was noticed for the intended rule adoption date. A notice of proposed rulemaking was sent to EFSEC's rulemaking mail list and extensive list of those who follow EFSEC issues.

The Council held a formal public hearing on the draft rules on September 9, 2008 in Olympia beginning at 2:00 P.M. The Council did not receive any oral comments at the hearing. All written comments were required to be submitted by 5:00 p.m. on September 9, 2008. The Council received 2 emails commenting on the proposed rule revisions. One email contained only one comment and the second email contained a list of seven comments.

EFSEC staff prepared responses to the two comment emails for Council member consideration. Those responses to the comments were distributed to the Council members prior to their October 14, 2008 meeting. All comments were considered by the Council. There were some suggestions for changes that the council did not agree with and were not accepted by the council. The Council approved minor clarifying changes to the rule and authorized issuance of a CR 103.

The council wishes to thank everyone who has been involved in this rule revision process for their time, effort and comments on these rules. Without the stakeholder process and the many individuals that have been involved these rules could not have been revised so extensively and so thoroughly.

### ***Proposed Final Rule***

Following the formal public hearing and public comment period, the council found no compelling reason to make substantive revisions to the proposed rule. A few grammatical and clarifications corrections were made.

Throughout the rule development period, the council provided opportunity for interested parties to both participate in the rule revision process and to provide oral and or written comments for council consideration. In large part this involvement provided the basis for the council's acceptance of the changes to the rules.

## **Rulemaking Is Justified, Beneficial and Best Alternative**

### ***Justification***

All agencies of state government are required to adopt operating rules. The rules of EFSEC are contained in Title 463 WAC. It is essential that the intent of legislative action be presented in a manner so as to be clearly understood, fairly applied and enforced consistently. To do so without adopting rules would be a recipe for chaos, uncertainty and unevenly applied requirements for siting energy facilities. The rulemaking process affords interest groups and the public the opportunity to shape how the programs of government are implemented so as to ensure consistency and fairness in their application.

The council gains its authority and powers from Chapter 80.50 RCW. The authority granted to the council is for the most part described in Chapter 80.50.040 RCW. Specifically this provides the overall direction to the council including the promulgation of suitable rules to carry out the intent of the law and the policies and practices of the council.

In addition to the directives of Chapter 80.50 RCW, EFSEC and all other state agencies must comply with the provisions of RCW 34.05.328(1) and (2). Where Chapter 80.50 RCW gives the council the authority to adopt rules, Chapter 80.50 RCW provides the process and specifies that in instances of significant rules, additional steps need to be taken. This is done so as to fulfill a requirement to the citizens of the state that public health and safety as well as the natural environment are protected. It is essential that the authorities granted to state agencies by the legislature be easily understood and that they be implemented in a fair and uniform manner. In 1995, the legislature enacted laws to ensure that both the citizens and environment of the state are protected without stifling legitimate activities and responsible economic growth<sup>10</sup>. In doing so, it is intended that agencies when adopting rules ensure that;

- they are accountable to the legislature;
- the rules are justifiable and reasonable;
- regulatory efforts be coordinated and not overlapping or contradictory;
- members of the public have a meaningful role in their development;
- the public has an opportunity to challenge administrative rules; and
- cooperative partnerships exist between the agencies and the regulated public.

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<sup>10</sup> Findings and intent of 34.05.328 RCW.

The principal purpose of the council's undertaking rulemaking at this time is to update and refine application review and SCA amendment operating procedures. The rulemaking process is established to provide agencies with open and meaningful discussion and review of proposed rules.

The council did not prepare a Small Business Economic Statement because over the past 30 years, the businesses that have come to EFSEC for the siting and operation of large energy facilities that the Energy Facility Site Evaluation Council's rules have all had more 50 employees. EFSEC currently regulates or is conducting siting reviews for the following companies: Energy Northwest (1,054 employees), Invenenergy (130) employees, Horizon Energy (102) employees), Puget Sound Energy (2,400 employees), BP (700 local and 100,000 world-wide employees), and Suez Energy has thousands of employees. EFSEC does not expect small business to enter into this industry or be impacted by its rules.

This explanatory statement describes the rule revisions made by the council and what those rule revisions will mean once they are adopted. While the revisions that are being proposed are administrative in nature, all revisions and the administrative changes will be described. The process and steps that the council has followed in this rulemaking effort are described in this document.

### ***Consequences of Not Adopting Rules***

SHB 1037 provides for rulemaking regarding electrical transmission facilities. It institutes a preapplication process and states "the council shall conduct a preapplication process pursuant to rules adopted by the council to govern such process, receive applications as prescribed in RCW 80.50.071, and conduct public meetings pursuant to RCW 80.50.090."

