



Washington State

Energy Facility Site Evaluation Council

AGENDA

MONTHLY MEETING
Tuesday, April 17, 2018
1:30 PM

J.A. Cherberg Building
Senate Hearing Room 4
304 15th Ave, S.W.
Olympia, WA 98501

1. Call to Order Kathleen Drew, EFSEC Chair
2. Roll Call Tammy Mastro, EFSEC Staff
3. Proposed Agenda Kathleen Drew, EFSEC Chair
4. Minutes **Meeting Minutes** Kathleen Drew, EFSEC Chair
 - March 20, 2018
5. Projects
 - a. Kittitas Valley Wind Project
 - Operational Updates Eric Melbardis, EDP Renewables
 - b. Wild Horse Wind Power Project
 - Operational Updates Jennifer Diaz, Puget Sound Energy
 - c. Columbia Generating Station
 - Operational Updates Debbie Knaub, Energy Northwest
 - d. WNP – 1/4
 - Non-Operational Updates Debbie Knaub, Energy Northwest
 - e. Chehalis Generation Facility
 - Operational Updates Mark Miller, Chehalis Generation
 - f. Grays Harbor Energy Center
 - Operational Updates Chris Sherin, Grays Harbor Energy
 - g. Desert Claim
 - Project Update Sonia Bumpus, EFSEC Staff
 - h. Columbia Solar Project
 - Project Update Ami Kidder, EFSEC Staff
 - Expedited Processing Sonia Bumpus, EFSEC Staff

EFSEC staff will provide updated information on the expedited process and the Council may take FINAL ACTION on granting expedited processing.
6. Other
 - a. EFSEC Council
 - 3rd Quarter Cost Allocation Stephen Posner, EFSEC Staff
7. Adjourn Kathleen Drew, EFSEC Chair

Verbatim Transcript of Monthly Council Meeting

Washington State Energy Facility Site Evaluation Council

March 20, 2018



206.287.9066 | 800.846.6989

1325 Fourth Avenue, Suite 1840, Seattle, Washington 98101

www.buellrealtime.com

email: info@buellrealtime.com



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WASHINGTON STATE
ENERGY FACILITY SITE EVALUATION COUNCIL
Ellensburg, Washington
Tuesday, March 20, 2018
1:30 p.m.

MONTHLY COUNCIL MEETING
Verbatim Transcript of Proceeding

TRANSCRIBED BY: Marjorie Jackson, CET
Buell Realtime Reporting, LLC
1325 Fourth Avenue
Suite 1840
Seattle, Washington 98101
206.287.9066 | Seattle
360.534.9066 | Olympia
800.846.6989 | National
www.buellrealtime.com

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-o0o-
March 20, 2018
1:29:52

CHAIR DREW: Can everybody hear me in the room? Okay.
FEMALE SPEAKER: No.

CHAIR DREW: No? I can move it closer, make sure we're
able to do that. How's that? Is that better?

FEMALE SPEAKER: Yes.

CHAIR DREW: Okay. Thank you.

Thank you for being here today. We are beginning our
meeting of the Energy Facility Site Evaluation Council. We
have several people joining us by phone, so I'm going to ask
them to make sure and mute your phones unless you are
speaking to the Council so we won't have feedback that makes
it difficult for others to hear.

My name is Kathleen Drew. I am the Chair of the EFSEC
Council. This is my third meeting. I joined the Council in
January.

Before we begin the rest of the meeting, I wanted to just
share some information with all of you. I am really pleased
to see all of you here today. I wanted to share some
information about our Council meetings. This is what we
consider to be a regular monthly meeting of the EFSEC
Council. Most of our monthly meetings have historically

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APPEARANCES

Councilmembers:

KATHLEEN DREW, Chair
JAMIE ROSSMAN, Department of Commerce
CULLEN STEPHENSON, Department of Ecology
MIKE LIVINGSTON, Department of Fish and Wildlife
DAN SIEMANN, Department of Natural Resources (via phone)
DENNIS MOSS, Utilities and Transportation Commission

Local Government and Optional State Agency:

KELLY COOPER, Department of Health (via phone)
IAN ELLIOT, Kittitas County

Attorney General's Office:

JON THOMPSON, Assistant Attorney General

EFSEC Staff:

STEPHEN POSNER
JIM LASPINA
TAMMY MASTRO
SONIA BUMPUS
JOAN AITKEN
AMI KIDDER
CHRISTINA POTIS

Guests:

ERIC MELBARDIS, Kittitas Valley Wind Power Project (via phone)
JENNIFER DIAZ, Wildhorse Wind Power Project (via phone)
DEBBIE KNAUB, Columbia Generating Station (via phone)
MARK MILLER, Chehalis Generating Facility (via phone)
CHRIS SHERIN, Grays Harbor Energy Center (via phone)
KAREN MCGAFFEY, Perkins Coie (via phone)
RICK MILLER, Wind Business Development at EDF- Renewable Energy
(via phone)
KELLY WOOD, Attorney General's Office, Council for Environment
Protection Unit (via phone)

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been in Olympia. And during these meetings, we hear reports
from each entity that has a site certification agreement
with EFSEC. So you will hear us go through all of those on
the agenda.

We then receive updates from projects that have submitted
site certification applications. And we will hear updates
from the staff today, both on Desert Claim Wind Site, as
well as the Columbia Solar application.

The Council may take action on certification agreements
or permit renewals when we have permit renewals in front of
us, if it's warranted at that time.

During this meeting, the Council will discuss when we
will have formal comment periods for both of the projects
that are before us. So I wanted to make sure that everybody
here knows there will be additional opportunity for comment
on both of those projects, so just to make that clear.

I also wanted to make sure you are aware that in the back
is a signup sheet, and you can identify if you want to be on
the overall mailing list or on a project-specific mailing
list to get all the updates and information that way.

Although we don't have a specific comment period today,
we decided to have our meeting here because when we had our
meeting last month in Olympia, I thought it was incredibly
difficult for anybody who would be interested in the project
to be able to just listen over the phone or listen

1 (Pages 1 to 4)

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1 afterwards. And so that's why we are here today, is so that
2 you can be here and also have opportunities to talk to the
3 staff after the meeting about the process and ask questions
4 about that, should you choose to do so.

5 Another advantage of -- well, I will just finish that. I
6 was ahead of my own notes. I was just going to say that you
7 can meet and talk to the staff and the Councilmembers, as
8 well.

9 So I want to thank you again for being here. And with
10 that, Tammy, will you call the roll?

11 MS. MASTRO: Department of Commerce?

12 MR. ROSSMAN: Jaime Rossman is here.

13 MS. MASTRO: Department of Ecology?

14 MR. STEPHENSON: Cullen Stephenson, here.

15 MS. MASTRO: Fish and Wildlife?

16 MR. LIVINGSTON: Mike Livingston, here.

17 MS. MASTRO: Department of Natural Resources?

18 MR. SIEMANN: Dan Siemann is on the phone.

19 MS. MASTRO: Utilities & Transportation Commission?

20 MR. MOSS: Dennis Moss is here.

21 MS. MASTRO: Local governments and optional state
22 agencies for the Columbia Solar Project, Department of
23 Health?

24 MS. COOPER: Kelly Cooper is on the phone.

25 MS. MASTRO: And Kittitas County.

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1 MR. ELLIOT: Ian Elliot.

2 MS. MASTRO: Chair, there is a quorum for the regular
3 Council and for the Columbia Solar Project Council.

4 CHAIR DREW: Thank you. We have a proposed agenda in
5 front of us. Is there a motion to approve that proposed
6 agenda?

7 MR. STEPHENSON: I will move that we approve the agenda.

8 MR. MOSS: Second.

9 CHAIR DREW: Any comments or additions?

10 (No audible reply)

11 CHAIR DREW: I have one item I'm going to speak to at the
12 end of the meeting, which is a Memorandum of Agreement that
13 we are signing with Ecology and EPA on our NPDES -- or
14 National Pollutant Discharge Elimination System -- permits.
15 So I would like to add that after the Columbia Solar
16 Project.

17 MR. STEPHENSON: I will move that we approve the amended
18 agenda.

19 CHAIR DREW: Thank you.

20 All those in favor?

21 MULTIPLE SPEAKERS: Aye.

22 CHAIR DREW: Opposed?

23 (No audible reply)

24 CHAIR DREW: Motion carries.

25 Next on our agenda is the minutes, the minutes for the

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1 February 20th meeting. Are there any corrections to the
2 minutes?

3 (No audible reply)

4 CHAIR DREW: I have one correction. On page 52, line 4,
5 Mr. Elliot, it says "sustained," and I believe Mr. Elliot
6 said "abstained."

7 Is that correct?

8 MR. ELLIOT: That's correct.

9 CHAIR DREW: So if we could correct that in the minutes.

10 Are there any other corrections?

11 (No audible reply)

12 CHAIR DREW: Is there a motion?

13 MR. MOSS: Chair Drew, I would move that we adopt the
14 amendments of the February 20th, 2018 meeting of the
15 Washington State Energy Facility Site Evaluation Council, as
16 corrected.

17 MR. ROSSMAN: Second.

18 THE CLERK: Oh. It's been moved and seconded. And those
19 were the monthly Council meeting --

20 MR. MOSS: That was the monthly meeting.

21 CHAIR DREW: Okay. So those are approved. And --

22 MR. ROSSMAN: Don't --

23 CHAIR DREW: Oh. Okay. All those in favor?

24 MULTIPLE SPEAKERS: Aye.

25 CHAIR DREW: Opposed?

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1 (No audible reply)

2 CHAIR DREW: Moving ahead of myself. Okay.

3 Then we also have the transcripts of the executive
4 session. Is there a motion to approve those?

5 MR. ROSSMAN: So moved.

6 MR. MOSS: I will second.

7 CHAIR DREW: Motion is to approve and seconded. All
8 those in favor?

9 MULTIPLE SPEAKERS: Aye.

10 CHAIR DREW: All those opposed?

11 (No audible reply)

12 CHAIR DREW: Motion carried. Those minutes are approved.

13 Now we are moving into reports on our projects -- excuse
14 me -- on our sites.

15 The first item is Kittitas Valley Wind Project. Eric
16 Melbardis is --

17 MR. MELBARDIS: Good afternoon, Chair Drew and EFSEC
18 Council. This is Eric Melbardis at the Kittitas Valley Wind
19 Power Project with EDP Renewables. For the reporting
20 period, all operations were routine and there is nothing to
21 report.

22 CHAIR DREW: Okay. Thank you.

23 Any questions?

24 (No audible reply)

25 CHAIR DREW: Okay.

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1 Moving on to the Wildhorse Wind Power Project. And
2 Jennifer Diaz is here.

3 Oh, time delay on our microphone. Sorry. There we go.
4 Thank you.

5 MS. DIAZ: All right. Thank you, Chair Drew and
6 Councilmembers. For the record, my name is Jennifer Diaz.
7 I'm with Puget Sound Energy at the Wildhorse Wind and Solar
8 Facility. It's great to have you all in Ellensburg.

9 I only have one non-routine item to update the Council
10 on. And that's under Compliance and Environmental. In
11 accordance with WAC 463-72-080, a five-year review of the
12 decommissioning and site restoration plan was completed and
13 updates were submitted to EFSEC staff on February 15th.