Not adopting the rule would not only counter the requirements of SHB 1038 but would leave developers of electrical transmission facilities without guidance in the process that the legislature set up. This rule sets guidelines for this new process. Without the rule electrical transmission facility developers, local governments, and EFSEC wouldn't have a structure to work from. This could lead to a longer, more protracted preapplication and application review process. Local governments are very concerned that they have the ability to participate in development of where these electrical transmission facilities will be located in their jurisdictions. They want to ensure that these types of facilities are developed according to local needs and conditions, and that they are active participants. This rule outlines the roles, responsibilities, and timelines for that participation.

### **Consistency with State and Federal Law**

The proposed adoption of Chapter 463-61 WAC is consistent with state laws. In particular they are consistent with Chapter 80.50 RCW, EFSEC enabling statute and SHB 1037.

### ***The Best Alternative***

The rulemaking process that the council has undergone is the appropriate approach to establish a preapplication procedure for and review of electrical transmission facilities. The

decision to consider Chapter 34.05 RCW, Significant Legislative Rules and to prepare a concise Explanatory Statement of the proposed addition to Title 463 WAC is to provide a full understanding of the complete Energy Facility Siting requirements of the state of Washington. A complete description of all the addition and change, its intended purpose and the expected outcome will provide a basis for determining if the rule meets its intended purpose of creating clear, concise, and streamlined procedural requirement.

## **What New Rules Will Mean (RCW 34.05.328)**

### ***Effect of Adopting Rule – Greater Understanding***

The Energy Facility Site Evaluation Council was created to provide a one-stop siting and approval entity for persons wishing to construct energy facilities in Washington State. The intent of its authorization was to “ease the burden” of applying for and receiving approval to construct and operate an energy facility. In the period since EFSEC was created there have been several amendments to Chapter 80.50 RCW, the EFSEC enabling legislation. There have also been a number of legislative and administrative changes that have had an impact on the types of facilities and manner in which the council considers proposals for siting energy facilities.

With the enactment of SHB 1037 EFSEC now is able to receive application for electrical transmission facilities. This new rule requires those applications to be formatted and contain the information required of all applications to EFSEC for its one-stop review process.

However prior to receiving an application this rule outlines a preapplication process to ensure that local jurisdictions, where the facilities is proposed to be located, have had an opportunity to discuss and negotiate with the proponent exactly where the facility will be located. This preapplication process should provide more certainty to the local governments during EFSEC’s application review because of their prior involvement. In most cases this should speed up EFSEC’s application review because the project proponent and local jurisdictions have had time to work out any differences regarding facility location and other issues that could arise.

## Response to Comments

Below is a side-by-side comparison of the comments and EFSEC’s response to those comments.

Comment	Response
<p><b>William Appell</b>  <b>By Email, September 2, 2008</b></p> <p>New Section 463-61-030 ("Applicability") all references to "applicant" and to "preapplicant" are in the plural, whereas all other references throughout the remaining new sections are in the singular. This could create confusion (or opportunity); are the new sections only applicable if there are multiple preapplicants or applicants?</p>	<p>Corrected by using “(s)” to indicate either plural or singular in 030(1)(b) and (c).</p>
<p><b>Puget Sound Energy</b>  <b>Ken Johnson</b>  <b>By Email, September 9, 2008</b></p> <p><u>WAC 463-61-050(10) PREAPPLICATION PROCESS</u></p> <p><b>PSE Comment 1:</b>  <u>Revise paragraph (4<sup>11</sup>):</u>            (4) <u>To the extent known</u>, a description of the proposed transmission line structures and their dimensions.  <u>Reason:</u> Specific details of structures are usually not known until the later stages of project development. In fact, the details may depend in part on input derived from the permitting process. This change allows the preapplicant to provide the information that is available at the time of the preapplication.</p> <p><b>PSE Comment 2.</b>  <u>Revise paragraph (10):</u>            (10) A <del>structured</del> negotiation process acceptable to EFSEC between the preapplicant and the cities, towns, and/or counties through which the proposed transmission line corridor will be located</p>	<p><b>PSE Comment 1.</b>            Who would determine to what extent is known? If more specifics are to be known later, a brief statement could be included in the description noting that more detail will be known at a later time. No change to the proposed language is needed.</p> <p><b>PSE Comment 2.</b>            The word “structured” does not add clarity to this section and was deleted.</p>

<sup>11</sup> This appears to be 463-61-050(2) not (4)