14 Updates include feedback received from Golder Associates
15 based on their review of the plan which was completed in
16 July of 2016. And that's all I have.

17 CHAIR DREW: Okay, thank you.

18 Columbia Generating Station, Debbie Naub [phonetic].
19 Debbie, are you on the phone?

20 MS. KNAUB: Yes, I am. Hello.

21 CHAIR DREW: Hello.

22 MS. KNAUB: This is Debbie Knaub --

23 CHAIR DREW: Knaub.

24 MS. KNAUB: -- Energy Northwest. Good afternoon. And we
25 do not have any changes for the Columbia Generating Station,

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1 Grays Harbor Energy Center. All of our operations have been
2 routine, and the only change I will note since our monthly
3 operational report was sent out is that in 2.1 we have
4 received our final approval of the -- from EFSEC of our
5 engineering report addendum for an NPDES permit.

6 CHAIR DREW: Okay. Any questions?

7 (No audible reply)

8 MR. SHERIN: Thank you.

9 CHAIR DREW: Did you have anything to add on that?

10 Mr. LaSpina has something to add to that from EFSEC
11 staff.

12 MR. LaSPINA: Good afternoon, Chair Drew and
13 Councilmembers. At this time I would like to update you on
14 the completion of a recent milestone regarding the Grays
15 Harbor Energy NPDES engineering report, which, by the way,
16 has been ongoing for several years. I thought you might
17 like closure on this long-running issue.

18 EFSEC issued the current NPDES permit to Grays Harbor
19 Energy for its Grays Harbor Energy Center Facility on
20 May 13th, 2008. EFSEC issued a permit modification on
21 November 1st, 2010 to correct technical errors. The
22 facility discharges cooling water in the Chehalis River near
23 Satsop, Washington.

24 EFSEC staff and its compliance contractor, the Department
25 of Ecology's Southwest Regional Office, have been working

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1 other than that we have an inspection tomorrow with the
2 Department of Ecology for our waste, dangerous waste
3 program. And Ecology will be with us all day tomorrow doing
4 inspections, as well as reviewing records and interviewing
5 personnel. And that is different than our update from last
6 time. That is the only update.

7 CHAIR DREW: Okay. Thank you. And staying with Debbie,
8 WNP 1/4.

9 MS. KNAUB: Yes, there is no change from our report of
10 the last time.

11 CHAIR DREW: Thank you.

12 MS. KNAUB: Thank you.

13 CHAIR DREW: Chehalis Generating Facility, Mark Miller.
14 Mark, if --

15 MR. MARK MILLER: Good afternoon, Chair Drew. I
16 apologize. Councilmembers and Staff, I am Mark Miller, the
17 plant manager at the PacifiCorp Chehalis Generation
18 Facility. I have no nonroutine comments to provide and
19 would offer, if there are any questions.

20 CHAIR DREW: Any questions?

21 (No audible reply)

22 CHAIR DREW: Thank you.

23 Moving on to Grays Harbor Energy Center, Chris Sherin.

24 MR. SHERIN: Good afternoon, Chairperson Drew and EFSEC
25 Councilmembers. This is Chris Sherin, plant manager at

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1 with Grays Harbor Energy on engineering report to
2 demonstrate compliance with standards contained in state and
3 federal laws.

4 Over the past several years, EFSEC Ecology and Grays
5 Harbor Energy have collaborated to reduce and/or eliminate
6 several sources of pollutants from the facility's discharge
7 to the river.

8 On March 15th, 2018, the EFSEC manager approved the
9 engineering report with the exception of arsenic in the
10 discharge. In its recommendation letter, Ecology concluded
11 that the arsenic in the discharge required further study
12 that will be addressed in a new permit EFSEC expects to
13 issue later this year.

14 And I can answer any questions you may have at this time.

15 CHAIR DREW: Are there any questions from Councilmembers?

16 Mr. Rossman? Can you use the microphone? Here, you can
17 pass this one.

18 MR. ROSSMAN: Thank you. Sorry about that. Thanks for
19 that part and congratulations on reaching that milestone. I
20 know we had been hearing monthly updates on the arsenic
21 levels, and they have been declining. And my understanding
22 was it looked like that situation was resolved. Can you say
23 anything more about the situation with arsenic? Is it still
24 being tested? And, if so, what are the levels? What are
25 Ecology's concerns? Anything on that?

3 (Pages 9 to 12)

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MR. LaSPINA: I can very briefly address it. There's a couple issues involved with the arsenic issue. One is that the water quality criteria for arsenic is extremely low. It's 0.018 micrograms per liter, which is very low. So we have a couple -- we have -- there are several facets to this problem.

One is that if there is treatment technology available to take it out, it would be so prohibitively expensive that it's not even practical.

Another issue is that -- I don't know if you're aware, but arsenic is a naturally occurring contaminant in all the rock in many parts of this state. So the levels are actually higher than the water quality standards even before it comes into the power plant. So basically what we're going to do -- and there's also some other issues, too -- so what we're going to do is, rather than hold up the approval of the engineering report, we're going to have the permittee do a monitoring study to get a better handle on the issue and so the -- like, as I said, the issue will be addressed in the next permit, which is due to be issued in here.

CHAIR DREW: Mr. Rossman, I also expect that the Council will go and tour that facility sometime within the next few months, and we will have additional information that we can dig into at that time.

MR. LaSPINA: I mean, does that answer the question?

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MR. ROSSMAN: Do you happen to know what levels the testing has been coming out at for the -- I think it's been maybe six months or so since we have stopped having that information reported?

MR. LaSPINA: It's approximately 3 micrograms per liter.

MR. ROSSMAN: And that's down from the -- it had been up in the 25s, 30 --

MR. LaSPINA: 30 and even more.

MR. ROSSMAN: Okay.

MR. LaSPINA: So the idea is -- see, there's an economic test involved with approval of the engineering report. And what happens is, Ecology looks at the facility's revenues and the cost of treatment and that sort of thing.

MR. ROSSMAN: But just to clarify, so we have held the gain that we made with the replacement of the cooling towers --

MR. LaSPINA: Yes.

MR. ROSSMAN: So it's about 10 times less --

MR. LaSPINA: Yes.

MR. ROSSMAN: -- but it's still more than ideal.

MR. LaSPINA: Yes.

MR. ROSSMAN: Okay, thank you.

MR. LaSPINA: So it was reduced 90 percent, basically.

MR. ROSSMAN: Thank you.

CHAIR DREW: Any other questions?

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(No audible reply)

CHAIR DREW: Thank you.

Now an update on the Tesoro Savage Vancouver Energy Distribution Terminal, Mr. Posner.

MR. POSNER: Good afternoon, Chair Drew, Councilmembers.

Just a quick update. The Governor made his decision on January 29th, agreed with the EFSEC recommendation to deny the project. That began a 30-day time period for parties to file petitions for judicial review. That deadline was February 28th. There were no petitions filed. So at this time, we have ceased work on the project. The project is essentially cancelled.

That's all I have.

CHAIR DREW: Any questions?

(No audible reply)

CHAIR DREW: Thank you.

Moving on to Item H, Desert Claim, Mr. LaSpina.

MR. LaSPINA: Good afternoon, Chair Drew and Councilmembers. I'm here today to provide you with an update for the Desert Claim Wind Project. EFSEC issued the Desert Claim Site Certification agreement to the certificate holder on February 1st, 2010. Construction of the project has not commenced.

EFSEC received a request to amend the existing site certification agreement from the certificate holder on

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February 26th, 2018. And I'm just going to read off a very brief list of the changes from the project that's currently licensed to the proposed amendment. So the differences are -- proposed changes to the project include:

A reduction in the number of wind turbines from 95 to no more than 31. However, the generating capacity of each turbine will be larger than that authorized in the existing SCA.

A reduction in the generating capacity of the entire project from about 190 megawatts to no more than 100 megawatts.

A reduction in the project footprint from 5,200 acres to 4,400 acres.

No turbines will be placed east of Reecer Creek, avoiding environmentally-sensitive areas. In addition, a parcel has been added to the western border of the project.

An increase in the minimum distance from turbines to residences from 1687 feet to no less than 2500 feet.

A reduction of habitat and vegetation disturbance.

Disturbance during the construction phase will be reduced 30 percent and permanent impacts will be reduced by 40 percent.

A 36 to 48 percent reduction in turbine rotor sweep area due to the reduced number of turbines. So, in other words, that's the area of the sweep of the blades for all the turbines.

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1 Mr. Rick Miller, the project director, is on the bridge
 2 line to answer any questions you may have about the proposed
 3 amendment request and -- oh, got another piece here. Sorry.
 4 CHAIR DREW: An important one.
 5 MR. LaSPINA: Yes, yes. Sorry about that. On April
 6 11th, EFSEC plans to hold a public hearing here on the
 7 amendment request. More details about time and logistics
 8 will be provided in the next week or so, so stay tuned.
 9 So Mr. Rick Miller should be on the line and can answer
 10 any questions you may have.
 11 CHAIR DREW: So my understanding is on April 11th, it
 12 will be an evening comment period; is that correct?
 13 MR. LaSPINA: Yes.
 14 CHAIR DREW: Do we not have a facility scheduled yet?
 15 Oh, here. It will be here.
 16 MS. BUMPUS: That's correct, Chair Drew. It will be held
 17 here.
 18 CHAIR DREW: And do we have a starting time.
 19 MS. BUMPUS: We don't have the details on a start time
 20 yet. We will be working that out in the next week and we'll
 21 send an update to the Council.
 22 CHAIR DREW: Okay. So the evening of April 11th at this
 23 location will be the public hearing on the site
 24 certification agreement amendment.
 25 MS. BUMPUS: Thank you.

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1 CHAIR DREW: And are there other questions from
 2 Councilmembers.
 3 MR. MOSS: I have a question.
 4 CHAIR DREW: Mr. Moss.
 5 MR. MOSS: This is on? I noticed -- this was in the
 6 comments, if I got the math right, the number of turbines is
 7 being reduced by about two-thirds from 90 to 30.
 8 MR. LaSPINA: Yes, sir.
 9 MR. MOSS: And it sounded to me as though the acreage
 10 involved in the project is being reduced by about 20
 11 percent. Maybe I got that right?
 12 MR. LaSPINA: You're just about right, sir.
 13 MR. MOSS: So what does this portend in terms of the
 14 project? Are we talking about far less density in terms of
 15 the density of the turbines and the use shed, or something
 16 else going on here that accounts for that rather dramatic
 17 difference?
 18 CHAIR DREW: Do we want the applicant to answer that or
 19 are you prepared?
 20 MR. LaSPINA: He could provide a better answer if he's on
 21 the line.
 22 CHAIR DREW: Mr. Miller, you said? Rick Miller?
 23 MR. LaSPINA: Yes.
 24 CHAIR DREW: Okay.
 25 MR. RICK MILLER: Yes, hello. Can you hear me all right?

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1 CHAIR DREW: Yes, we can.
 2 MR. RICK MILLER: Okay, great. Hi, my name is Rick
 3 Miller. I am the director of Wind Business Development for
 4 EDF Renewable Energy.
 5 Councilman, what you just said is accurate, and we look
 6 forward to making a full presentation to you and the whole
 7 Council and the public on the 11th. The project site will
 8 be less dense, relatively speaking, from the original
 9 certified project.
 10 CHAIR DREW: Okay. Thank you.
 11 Any other questions?
 12 MR. MOSS: Well, I would like to follow up on that.
 13 CHAIR DREW: Follow up.
 14 MR. MOSS: And is the intent there something that is
 15 responsive in some way to the local community's interest or
 16 is there some other reason for changing the density.
 17 MR. RICK MILLER: I would characterize it more of a
 18 function of changes in turbine technology over time. The
 19 individual turbines have a greater generating capacity, main
 20 plate capacity, so we require less turbines to generate
 21 relatively the same number of megawatts. And we have just
 22 sized project down to up to 100 megawatts to be more
 23 consistent with the size of projects that we're seeing
 24 interest for from the offtake market.
 25 MR. MOSS: Okay. Thank you, Mr. Miller. That answers my

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1 questions.
 2 CHAIR DREW: Mr. Elliot?
 3 MR. ELLIOT: Yeah, clarification from Staff. Is this a
 4 revision? Is this a new permit? Or exactly what is the
 5 status of the application?
 6 MS. BUMPUS: This is a request to a site certification
 7 agreement amendment, so we're just looking at the proposed
 8 changes in the SEA to see if there are any differences in
 9 impacts, if there are any changes that need to be made to
 10 mitigation measures or conditions. So it's basically just
 11 an amendment to the SEA.
 12 CHAIR DREW: It may require, but we have not determined,
 13 a SEPA -- that they have a SEPA checklist. And so that's
 14 one of the things that we're looking at. Is that right, Ms.
 15 Bumpus?
 16 MS. BUMPUS: That's correct. And they --
 17 CHAIR DREW: And so -- go ahead.
 18 MS. BUMPUS: They were also required to submit an updated
 19 SEPA checklist that reflects, you know, any changes to
 20 impacts or mitigation measures for those impacts, so we're
 21 looking right now at all of that information and reviewing
 22 it. And in the next couple of weeks we're going to be
 23 bringing Golder on to assist us in looking at other
 24 resources for which we don't have agency contractors. So
 25 there will be more information about the project on April

5 (Pages 17 to 20)

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1 11th, and then of course the applicant will be here in
2 person to present, as well.

3 CHAIR DREW: Go ahead.

4 MR. ELLIOT: I was surprised at the number of passerines
5 and also the number of endangered species that were hit by
6 wind turbines as a matter of course that seems to be
7 acceptable. Has there been studies done with respect to
8 this new technology with respect the size of the turbines
9 and the blades and the speed and this kind of much.

10 MR. LaSPINA: I would see if Mr. Miller has an answer.

11 MR. RICK MILLER: Yeah. Hi, this is Rick Miller again.
12 Yeah, I mean, it would be my preference to be prepared
13 answer that question on April 11th. We certainly can come
14 with some updated information related to abeyant species and
15 species concerned. We have got a lot of study of this type
16 over the years, and we can be sure to give you a full update
17 on that, if that's acceptable.

18 MR. ELLIOT: Okay.

19 CHAIR DREW: My understanding -- and I don't know that I
20 heard this in the description -- is that although there are
21 fewer turbines, they're also taller. Yes.

22 MR. ROSSMAN: Chair Drew.

23 CHAIR DREW: Mr. Rossman?

24 MR. ROSSMAN: Thank you. I believe that as part of the
25 underlying site certification agreement, there were

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1 conditions. We have reached out over the years to those
2 organizations. I have reached out to the Attorney General's
3 Office, the folks who typically serve as the Council for the
4 Environment. And we're happy to continue those discussions
5 and make sure that they're aware of the April 11th meeting
6 so that they can participate, as well.

7 MR. LaSPINA: And I would add to that, Council Member
8 Rossman, I have spoken personally with Bill Sherman, who is
9 the Council for the Environment, and he's aware of what's
10 going on and he will be looking at the original agreement
11 and will be providing some input to us, as will DFW on the
12 agreement that they had with the certificate holder.

13 MR. ROSSMAN: Great, thank you.

14 MR. WOOD: This is Kelly Wood on the phone. I'm at the
15 Attorney General's Office in the Council for Environment
16 Protection Unit here on Bill's behalf today. He's traveling
17 and unfortunately couldn't make the call. But I can
18 confirm, yeah, that we are tracking on this and I expect
19 that one of us will be at the April 11th hearing.

20 CHAIR DREW: Thank you. Can we get your name one more
21 time, please?

22 MR. WOOD: Yes. It's Kelly Wood.

23 CHAIR DREW: Thank you. For the record I wanted to make
24 sure.

25 Other questions from Councilmembers?

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1 agreements -- and I'm not sure what they're called
2 exactly -- between the project sponsor and the Department of
3 Fish and Wildlife, and between the project sponsor and the
4 Council for the Environment at the --

5 MR. LaSPINA: Stipulations.

6 MR. ROSSMAN: Stipulations, thank you. And I assume WDFW
7 will be able to weigh in on how this change would affect
8 stipulations -- that side of stipulations. Have you thought
9 at all about how the Council for Environment, which is an
10 entity that exists during the adjudicative process on the
11 underlying siting, how any changes to that stipulation
12 related to this amendment request would be considered?
13 Because it seems like we don't have the other party there in
14 the way that we do with Fish and Wildlife.

15 MS. McGAFFEY: Hello, everyone. This is Karen McGaffey
16 from Perkins Coie and I represent Desert Claim in this
17 matter and was involved in the original permitting process,
18 as well, negotiating with the Council for the Environment
19 and WDFW.

20 With respect to both those stipulations, the company is
21 prepared to continue to abide by the agreements that were
22 made with both of those agencies or entities. And -- but as
23 you say, I think it's going to be important that both of
24 those entities also weigh in on whether any changes to the
25 project should require any additional or different

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1 (No audible reply)

2 CHAIR DREW: Okay. Thank you. Good discussion.
3 Moving on to the Columbia Solar Project, the project
4 update. Ms. Kidder.

5 MS. KIDDER: Good afternoon, Chair Drew and
6 Councilmembers. I have a brief SEPA update for you this
7 afternoon. Since the last Council meeting, EFSEC has issued
8 a SEPA threshold determination for public comment on a draft
9 MDNS for the proposed facility. The period for public
10 comment opened for 4 days on Tuesday, February 27th and
11 closed at 5 p.m. on Tuesday, March 13, 2018.

12 EFSEC received 18 comments from both the public and
13 agencies. And we received comments on several topics
14 including use of agricultural land for solar facilities,
15 recreational impacts, avian impacts and water rights and
16 water supply. Staff received comments on cultural
17 resources, which we will continue to work with DAHP to
18 resolve.

19 CHAIR DREW: And who is DAHP?

20 MS. KIDDER: Department of Archeological and Historical
21 Preservation.

22 Staff also received new information during this comment
23 period on water rights for the proposed sites. Staff has
24 been researching water rights since the beginning of the
25 review of the application for site certification and

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1 understand it's an important issue. We have been working
2 with Ecology throughout the process, and we will use the
3 information received during the public comment period to
4 update the mitigation measure in the MDNS. Staff are still
5 reviewing comments and developing responses, as appropriate.

6 Are there any questions on the SEPA update?

7 CHAIR DREW: Thank you.

8 Ms. Bumpus.

9 MS. BUMPUS: Thank you. Good afternoon, Chair Drew and
10 Councilmembers. So just to add to Ami's update on the SEPA
11 comments, EFSEC staff are also planning to meet with the
12 County here to talk about the comments we received from the
13 local government. We want to make sure that we understand
14 the concerns. We did get very good comments, and we want to
15 have an in-person meeting, if possible, to make sure we
16 understand their concerns as we're working to finalize the
17 MDNS.

18 So Staff will definitely be updating Council on the
19 progress of that effort. So that's what I had to add on the
20 SEPA update specifically.

21 The other thing I wanted to talk about before I go into
22 the expedited process update is that some Councilmembers had
23 expressed an interest in seeing the site at the February
24 Council meeting. So in your packets, there is the Tuusso
25 Columbia Solar Site visit notes. There are some additional

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1 Are there any other questions about the site tour that's
2 planned or the site visit notes?

3 MR. ROSSMAN: I just want to say, thank you very kindly
4 for arranging that. I know the logistics have been
5 difficult. I appreciate it very much.

6 MS. BUMPUS: Thank you. So we will keep you posted.

7 Now, the next thing I want to talk about is the expedited
8 process update. At the last Council meeting, the Council
9 made a land use consistency determination. There's
10 currently a draft order being prepared, so that's going to
11 be prepared for you to review, so you will be receiving
12 that -- I'm not sure, Stephen may have a timeline, but you
13 will be receiving it shortly.

14 And then the other thing I wanted to talk about is the
15 request that Councilmembers had from the last Council
16 meeting that Staff look for ways to gather more information
17 about site-specific conditions for the five solar sites. So
18 after discussing this internally with Mr. Posner and my
19 staff, we would like to recommend an idea for the Council to
20 consider. And this would include basically preparing a
21 draft site certification agreement, so this would obviously
22 be a little bit down the road. But we would prepare a draft
23 site certification agreement, and we would send this out
24 basically for --

25 CHAIR DREW: I think it's multiple -- potentially five,

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1 photos of the five sites that Ms. Kidder and I visited with
2 the applicant. And so this just may be of interest to those
3 of you that were wanting to look at the sites.

4 But, also, I wanted to let the Council know that on
5 April 11th, we're planning to get together with the Council
6 and go out to the five sites that are where the solar panels
7 would be installed. So those of you that are interested in
8 going, we're going to be providing more details about the
9 time.

10 Right now it's planned for the morning of April 11th, so
11 we would probably meet in one location, possibly here, head
12 out to the five sites, and then we would come back to have
13 our hearing in the evening for Desert Claim.

14 So we will keep you updated with more information.
15 Obviously there's a lot more detail that you need for that.

16 CHAIR DREW: And can you explain in terms of -- I know
17 that even though we will not be discussing the project, that
18 it is officially -- other than asking questions but not
19 making any decision on the project -- it is an open meeting,
20 and so we will publish the time that it starts. We will not
21 provide transportation, but members of the public may choose
22 to also be -- provide their own transportation to that tour.

23 Is that correct?

24 MS. BUMPUS: That's correct, Chair Drew. Thank you for
25 adding that.

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1 right?

2 MS. BUMPUS: Yes, sorry. That's right. There would be
3 five draft site certification agreements that we would send
4 out for --

5 CHAIR DREW: One for each site.

6 MS. BUMPUS: -- public comment. And we would also
7 propose that during the public comment period that we would
8 hold a hearing, the Council would hold a hearing here. We
9 would receive comments on the draft SCA or SCAs. And we
10 think that this would be a path towards getting more
11 information, particularly as we're, you know, preparing
12 these five different SCAs that would be detailed and
13 specific to each site, and would be a good opportunity to
14 get additional information if, for some reason, we haven't
15 gotten that already through the SEPA process and the land
16 use hearing.

17 CHAIR DREW: Thank you.

18 Are there any questions or comments?

19 Mr. Moss?

20 MR. MOSS: I just would like to comment that I appreciate
21 Staff being proactive on this and taking the measures that
22 are indicated by your update today. I think it will help
23 inform the Council as we move forward on this. I appreciate
24 it.

25 CHAIR DREW: Other comments?

7 (Pages 25 to 28)

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(No audible reply)

CHAIR DREW: Thank you.