Comment	Response
<p>except where the cities, towns, and/or counties have designated transmission corridors through their land use plans or zoning ordinances.</p> <p><u>Reason:</u> The meaning of “structured negotiation process” is not clear. If “structured” were deleted, the applicant would be required to propose a “negotiation process.” The concept of a negotiation process is generally understood and meets the objective of the proposed rule. On the other hand, if “structured” is left in the rule, it is likely to be the cause of unproductive controversy over its meaning.</p> <p><b>PSE Comment 3.</b>  <u>Revise paragraph (10)</u>  Insert criteria to guide EFSEC approval of proposed negotiation process</p> <p><u>Reason:</u> The proposed rule requires submission of a negotiation process that EFSEC finds “acceptable.” All participants in the pre application process would find it helpful to have an idea of what is required for EFSEC to find a proposed negotiation process to be acceptable. Moreover, criteria would be helpful to EFSEC in guiding its review and decision on a proposed process.</p>	<p><b>PSE Comment 3.</b>  The criteria seem to be implicit in the rule. One of primary purposes of this chapter is to have a proponent of an energy transmission facility work with counties, cities and/or towns where the facility might be located. Any negotiation process not involving those entities impacted or somehow is biased in its approach is not acceptable to EFSEC. No change to the language is needed.</p>

Comment	Response
<p><b><u>WAC 463-61-070(2) AND WAC 463-61-100(1)(C) SINGLE STANDARD FOR IMPASSE IN NEGOTIATIONS</u></b></p> <p><b>PSE Comment 4.</b>  <u>Revise WAC 463-61-070(2):</u>  (2) If EFSEC determines that negotiations as required in WAC 463-61-080 have failed <del>and no corridor plan can be agreed to by the preapplicant and affected cities, towns, and counties,</del> EFSEC shall consider the applicant's proposed corridor and transmission facilities consistent with RCW 80.50.090 and 80.50.100 taking into consideration the positions of the preapplicant and the affected cities, towns or counties.</p> <p><b>PSE Comment 5.</b>  <u>Revise WAC 463-61-100(1)(c):</u>  (c) Negotiations under WAC 463-61-080 have been conducted but the preapplicant, cities, towns, and/or counties have not agreed on a corridor and EFSEC has determined that <del>additional negotiations are not necessary have failed.</del></p> <p><u>Reason:</u> The proposed rule sets out two different standards for a negotiating impasse: (1) EFSEC determines that negotiations “have failed and no corridor plan can be agreed to” and (2) EFSEC determines that additional negotiations “are not necessary.” The two standards could lead to contradictory results: For example, one could assert that negotiations are particularly necessary in just those circumstances where the parties have not agreed. Thus, satisfying one test (lack of agreement on a plan) may mean that the other test (negotiation not necessary) cannot be satisfied. A single standard should be used throughout the rule</p>	<p><b>PSE Comment 4.</b>  The suggested strikeout language is duplicative and was taken out of this section.</p> <p><b>PSE Comment 5.</b>  EFSEC agrees that this proposed wording change clarifies the intent of this section. The subsection was changed as suggested.</p>

Comment	Response
<p><b><u>WAC 463-61-060(2) Notice of Preapplication</u></b></p> <p><b><u>PSE Comment 6.</u></b>  <u>Revise subsection (2):</u>  (2) The notice shall contain a brief summary of the proposed project, the preapplication and application process and tentative schedules, the locations where copies of the notice <del>of intent</del> are located in each town, city and county traversed by the proposed transmission route and the address of a web site containing the proposed project information.  <u>Reason:</u> The subject of this subsection is “notice” of the preapplication, not notice of intent. “Notice of intent” is a new phrase not used elsewhere in the rule. Its use in this subsection would cause confusion.</p> <p><b><u>WAC 463-61-080(2) Reasonable Time for Negotiations</u></b></p> <p><b><u>PSE Comment 7.</u></b>  <u>Revise paragraph (2):</u>  (2) If after sixty days of negotiations between the preapplicant and affected cities, towns, and/or counties, no corridor has been agreed upon, the preapplicant together with an affected city, town, or county may request EFSEC extend the time of negotiations by a period of time that the preapplicant and city, town, and/or county have agreed upon. <u>If such a joint request is not made, the negotiations shall be deemed to have failed.</u>  <u>Reason:</u> The statute requires negotiation “for a reasonable time” as provided by rule. RCW 80.50.330(3)(a). The proposed rule does not explicitly define a reasonable time but it implies that the process moves forward after 60 days unless the parties ask for additional time for negotiation. This result should be made explicit.</p>	<p><b><u>PSE Comment 6.</u></b>  EFSEC agrees with the comment and the words “of intent” was deleted from this subsection.</p> <p><b><u>PSE Comment 7.</u></b>  EFSEC agrees that the proposed new language clarifies the intent of this section. The suggested language was added to this section.</p>