With that, we move to the additional item I put before us, which is an update on the EFSEC Ecology NPDES Memorandum of Agreement. The U.S. Environmental Protection Agency established the National Pollutant Discharge Elimination System, or NPDES program, in 1972 under the Clean Water Act to implement a comprehensive program to regulate wastewater discharges to the nation's water bodies.

The NPDES program is implemented in the state of Washington by the Department of Ecology and EFSEC.

In 1979, the EPA delegated to EFSEC the authority to implement a water discharge permit program for EFSEC-licensed facilities. By this delegation the NPDES authorizes EFSEC to issue permits, oversee compliance with permit requirements and enforce permit conditions, as necessary.

And the implementation of this program in the state of Washington is addressed by two Memorandums of Agreement or MOA. The first MOA I will address is between EFSEC and Ecology, that describes the roles and responsibility between the two agencies to implement the NPDES program at the state level.

In accordance with state law, EFSEC works closely with Ecology to maximize coordination and minimize duplication.

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On this past February 26, 2018, EFSEC and the Department of Ecology signed an updated Memorandum of Agreement or MOA, which I believe is the first update since 1979. So it is a big deal. That describes the commitments of each agency to implement the National Pollutant Discharge Elimination System program in the state of Washington.

Highlights of this MOA commit EFSEC and Ecology to coordinate issuance of discharge permits, compliance inspections, enforcement actions and support for review and approval of engineering reports and additional technical issues.

Briefly, this MOA commits Ecology to provide permit writers, inspectors and additional technical support services to EFSEC, and EFSEC in turn commits to reimburse Ecology for its services.

Does anyone have any questions on this?

Mr. Elliot.

MR. ELLIOT: Who -- which of the entities is ultimately responsible for issuing violations and follow-up on the technical portions of it?

CHAIR DREW: Mr. LaSpina.

MR. LaSPINA: Sir, can you --

CHAIR DREW: You just have to wait.

MR. LaSPINA: Hello?

CHAIR DREW: Yes.

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MR. LaSPINA: Can you repeat your question, sir?

MR. ELLIOT: I hope so. Which of the two entities, EFSEC or Department of Ecology, is ultimately responsible for enforcement of whatever violation or potential violation there is of the MOA?

Mr. LaSPINA: Ultimately, it is EFSEC's call. However, we receive technical report -- technical support from Ecology.

MR. ELLIOT: I am not sure I understood the answer. Could you repeat the answer?

Mr. LaSPINA: I was trying to make it maybe too brief.

MR. ELLIOT: Yeah, because somebody is responsible for managing the violation. And, ultimately, what ends up happening is somebody sues somebody for not following through with a violation, and so we end up in a "Who's going to get sued and who's going to end up paying?"

Mr. LaSPINA: Can I just attempt to answer that? Are you talking about a regulated facility that's been cited for a violation? That's what you're talking about. So it would be EFSEC if it's an EFSEC-regulated facility. We're the ones that issue the permits.

MR. ELLIOT: Okay.

MR. LaSPINA: We are responsible for enforcement action. Ecology is our technical support agency, but they are not the permitting or enforcement agency.

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MR. ELLIOT: Okay.

MR. LaSPINA: Does that answer -- does that answer your question?

MR. ELLIOT: It answers the question and it opens some other questions up, I think, probably, for legal staff.

Okay.

CHAIR DREW: Okay. Thank you.

Other questions?

(No audible reply)

Then we also have a second MOA that will be signed by EFSEC, Ecology and the EPA that describes the roles and responsibilities of state agencies to EPA. And in this MOA, EPA delegates authority to EFSEC and Ecology to implement an NPDES program.

And, in return, EFSEC and Ecology commit to comply with applicable federal regulations that describe the contents of permits, permit issuance processes, compliance and enforcement procedures, and additional federal requirements.

In the past, my understanding is that -- and I may get this wrong -- EPA had a separate MOA with Ecology and EFSEC. And this time it's combined. So Ecology and EFSEC represent the State, but we both have our same sections -- or different sections in the MOA. So I am happy to share that with the Council as it's completed.

Mr. Rossman?

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1 MR. ROSSMAN: Thank you, Chair Drew. A question on that.
 2 If I recall during permitting of a previous project, there
 3 was an issue in contention as to a portion of discharges and
 4 whether they would be permitted through EFSEC or through, in
 5 that case, the local government authority subdelegated by
 6 the EPA. And is that going to be addressed in this MOA and
 7 that situation made even clearer? I think we got to clarity
 8 in an order, but will that be addressed in this MOA.

9 MR. LaSPINA: I believe you're talking about pretreatment
 10 authorization to POTW?

11 MR. ROSSMAN: Yes.

12 MR. LaSPINA: And we don't have that delegation authority
 13 from the EPA.

14 That's a specific delegation program that EPA gives to
 15 state agencies, and we are not authorized to exercise -- or
 16 to issue permits under that piece of the NPDES program.

17 Getting that delegation involves enormous resources that
 18 the agencies would have to have, and only Ecology has those
 19 resources.

20 MR. ROSSMAN: Yes. Just wondering if the MOA speaks to
 21 it at all.

22 MR. LaSPINA: Yes, it does.

23 MR. ROSSMAN: Okay.

24 MR. LaSPINA: It does.

25 MR. ROSSMAN: Thank you.

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1 generating station, the only operating nuclear power plant
 2 in the Pacific Northwest. So Jim has had his hands full
 3 over the years, and we have big shoes to fill.

4 We are currently recruiting for a siting specialist, and
 5 we wish Jim the best in his future endeavors.

6 CHAIR DREW: Thank you, Jim.

7 Mr. LaSPINA: It's been a real pleasure working with the
 8 Council and my colleagues over the years. And at the very
 9 least, I hope to leave things better. So it's been a real
 10 pleasure, but it's time to move on. Thank you. Thank you
 11 for your support, all of you.

12 CHAIR DREW: Thank you. I would like to once again say
 13 that if any members of the public wish to discuss any of the
 14 issues that we talked about with staff members, please feel
 15 free to do so after the meeting. And the meeting is
 16 adjourned.

17 (Meeting is adjourned.)

18 2:18:32

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1 CHAIR DREW: Go ahead.

2 MR. STEPHENSON: Thank you, Chair Drew.

3 As I understand it, Jim, let me make sure that I'm
 4 getting this right. If EFSEC has the authority as issued
 5 from EPA, then EFSEC would issue the permit and enforce the
 6 permit. If, as in the case of the pretreatment, they don't,
 7 then someone else would issue that permit and they would
 8 enforce that permit. So it's not going unenforced; it's
 9 just not from EFSEC.

10 Is that right?

11 MR. LaSPINA: That's exactly right.

12 MR. STEPHENSON: All right.

13 CHAIR DREW: Okay.

14 Any other questions?

15 (No audible reply)

16 CHAIR DREW: Thank you. I will share those documents
 17 with the Council. If there is nothing else to come before
 18 the Council?

19 MR. POSNER: One other item. I just wanted to let
 20 Councilmembers and everybody know that our longest-serving
 21 site specialist, Jim LaSpina, is leaving EFSEC.

22 CHAIR DREW: Very important.

23 MR. POSNER: And Jim began at EFSEC in 2007. Over the
 24 years he has been our primary compliance specialist at all
 25 of our operating facilities, including the Columbia

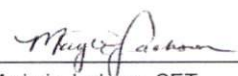
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Kittitas Valley Wind Power Project

Monthly Operations Report

March 2018

Project Status Update

Production Summary:

Power generated:	20,052 MWh
Wind speed:	6.5 m/s
Capacity Factor:	26.7%

Safety:

No incidents

Compliance:

Project is in compliance

Sound:

No complaints

Shadow Flicker:

No complaints

Environmental:

No incidents

Wild Horse Wind Power Project

March 2018

Safety

No lost-time accidents or safety injuries/illnesses.

Compliance/Environmental

In accordance with the Operations Stormwater Pollution Prevention Plan (SWPPP), a semi-annual stormwater inspection was completed on 3/14. Overall, the site responded very well to spring snowmelt and installed BMPs functioned properly.

Operations/Maintenance

Nothing to report.

Wind Production

March generation totaled 63,587 MWh for an average capacity factor of 31.35%.

Eagle Update

Nothing new to report.

**Energy Northwest
EFSEC Council Meeting
March 2018 Operations Report
Debbie Knaub**

Columbia Generating Station Operational Status

Columbia is online at 100% power and producing 1169 MWs.

Executive Team Changes:

Columbia is in the process of selecting a successor to the current CEO, Mark Reddemann, who has announced his retirement. Selection will occur in April 2018 and the new CEO will start in June 2018.

Ecology Dangerous Waste Inspection:

Inspectors from the Washington state Department of Ecology conducted an unannounced dangerous waste inspection at Columbia on March 21, 2018. Inspectors walked through laboratories, chemical product and waste storage areas, conducted document reviews, and interviewed employees.

Safety Award from the American Public Power Association:

Energy Northwest will receive first place in group G of the American Public Power Association (APPA) 2017 Safety Awards of Excellence. Category G is for utilities with between one and four million workhours. APPA assists not-for-profit, community-owned utilities that power 2,000 towns and cities nationwide, serving more than 14 percent of the nation's electricity consumers.

WNP 1/4 Building Transfer/Water Rights

NEPA/Leasing:

Energy Northwest's new lease with the Department of Energy for WNP 1/4 went into effect on July 1, 2017. We have started the planning and some field work on the water distribution system project, which will eventually utilize the Water Rights permit granted by the Department of Ecology.

Chehalis Generation Facility----Monthly Plant Report – March 2018

Washington Energy Facility Site Evaluation Council

04.10.2017

Safety:

- There were no recordable incidents this reporting period and the plant staff has achieved 967 days without a Lost Time Accident.

Environment:

- There were no air emissions or stormwater deviations or spills during the month of March 2018.
- Wastewater and Stormwater monitoring results were in compliance with the permit limits for the month of March 2018.

Operations and Maintenance Activities:

- The Plant generated 144,387 MW-hours in March for a 2018 YTD generation total of 381,723 MW-hours and a capacity factor of 31.7%.

Regulatory/Compliance:

- The Chehalis plant conducted the 2018 annual relative accuracy test audit (RATA) of the continuous emission monitors for each of the combustion turbine emission units. The final report will be issued in May 2018.
The draft results of the RATA confirmed the CEM's were performing within the limits as required by the Federal Regulation, 40 CFR Part 75 Annual specifications. Additionally, the plant is also in compliance with the regulatory specifications for PM10, VOC, SO2 and H2SO4 components.
- On March 15, 2018 a representative from the Southwest Clean Air Agency conducted an annual site inspection as required by the Title V Permit.

Sound monitoring:

- Nothing to report this period.



Carbon Offset Mitigation:

- On February 27, 2018, PacifiCorp received notice from the The Climate Trust that they had received 9,347 tons of Vintage 2017 Farm Power Lyden California Carbon Offsets. PacifiCorp has now received 52,162 tons of the contracted 70,000 tons from the Farm Power Lyden project.

In 2008, as a condition of the transfer of ownership and the Site Certification Agreement for the Chehalis Generation Facility from Chehalis Power to PacifiCorp, the EFSEC included within its Order No. 836 a requirement that PacifiCorp provide \$1.5 million in funding for greenhouse (“GHG”) mitigation projects plus reimbursement for state agency staff time reviewing and approving proposals. A letter summarizing PacifiCorp’s commitment progress to date is being drafted and will be submitted to EFSEC staff by June 1, 2018.

Respectfully,

Mark A. Miller
Manager, Gas Plant
Chehalis Generation Facility

EFSEC Monthly Operational Report

March 2018

1. Safety and Training

- 1.1. There were no accidents or injuries during the month of March.
- 1.2. Conducted scheduled and required monthly training.
- 1.3. Conducted the scheduled Safety Committee meeting.
- 1.4. Conducted Annual Safety Training, which included Confined Spaces and Fall Protection.

2. Environmental

- 2.1. The annual greenhouse gas report for 2017 was submitted to EPA and DOE. A 3rd party review is required by August for this submittal.
- 2.2. The discharge monitoring report quality assurance process for 2018 was initiated for ALS and site labs.

3. Operations & Maintenance

- 3.1. Grays Harbor Energy Center (GHEC) operated 30 days and generated 312,857MWh during the month of March.
- 3.2. EFSEC/DOE conducted an annual site inspection on March 28 and all requested info has been provided to them. No discharge was noted at the MH-12 sampling point and no issues were identified with the stormwater system.
- 3.3. An updated Initial Site Restoration Plan was submitted to EFSEC on March 29.
- 3.4. Tentatively scheduled RATAs and stack testing with Montrose for week of August 13 and confirmed the scope of work with them.

4. Noise and/or Odor

- 4.1. None.

5. Site Visits

- 5.1. On March 28, EFSEC staff members Jim LaSpina and Sonia Bumpus, visited GHEC for introductions and site familiarization. Also, in attendance was DOE staff member Liem Nguyen. He also conducted DOE's annual site inspection.

6. Other

- 6.1. Grays Harbor is staffed with 21 personnel.

**BEFORE THE STATE OF WASHINGTON
WASHINGTON ENERGY FACILITY SITE EVALUATION COUNCIL**

In the Matter of Application No. 2017-
01 of

DOCKET EF-170823

TUUSSO ENERGY, LLC
COLUMBIA SOLAR PROJECT

ORDER GRANTING EXPEDITED
PROCESSING

**ATTORNEY-CLIENT PRIVILEGED
COMMUNICATION**

BACKGROUND

Synopsis. *TUUSSO Energy LLC requested expedited review of an application it filed with the Energy Facility Site Evaluation Council (EFSEC or Council) for site certification and approval of the Columbia Solar Project. The Council may grant expedited review when it finds the project is consistent and in compliance with land use plans and zoning ordinances, and the environmental impacts are insignificant or can be mitigated to a nonsignificant level. The Council, by this order, concludes that the criteria for expedited review have been satisfied and will use the expedited process authorized by RCW 80.50.075 to evaluate the application.*

- 1 **Nature of Proceeding.** This matter involves an application (Application) filed on October 16, 2017, by TUUSSO Energy, LLC (Applicant) for site certification to construct and operate the Columbia Solar Photovoltaic Project (Project). The Project would be located in unincorporated Kittitas County near the city of Ellensburg, and consist of five discrete sites with a combined maximum generating capacity of 25 megawatts (MW).
- 2 The Applicant requests that EFSEC use the expedited process authorized by RCW 80.50.075 to evaluate the Application. An applicant is eligible for expedited processing when EFSEC finds (1) the environmental impacts of the proposed project are not

ORDER – Expedited Processing

significant or can be mitigated to non-significant levels and (2) the proposed project is consistent and in compliance with city, county or regional land use plans.¹

- 3 **SEPA.** On February 27, 2018, the Council issued a Mitigated Determination of Nonsignificance (MDNS). The MDNS listed 10 mitigation measures related to water, wildlife, and historic and cultural preservation. The public and agencies were invited to comment on this MDNS through March 13, 2018. The Council received 18 comments. Mitigation measures and a summary of the comments received are listed beginning on page 15.
- 4 **Land Use Consistency Hearing.** RCW 80.50.090(2) requires the EFSEC to “conduct a public hearing to determine whether or not a proposed site is consistent and in compliance with city, county, or regional land use plans or zoning ordinances.” On December 1, 2017, EFSEC issued a Notice of Land Use Consistency Hearing and scheduled the hearing in Ellensburg, Washington for 7:30 p.m. on Tuesday, December 12, 2017.²
- 5 On December 12, 2017, the Council conducted a land use hearing at the Kittitas Valley Event Center Armory in Ellensburg, Washington, to hear testimony regarding whether the Site was consistent and in compliance with Kittitas County’s local land use provisions. The following EFSEC members were present: Cullen Stephenson (Department of Ecology), Jaime Rossman (Department of Commerce), Dan Siemann (Department of Natural Resources), Joe Stohr (Department of Fish and Wildlife), Laura Chartoff (Utilities and Transportation Commission), Ian Elliot (Kittitas County) and Kelley Cooper (Department of Health).³ Cullen Stephenson presided over the hearing.
- 6 Tim McMahan, Stoel Rives Law Firm, represented the Applicant. The Applicant also filed a written hearing memorandum. Greg Poremba, Senior Energy Manager with SWCA Environmental Consultants, and Evan Dulin, Wetland Scientist and Biologist with SWCA Environmental Consultants, spoke for the Applicant. Neil Caulkins, Deputy

¹ RCW 80.50.075; WAC 463-43-030.

² The Council sent this Notice to all interested persons on the mailing list for the Facility and also to all subscribers to EFSEC’s general minutes and agenda list. Further, the Council purchased advertisements in The Ellensburg Daily Record, the local daily newspaper of general circulation.

³ Kelley Cooper appeared by phone. Laura Chartoff appeared for Council Member, Dennis Moss.

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Prosecuting Attorney, represented Kittitas County and Paul Jewell, Kittitas County Commissioner and Chairman of the Board of County Commissioners, spoke for the County.

- 7 The Council also received oral comments from the following members of the public: Dave Nerpel, Jeff Brunson, Jeff Pittenger, Karen Poulsen, Dick Carkner, Doug Dicken, Mark Pritchard, Kathi Pritchard, Jim Joyner, Jeff Dunning, Colleen Donovan, Donald Chance, Joanne Chance, Mark Kirkpatrick, Matthew Cox, Keith Crimp, Stan Blazynski, Roger Clerf, Charles Weidenbach, and Ron Poulsen. Assistant Attorney General Bill Sherman, Counsel for the Environment, was present for the land use hearing.
- 8 At the request of Commissioner Jewell, the Council moved to extend the public comment period for 10 days to allow Kittitas County, and any interested member of the public, to provide additional information regarding land use consistency. During this public comment period, Kittitas County submitted a legal brief, and the Applicant submitted a supplemental memorandum. In addition, the Council received written statements from the following persons: Dick Carkner, Mary Christensen, Steven C. Rosbach, Karen Poulsen, Ron Poulsen, Kathi Pritchard, Mark Pritchard, and Fred Scarlett.
- 9 Kittitas County residents have expressed the greatest concern over potential loss of high-quality irrigated agricultural land and future proliferation of similar facilities. Other concerns were raised related to visibility, glare, or other impacts from the TUUSSO structures and operations, and also about a perceived loss of local control over land uses resulting in the loss of Kittitas County's rural character.
- 10 **Applicant's Description of Proposed Facility.** The Project consists of five new photovoltaic facilities at five site locations in unincorporated Kittitas County. The five sites are named: Camas, Fumaria, Penstemon, Typha, and Urtica. Two generation tie lines would also be constructed to connect the Fumeria and Typha locations. Each new PV solar array would be capable of providing up to 5 megawatts (MW) of solar energy within the Puget Sound Energy (PSE) service area, for a total of 25 MW of electrical power generation. The five solar arrays and two generation tie lines would be constructed on 200 of approximately 232 leased acres, in close proximity to existing PSE electrical infrastructure.
- 11 Individually, the sites are 35 to 55 acres in size, and each site represents approximately .01 to .02 percent of the area in their County land use designations. Combined, the sites

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include approximately 145 acres of commercial agricultural land, which is .05 percent of all lands in the County under that designation, and 87.2 acres of rural working-agriculture 20 lands, which is .03 percent of the total lands in the County under that designation.

Four of the five project sites are active agricultural properties, either being used to grow hay or for grazing. The 35-acre Fumaria site is currently fallow agricultural land without irrigation. Data from the United States Department of Agriculture indicates that there are approximately 183,000 acres of farmlands in Kittitas County. Therefore, the TUUSSO project sites would constitute 0.13 percent of the 183,000 acres of total County farmlands. The expected life of the Project is approximately 30 years, after which time the project sites could be returned to their original agricultural uses.

- 12 The Camas, Penstemon, and Typha sites are on land zoned as “Commercial Agriculture” (CA) under Kittitas County zoning ordinances. Kittitas County Code (KCC) 17.32.010 describes the purpose and intent of the CA zone as follows: “The commercial agriculture zone is an area wherein farming and ranching are the priority. The intent of this zoning classification is to preserve fertile farmland from encroachment by nonagricultural land uses and protect the rights and traditions of those engaged in agriculture.”
- 13 The Fumeria and Urtica sites are on land zoned as “Rural working – Agriculture 20” (A-20). KCC 17.29.010 describes the purpose and intent of A-20 zone as follows: “The agriculture (A-20) zone is an area wherein farming, ranching and rural life styles are dominant characteristics. The intent of this zoning classification is to preserve fertile farmland from encroachment by nonagricultural land uses; and protect the rights and traditions of those engaged in agriculture.”
- 14 Proposed structure setbacks on the five sites would range from 20 feet to 60 feet. None of the solar arrays would be above eight feet tall, so there would be no shadow onto adjacent properties from the solar panels or inverters. The Projects would be located and designed so there will be no water drainage off-site. To avoid or minimize the growth of weeds, the Applicant plans to grow native vegetation, treat for any noxious weeds that appear, and possibly plant some hay crops.
- 15 On average, vehicle use associated with the construction phase of the Project would consist of six heavy trucks and 19 non-heavy vehicles per day to each site, which amounts to less than five percent of the current number of vehicles using the roads serving the Project sites. For the Fumaria site, vehicle use would be slightly higher, between 12 to 35 percent of current traffic use. It is not anticipated that any farm traffic

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would be affected. State and local noise standards would be observed. During operation, traffic trips would be relatively small. It is anticipated that four to five operation maintenance personnel would conduct two to three visits per year to each of the five sites. Additional truck trips are indicated in the Application, specifically for panel washing during the life of the facility.

- 16 For analysis of the visual impacts of the sites, the Applicant conducted a visual assessment with a widely-accepted method designed for rural areas and energy projects. This takes into account land form, vegetation, bodies of water, and human-made structures to define the characteristics of sites and the contrast that a proposal would have on those sites and the surrounding areas. A key aspect of this evaluation is contrast. For all five sites, the visual impacts were classified at most as moderate, meaning that the structure(s) would begin to be considered above background level and attract the eye of a person. Observation points were placed at two miles from the structures. They were selected to assess the visual impact to people living or working around the sites, travelers along main transportation routes, and recreational users of public lands.
- 17 The researchers found that, although the structures would introduce horizontal and vertical lines to areas of farm country, open fields, and land forms, these lines would not dominate the landscape due to the presence of other structures in view, such as transmission lines and metal buildings. In sum, they found no strong contrast effects. In addition, the Applicant plans to plant vegetation such as native plants, shrubs, and trees specifically placed and designed to mitigate and screen some of these effects. To address concerns about glare from the solar arrays, the applicant explained that the arrays absorb most of the light and do not reflect it. The more light they absorb, the more efficient they are, and the more electricity they generate. Because of this, the panels are darker, and, from above, tend to look like dark blue ponds. The Applicant pointed to a U.S. Air Force study of solar panels to determine their impacts on planes flying in and out of airports. This study concluded the panels pose a minimal risk to air traffic around airports and would look like weathered concrete and similar to dark water bodies. After modeling the Project sites with a Solar Glare Hazard Analysis tool developed by Sandia National Labs, the researchers found the sites had either no unacceptable glare effects or were well within and below levels that are normally considered of concern.
- 18 At the hearing, the Council and the public were shown photographs illustrating the visual impacts from each of the sites at the locations where the structures would be visible to the

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public from the surrounding lands. The Camas site visual contrast was at a moderate level, so specific plantings of trees and shrubs are planned, up to 15 feet tall when planted, to grow taller and provide additional screening height at maturity. At the Penstemon site, there was some moderate contrast potential, but there is a similar plan for appropriately sized shrub and tree planting. On the Urtica site, the contrast is much further in the background and more difficult to see from public observation points, so has less visual impact. The other two sites, Fumaria and Typha, had either no visual impacts or contrast levels of any kind because of how far away they were from the key observation points at roads or other properties, and they could not be seen.

- 19 A wetland scientist and biologist provided information on wetland and wildlife impacts and mitigation measures for the Project. She described the Project sites as including fallow fields, recently grazed areas, and natural vegetation along riparian, wetland, and open-water areas, as well as some native shrub steppe areas nearby. The Project would avoid all water impacts on site through project design. Any access roads or internal access roads would be located along uplands and existing roads and bridges, so no additional road construction would be needed. The one proposed wetland impact would be on the Typha site entrance, requiring a limited wetland fill of about 600 square feet to address a collapsed and clogged culvert causing flooding of the road, preventing year-round access to the site. On all other sites, impacts to wetlands would be avoided with buffers. Any unanticipated impacts identified for wetlands will be addressed by the Applicant in coordination with EFSEC.
- 20 Wildlife impacts would be limited to any game species traversing the Kittitas Valley that might be impacted by the fences. But none of the project sites are within identified big game migratory corridors or migratory bird fly-ways. Two protected species have a likelihood to occur in or near the project sites: bald eagles and Columbia spotted frogs. However, all impacts to the frogs would be avoided with setback distances from the aquatic resources and construction best management practices. No eagle nests were observed within the project site areas. Should any nests be encountered during the construction period, the Applicant would coordinate with EFSEC, Washington Department of Fish and Wildlife and the U.S. Fish and Wildlife Service, construction would be delayed during the critical use period (January 1 – May 31). There was no likelihood of any protected fish species occurring within the analysis area as any stream that could potentially have those species was avoided.

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- 21 To avoid impacts to wetlands, existing roads would be used to the extent possible. In addition, seeding and planting of the sites will be conducted to reduce erosion and improve water quality. Currently there are no buffers on riparian corridors, so establishing them will improve riparian corridor quality for wildlife. The wetland scientist determined that, other than the road repair, the Project will not impact waters or wetlands, or have any significant impact on wildlife and available habitat. In addition to the review by the wetland scientist contracted by the Applicant, mitigation measures four and five indicate that the Department of Ecology, as contractor to EFSEC will perform further evaluation of wetlands and that any unanticipated impacts identified will be addressed and/or compensated for by the Applicant.
- 22 The Applicant contends that the Project satisfies the conditional use criteria at KCC 17.60A.015 and therefore is consistent and in compliance with Kittitas County's applicable land use plans and zoning ordinances. The Applicant provided oral comments and a memorandum detailing how each of the conditional use criteria are met, and how the Project is compatible and will not jeopardize farming and ranching activities on surrounding lands.
- 23 **Kittitas County's Response.** Kittitas County argues that "a conditional use permit application is not amenable to a summary determination of code consistency, by definition."⁴ The County explains that Kittitas County Code defines a conditional use as "a use which may be permitted in a zone classification following review and hearing under the provisions of KCC Chapter 17.06A." Thus, the County contends that absent a review and hearing contemplated by the county code, one could not determine if the Application meets the criteria for a conditional use. With regard to specific conditional use criteria, the County argues that the Project is not in keeping with "rural character," nor consistent with the Kittitas growth management plan, and that the Project is "not essential or desirable to the public convenience." The County further argues that the project is inconsistent due to the moratorium on solar facility applications.
- 24 **Public Comment.** Members of the public provided oral as well as written comments. Four people supported the Application while 20 people were opposed. Persons in support of the Project commented that the Project will help meet renewable energy goals, offers income diversification for farmers, is an allowed conditional use under county zoning

⁴ County's Brief on Land Use Consistency, p.2.

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codes, has little environmental impact, and that the Applicant has been working with neighbors to mitigate impacts. Citizens opposed to the Project commented that irrigated farmland is a valuable resource that should be preserved, the Project is not in compliance with land use due to the moratorium, and the Project cannot satisfy conditional use criteria because it is inconsistent with rural character, and visual, noise, and wildlife impacts cannot be sufficiently mitigated. Opponents also commented that EFSEC should delay a decision and allow the County's Solar Facilities Citizen Advisory Committee to develop zoning regulations. Opponents also expressed fear that EFSEC's decision in this case will set a precedent requiring approval of all future solar projects.

DISCUSSION**I. Land Use Consistency Determination**

- 25 The purpose of the land use hearing is “to determine whether at the time of application the proposed facility was consistent and in compliance with land use plans and zoning ordinances.”⁵ In this order, the Council will refer to land use plans and zoning ordinances collectively as “land use provisions” and will refer to its decision as pertaining to “land use consistency.”
- 26 The Council's evaluation of land use consistency is not dispositive of the Application and a determination of land use consistency is neither an endorsement nor an approval of the Project.⁶ The evaluation pertains only to the general siting of categories of uses, taking into account only the Site (in this case, the Sites) and not the Project's construction and operational conditions. Whether a particular project will actually create on- or off-site impacts (including impacts to the environment) is considered separately through the State Environmental Policy Act (SEPA) process, during the Council's adjudication (if applicable), through the environmental permitting processes (if applicable), and through

⁵ WAC 463-26-050.

⁶ In re Whistling Ridge Energy Project, Council Order No. 868 at 9 (October 6, 2011) (Whistling Ridge Order). A determination of land use inconsistency simply results in the Council's further consideration of whether local land use provisions should be preempted. WAC 463-28-060(1), *see also* RCW 80.50.110(2) and WAC 463-28-020. If they are preempted, the Council will include in any proposed site certification agreement conditions designed to recognize the purpose of the preempted provisions. WAC 463-28-070.

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other Council processes (if applicable).⁷ The Council's ultimate recommendation to the Governor will be made after full and thorough consideration of all relevant issues.

- 27 The Applicant did not obtain certificates from local authorities attesting to the land use consistency. Therefore, the Applicant retains the burden of proving the Sites are consistent.⁸
- 28 **Definitions of “Land Use Plan” and “Zoning Ordinances.”** The term “land use plan” is defined by statute as a “comprehensive plan or land use element thereof adopted ... pursuant to” one of the listed planning statutes.⁹ EFSEC interprets this definition as referring to the portions of a comprehensive plan that outline proposals for an area's development, typically by assigning general uses (such as housing) to land segments and specifying desired concentrations and design goals.¹⁰ Comprehensive plan elements and provisions that do not meet this definition are outside of the scope of the Council's present land use consistency analysis.
- 29 The term “zoning ordinance” is defined by statute as an ordinance “regulating the use of land and adopted pursuant to” one of the listed planning statutes.¹¹ EFSEC has interpreted this definition as referring to those ordinances that regulate land use by creating districts and restricting uses in the districts (i.e., number, size, location, type of structures, lot size) to promote compatible uses. Ordinances that do not meet this definition are outside of the scope of the Council's present land use consistency analysis.
- 30 EFSEC has defined the phrase “consistent and in compliance” based on settled principles of land use law: “Zoning ordinances require compliance; they are regulatory provisions

⁷ RCW 80.50.090(3), RCW 80.50.040(9), (12), WAC 463-30, WAC 463-47, WAC 463-76, WAC 463-78.

⁸ WAC 463-26-090. In cases where such certificates are obtained, they are regarded as *prima facie* proof of consistency and compliance with local land use plans and zoning ordinances absent contrary demonstration by anyone present at the hearing.

⁹ RCW 80.50.020(14).

¹⁰ In re Northern Tier Pipeline, Council Order No. 579 (Northern Tier Pipeline Order) at 9 (November 26, 1979).

¹¹ RCW 80.50.020(22).

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that mandate performance. Comprehensive plan provisions, however, are guides rather than mandates and seek consistency.”¹²

- 31 **The County’s Comprehensive Plan.** The portions of the Comprehensive Plan (the Plan) that meet the statutory definition are within Chapter 2 (Land Use), Chapter 6 (Utilities), and Chapter 8 (Rural and Resource Lands). Chapter 2 identifies the land use designations assigned in the Comprehensive Plan, along with corresponding zone classifications present in each land use designation. Lands zoned for “Commercial Agriculture” (CA) are “resource” lands and lands zoned “Rural working – Agriculture 20” (A-20) are “rural working” lands. The CA designation is for “agricultural land of long-term commercial significance.” Rural working lands “generally encourage farming, ranching, and storage of agriculture products, and some commercial and industrial uses compatible with rural environment and supporting agriculture and/or forest activities.” The goals, policies and objectives (GPOs) for rural and resource lands are in Chapter 8. Generally, the applicable GPOs give priority to farming uses, and require any development to preserve rural character. Solar facilities are briefly addressed in GPO 6.36 which states: “Develop a study area encompassing the entire county to establish criteria and design standards for the siting of solar farms.”
- 32 **The County’s Zoning Ordinances.** The portions of the County’s zoning ordinances that meet the statutory definition are the County’s zoning map, development restrictions, and associated definitions. Three of the sites—Camas, Penstemon, and Typha—would be on land zoned as CA. KCC 17.32.010 describes the purpose and intent of the CA zone as follows: “The commercial agriculture zone is an area wherein farming and ranching are the priority. The intent of this zoning classification is to preserve fertile farmland from encroachment by nonagricultural land uses and protect the rights and traditions of those engaged in agriculture.” In addition to farming, the following uses may be permitted in the CA zone: religious institutions, schools, shooting range, refuse disposal/recycling, public facilities, utilities, farming-related and vehicle repair, and airports.¹³
- 33 Two of the sites—Fumaria and Urtica—would be on land zoned as “Rural working – Agriculture 20” (A-20). KCC 17.29.010 describes the purpose and intent of the A-20

¹² Whistling Ridge Order at 10 n 15.

¹³ TUUSSO Energy – Columbia Solar Project, Land Use Analysis Report, Prepared by Washington State Department of Commerce.

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zone as follows: “The agriculture (A-20) zone is an area wherein farming, ranching and rural life styles are dominant characteristics. The intent of this zoning classification is to preserve fertile farmland from encroachment by nonagricultural land uses; and protect the rights and traditions of those engaged in agriculture.” Additional non-agricultural uses that may be allowed include: religious institutions, schools, interpretive center, veterinary hospital, shooting range, forest product processing, refuse disposal/recycle, campgrounds, golf course, parks and playgrounds, mining and excavation, public facilities and utilities.¹⁴

34 Under the Kittitas County Code, each of the Project Sites would qualify as a “major alternative energy facility.”¹⁵ Major Alternative Energy Facilities may be permitted as a “conditional use” in the A-20 and CA zones if they satisfy the conditional use criteria in KCC 17.60A.015,¹⁶ which are:

1. The proposed use is essential or desirable to the public convenience and not detrimental or injurious to the public health, peace, or safety or to the character of the surrounding neighborhood.
2. The proposed use at the proposed location will not be unreasonably detrimental to the economic welfare of the county and that it will not create excessive public cost for facilities and services by finding that
 - A. The proposed use will be adequately serviced by existing facilities such as highways, roads, police and fire protection, irrigation and drainage structures, refuse disposal, water and sewers, and schools; or
 - B. The applicant shall provide such facilities; or
 - C. The proposed use will be of sufficient economic benefit to offset additional public costs or economic detriment.
3. The proposed use complies with relevant development standards and criteria for approval set forth in this title or other applicable provisions of Kittitas County Code.
4. The proposed use will mitigate material impacts of the development, whether environmental or otherwise.
5. The proposed use will ensure compatibility with existing neighboring land uses.

¹⁴ TUUSSO Energy – Columbia Solar Project, Land Use Analysis Report, Prepared by Washington State Department of Commerce.

¹⁵ KCC 17.61.010(9).

¹⁶ KCC 17.61.020.

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6. The proposed use is consistent with the intent and character of the zoning district in which it is located.
7. For conditional uses outside of Urban Growth Areas, the proposed use:
 - A. Is consistent with the intent, goals, policies, and objectives of the Kittitas County Comprehensive Plan, including the policies of Chapter 8, Rural and Resource Lands;
 - B. Preserves “rural character” as defined in the Growth Management Act (RCW 36.70A.030(15));
 - C. Requires only rural government services; and
 - D. Does not compromise the long term viability of designated resource lands.

35 **The Test for Consistency and Compliance.** Under the test for land use consistency previously established by the Council, the Council considers whether the pertinent local land use provisions “prohibit” the Sites “expressly or by operation clearly, convincingly and unequivocally.”¹⁷ If a Site can be permitted either outright or conditionally, it is consistent and in compliance with the local land use provisions.¹⁸

36 Applying the facts to the test established, we conclude the Sites are consistent with the pertinent portions of the land use provisions because neither the pertinent portions of the Plan nor the pertinent portions of the zoning ordinances clearly, convincingly, and unequivocally prohibit the Project. The Plan does not provide guidance on the siting of solar facilities. The zoning ordinances specifically allow the proposed use to be authorized in the CA and A-20 zones as a conditional use, KCC 17.61.020, and one solar facility was previously permitted by the County in an A-20 zone.¹⁹ Therefore, we conclude the pertinent land use provisions do not clearly, convincingly or unequivocally prohibit the Sites. It follows that under the established precedent for a minimal threshold for determining land use consistency, the Project is consistent and in compliance with the County’s land use provisions. This determination does not prejudice whether the conditional use criteria are met at the sites. When making determinations of land use

¹⁷ In re TransMountain Pipeline, Council Order 616 at 3 (May 26, 1981).

¹⁸ *Id.*

¹⁹ See Kittitas County Board of County Commissioners Resolution No. 2015-106, Osprey Solar Farm Conditional Use Permit & Shoreline Substantial Development Permit (CU-14-00003 & SD-14-00002) (July 7, 2015); *see also*, Findings of Fact and Decision Teanaway Solar Reserve – Condition Use Permit CU-09-0005.

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consistency in prior cases, the Council has stated that consideration of land use criteria would be taken up in later hearings.²⁰ The Council in this matter has decided that if it were to grant expedited processing, it would afford a means for it to receive information akin to what the County would receive during a conditional use hearing as to site-specific conditions and criteria.²¹ To the extent that the County is arguing that that conditional use criteria may only be applied by the legislative body of the County government, and not by EFSEC, this argument is at odds with RCW 80.50.110(2) (preempting the regulation and certification of the location, construction, and operational conditions of certification of energy facilities included in RCW 80.50.060) and RCW 80.50.100(2) (providing that if EFSEC recommends that the governor approve an application for certification, it shall include conditions designed to recognize the purpose of the ordinances preempted by RCW 80.50.110).

- 37 Kittitas County and members of the public argued that the Project is inconsistent with land use provisions because it cannot satisfy the conditional use criteria. Specifically, opponents argued the Project is inconsistent with rural character because the Project covers entire parcels, and therefore results in the built environment predominating over “open space, the natural landscape, and vegetation.”
- 38 The Applicant performed a visual impact assessment and provided evidence that the Project would not dominate or substantially impact the current visual landscape. In addition, the Applicant proposes to plant vegetation to mitigate and screen some of the effects. The Applicant provided photographs showing low to moderate visual impacts where the built environment does not dominate over the landscape. Therefore, we conclude the Applicant has shown that the Project could be consistent with rural character and that the Project is not clearly prohibited.
- 39 The County cites GPO 8.21A which states a policy that “residential and commercial buildings” in rural and resource lands be “located in areas buffered by vegetation and along the edges of fields or areas of shrub steppe vegetation to maintain Kittitas County’s historic rural character.” However, KCC 17.08.130 defines “building” as “a structure having roof supported by columns or walls for the shelter, support or enclosure of

²⁰ *In re TransMountain Pipeline*, Council Order 616 at 3 (May 26, 1981); *In re Northern Tier Pipeline*, Council Order 529 at 2 (April 11, 1977).

²¹ EFSEC February 20, 2018 meeting minutes, pp. 51-52.

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persons, animals or chattels.” In addition, the siting of “major alternative energy facilities” including “solar farm[s]” is specifically and separately addressed for CA and A-20 lands as a use that is reviewed under the conditional use criteria. KCC 17.61.010(9), 020(4). There is no zoning code provision that expressly limits solar arrays to being located only in areas buffered by vegetation and along the edges of fields or areas of shrub steppe vegetation. It does not appear that the County asserted this interpretation about solar arrays constituting “buildings” in its prior permitting decision regarding the Osprey solar facilities permitted by the county, or even in its denial of a permit for the Iron Horse facilities.²² We find that the solar arrays are not “residential [or] commercial buildings,” and that GPO 8.21A is therefore not applicable. However, even if the County’s argument is correct and not at odds with its prior interpretations, it merely raises issues about the positioning or extent of coverage of solar arrays on the proposed sites. It does not establish that solar farms constituting “major alternative energy facilities” are unequivocally prohibited in rural and resource lands. Clearly, they are not. KCC 17.61.010(9), 020(4).

- 40 The County further argues that it denied a conditional use permit to another solar farm applicant (OneEnergy Development LLC) and that the Superior Court affirmed the County’s decision, agreeing that the project violated rural character. The Superior Court’s decision is on appeal. In addition, the Superior Court decision is not controlling with respect to a different project by a different applicant and the decision states that it applies only to the specific project in that specific location. Therefore, the Superior Court decision in OneEnergy Development LLC does not convince us that the Project cannot satisfy the rural character criteria and is therefore prohibited by the pertinent land use provisions.
- 41 The County also argues the Project is not “essential or desirable to the public convenience” because several permitted alternative energy projects have not been built. The Applicant argues that the Project helps the State meet renewable energy goals.²³ Because the legal standard is whether the proposed use is clearly prohibited, we cannot

²² Kittitas County Board of County Commissioners Resolution No. 2015-106, Osprey Solar Farm Conditional Use Permit & Shoreline Substantial Development Permit (CU-14-00003 & SD-14-00002) (July 7, 2015); Kittitas County Board of County Commissioners Resolution No. 2017-022, Iron Horse Conditional Use Permit Denial (CU-15-00006).

²³ Applicant’s Legal Memorandum regarding Land Use, Page 4.

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conclude the Project is not essential or desirable to the public convenience based solely on the failure of similar projects to be built.

42 **Kittitas County Moratorium on Energy Facility Applications.** On January 10, 2017, the Board of County Commissioners (BCC) passed “a moratorium on applications for solar projects that qualify as major alternative energy facilities” as authorized in RCW 36.70A.390. On July 18, 2017, the BCC extended the moratorium through January 2018. On August 15, 2017, the BCC formed a Solar Facilities Citizens Advisory Committee to gather information and make recommendations concerning criteria for siting of solar facilities that qualify as major alternative energy systems. On January 3, 2018, the BCC extended the moratorium until July 20, 2018, or earlier upon the County adoption of standards and/or criteria. Kittitas County argues that the moratorium is a land use plan or zoning ordinance that was in effect when the Application was submitted, and, therefore, the Project is inconsistent and noncompliant with County land use plans and zoning ordinances.²⁴

43 We conclude that the County’s moratorium is not a land use plan or zoning ordinance for purposes of EFSEC’s land use consistency determination. In order to come within the Energy Facilities Site Location Act, RCW 80.50 (EFSLA’s) definition of a “land use plan,” the directive must be “a comprehensive plan or land use element thereof” adopted pursuant to one of Washington’s statutory provisions for land use planning,²⁵ which in the case of Kittitas County would be the Growth Management Act, RCW 36.70A. The Growth Management Act addresses moratoria separately from comprehensive plan documents.²⁶ The County’s moratorium plainly is not an amendment to the County’s Comprehensive Plan or a land use element thereof and therefore is not a “land use plan” under EFSLA. A somewhat closer question is presented by whether the moratorium meets EFSLA’s definition of a “zoning ordinance,” but ultimately it does not. In *Friends of Columbia Gorge, Inc. v. State Energy Facility Site Evaluation Council*, the Washington Supreme Court held that a moratorium on the acceptance of SEPA checklists did not fall within EFSLA’s definition of “zoning ordinance,” which is “an ordinance of a unit of local government regulating the use of land and adopted pursuant to chapter ...

²⁴ Jewell, TR 33:11-17.

²⁵ RCW 80.50.020(14).

²⁶ See RCW 36.70A.390.

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36.70[] or 36.70A.”²⁷ The Court explained that the moratorium in that case “does not regulate how land is used. Rather, it regulates the county’s processing of SEPA checklists and is not land use regulation within the definition provided by EFSLA.”²⁸ Similarly here, the County’s moratorium on the acceptance of applications for solar projects is not a land use regulation because it regulates the processing of applications and does not regulate how land is used.

44 The Washington Supreme Court in *Save Our Scenic Area v. Skamania County*²⁹ described zoning moratoria as the “temporary suspension of established regulations” that “do[] not repeal, amend, or contradict” the existing regulations. The Growth Management Act (GMA), RCW 36.70A, also distinguishes between “development regulations” (a term defined under the GMA to include “zoning ordinances”³⁰) and moratoria. RCW 36.70A.160 requires a county proposing adoption of development regulations to notify the Department of Commerce of its intent to adopt development regulations at least sixty days prior to final adoption and to allow state agencies to provide comments prior to adoption. The County’s moratorium is not styled as a development regulation. Instead, the moratorium cites to RCW 36.70A.390, concerning moratoria. Under that GMA provision, moratoria may be adopted through less involved procedural requirements than are required for adoption of development regulations, but are also subject to limits in duration. The County’s moratorium does not repeal or amend existing zoning ordinances and does not restrict EFSEC from making a determination that, “at the time of application the proposed facility was consistent and in compliance with land use plans and zoning ordinances.”³¹ Under the test previously established by the Council, the Council considers whether the pertinent local land use provisions “prohibit” a site “expressly or by operation clearly, convincingly and unequivocally.”³² A temporary suspension of a

²⁷ RCW 80.50.020(22).

²⁸ 178 Wn.2d 320, 346 (2013).

²⁹ 183 Wn. 2d 455, 465, 352 P.3d 177 (2015) (citing favorably Fairhurst, J., dissenting in *Biggers v. City of Bainbridge Island*, 162 Wn. 2d 683, 709, 169 P.3d 14 (2007)).

³⁰ RCW 36.70A.030(7).

³¹ WAC 463-26-050.

³² *In re TransMountain Pipeline*, Council Order 616 at 3 (May 26, 1981).

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zoning ordinance that does not repeal, amend or contradict that ordinance cannot be said to prohibit a site.³³

- 45 We therefore conclude that the County’s moratorium on acceptance of permit applications for solar facilities is not a land use plan or zoning ordinance for purposes of this land use consistency determination. Under the established precedent for a minimal threshold for determining land use consistency, the Project is consistent and in compliance with the City’s land use provisions. However, the Council’s evaluation of land use consistency is not dispositive of the Application and a determination of land use consistency is neither an endorsement nor an approval of the Project. The County and the public raised many important issues during this proceeding including the loss of agricultural land, lack of local control, and whether the Project is consistent with rural character. This finding does not preclude the Council’s future consideration of issues raised in EFSEC’s recommendation to the Governor.

II. Environmental Impact

- 46 On February 27, 2018, EFSEC’s SEPA responsible official³⁴ issued a Mitigated Determination of Non-Significance (MDNS) under WAC 197-11-350 based on its determination that mitigating conditions included in the MDNS report, along with required compliance with applicable county, state and federal regulations and permit requirements, will mitigate all significant adverse impacts to the environment. The responsible official made this determination after a review of a completed environmental checklist and other information on file with the lead agency and existing regulations applicable to the proposal.
- 47 The following table details the required mitigation measures in the revised MDNS report:

Resource	Impact	Mitigation
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³³ It should also be noted that whether or not a proposed site is consistent and in compliance with land use plans and zoning ordinances does not determine EFSEC’s authority to make a recommendation to the Governor, or for the Governor to take action on the application. RCW 80.50.110(2) provides that “[t]he state hereby preempts the regulation and certification of the *location*, construction, and operational conditions of certification of energy facilities included under RCW 80.50.060 as now or hereafter amended.” (Emphasis added.)

³⁴ Within EFSEC, the SEPA responsible official is the council manager. WAC 463-47-051.

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Water	Flow path disruption in floodplains	(1) Prior to construction, TUUSSO will provide final construction and micrositing plans to EFSEC showing that structures (including roads and fences) placed within floodplains are designed so as to not restrict or redirect flows from their natural flow path. If impervious surfaces such as roads are placed in the floodplain, measures will be taken to mitigate for the lack of floodplain storage.
	Riparian habitat	<p>(2) Prior to construction, TUUSSO will provide final construction and micrositing plans to EFSEC that apply a 100-foot minimum setback from Type F (fish-bearing) streams in the Project sites, including the Yakima River, as well as compliance with updated (draft) Kittitas County Critical Areas Ordinances for the protection of riparian areas.</p> <p>(3) Further, TUUSSO will compensate for habitat impacts of the Project by submitting a plan for EFSEC approval detailing riparian habitat enhancement within the 100-foot buffers adjacent to fish-bearing streams. The plan will include, at a minimum, the following:</p> <ul style="list-style-type: none"> • TUUSSO will plant native riparian plants (including shrubs) within the riparian area buffers where current vegetation has been reduced or eliminated from agricultural practices. • TUUSSO will establish benchmarks and timeline for revegetation success, and monitor revegetation activities in the riparian areas to ensure success.
	Wetland impacts during construction	<p>(4) Prior to construction, TUUSSO will provide plans to EFSEC for coordination with Ecology to conduct additional wetlands surveys and identification of hydrologic features at each site.</p> <p>(5) Further, TUUSSO will compensate for habitat impacts of the Project by submitting a plan for EFSEC approval detailing buffer zones and/or any</p>

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		required compensatory mitigation as identified through coordination with EFSEC and Ecology.
	Resources	(6) TUUSSO will verify that landowners' water shares purchased from the controlling water companies will be maintained throughout the life of the facility.
Wildlife	Disturbance of nesting birds during construction	<p>(7) TUUSSO will survey all Project sites for nesting raptors and great blue heron in the spring of each year of construction, and if found to be active, establish the following seasonal work avoidance buffers (in addition to those proposed by TUUSSO in the SEPA Environmental Checklist):</p> <ul style="list-style-type: none"> • 0.25-mile avoidance buffer during nesting season for raptors. If construction near active raptor nests might occur during the critical use period, TUUSSO will consult with EFSEC and local U.S. Fish and Wildlife Service (USFWS) biologists for appropriate mitigation or monitoring. • 0.25-mile avoidance buffer from February through May for great blue heron.
	Hazards to birds during construction and operation	<p>(8) TUUSSO will develop an Avian Protection Plan (APP) in consultation with EFSEC, USFWS, and WDFW prior to construction that specifies mitigation or monitoring for impacts to birds from the Project, with particular attention to Birds of Conservation Concern known or likely to occur in the Project area. The APP will include, at a minimum, the following:</p> <ul style="list-style-type: none"> • TUUSSO will follow measures listed in Avian Power Line Interaction Committee (APLIC) guidelines for new electrical poles installed for the Project. If the APLIC guidelines are not feasible on a pole location, TUUSSO will present the reasons to EFSEC and determine appropriate mitigation or monitoring measures. • TUUSSO will avoid avian attraction to solar panels (birds may attempt to land on panels due to "lake effect") by planting vegetation around panels, adding patterns

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		to panels, or using other strategies to reduce the risk of avian collisions.
	Hazards to wildlife during construction and operation	(9) TUUSSO will install fencing at all site locations at a minimum of eight feet in height, with a single line of barbed wire installed at the top of the fence. Razor wire will not be used in Project fencing.
Historic and Cultural Preservation	Resource disturbance or degradation during construction	(10) Prior to construction, TUUSSO, in consultation with EFSEC and Washington Department of Archaeology and Historic Preservation (DAHP), will provide final construction and microsite plans and plans for avoidance of impacts to resources. TUUSSO will continue to coordinate with EFSEC to obtain all necessary permits and perform all required archeological work in order to comply with RCW 27.53.

48 The Council received 18 comments during the public comment period, including from Kittitas County. Seven commenters were in favor of the Project. Eight commenters were opposed for one or more of the following reasons: impacts to farmlands; aesthetic impacts; impacts to tourism, recreation and property values; conflict with local land use permitting; and opposition to expedited process. Three requested deletion of mitigation measure number six and one requested language revision to mitigation measure seven and eight. Finally, one requested extension of the public comment period and one requested information from Applicant but did not comment on the MDNS. After close of the public comment period, EFSEC staff reviewed all eighteen comments and subsequently prepared a revised MDNS. The revised MDNS mitigation measures shown above reflect revisions to mitigation measures six and ten.

49 Kittitas County submitted comments that it termed “SEPA objections.” Citing WAC 197-11-330(3)(e)(iii), the County argued that a project that is in “conflict with local, state, or federal laws or requirements for the protection of the environment” will have a significant adverse environmental impact, and that an MDNS is inappropriate when such a conflict exists. The County then asserted various inconsistencies between the project, as proposed, and the County code. According to the County, these include the applicant’s failure to obtain an “adequate water supply determination” and the project’s failure to meet two of the County’s conditional use criteria: “consistency with rural character” and

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“necessary or desirable to the public convenience.” In response to the County’s objections, EFSEC’s SEPA responsible official has tentatively concluded that no adequate water supply determination is required under KCC 13.35.020 because none of the proposed structures would have potable water plumbing. The responsible official has also concluded that aesthetic impacts related to rural character have been mitigated below significant levels by the applicant’s proposed site plans—which include vegetative screening where needed—and may be mitigated further by EFSEC through conditions such as those listed a KCC 17.60A.020. EFSEC may choose to impose additional conditions related to preservation of rural character after receiving site-specific comments and testimony on conditional use criteria from the public and the County. Finally, the SEPA responsible official concludes that solar alternative energy facilities are “necessary and **desirable** to the public convenience” as a matter of state law and policy³⁵ as well as past County permitting decisions, notwithstanding the fact that some permitted sites have not yet been constructed.

- 50 The Council finds that the responsible official’s conclusions are reasonable and that the MDNS is appropriate based on currently available information. The Council has the ability to revisit the threshold determination, or to require an addendum to the MDNS following the receipt of site-specific comments and testimony related to conditional use criteria or other relevant information.

FINDINGS OF FACT

- 51 (1) On October 16, 2017, TUUSSO Energy, LLC submitted an application for site certification to construct and operate five photovoltaic solar projects on 232 leased acres in Kittitas County, Washington.
- 52 (2) Also on October 16, 2017, the Applicant submitted a written request that the Council use the expedited processing procedure authorized by RCW 80.50.075.
- 53 (3) On December 12, 2017, the Council convened a public information hearing and land use consistency hearing in Ellensburg, Washington, pursuant to due and proper notice. The Council received testimony from the Applicant, Kittitas

³⁵ E.g., RCW 80.16.110, RCW 19.285.020, RCW 80.60.005.

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County, and all others who wished to be heard on the issue of land use consistency for the Project.

- 54 (4) The Council extended the public comment period for 10 days and received 8
written comments from the public, and legal briefs from Kittitas County and the
Applicant.
- 55 (5) The Applicant did not present certificates from local authorities attesting to the
Project’s consistency or compliance with local land use plans and zoning
ordinances.
- 56 (6) The five project sites (Camas, Fumeria, Penstemon, Typha, and Urtica) are all
located in unincorporated Kittitas County, Washington.

CONCLUSIONS OF LAW

- 57 (1) The Council has jurisdiction over the subject matter of this proceeding and the
parties to it pursuant to RCW 80.50.075 and WAC chapter 463-43.
- 58 (2) The Council provided adequate notice to interested parties, and the Council has
adequate information to render a land use consistency decision.
- 59 (3) Under Kittitas County Code, each of the projects qualifies as a “major alternative
energy facility.”
- 60 (4) The Camas, Penstemon and Typha sites are on land zoned as Commercial
Agriculture (CA) under Kittitas County Code.
- 61 (5) The Fumeria and Utica sites are on land zoned as Rural Working – Agriculture 20
(A-20) under Kittitas County Code.
- 62 (6) Major alternative energy facilities are permitted as conditional uses in the CA and
A-20 zones.
- 63 (7) A site is consistent and in compliance with land use plans and zoning ordinances
if it is permitted absolutely or conditionally. To be inconsistent and noncompliant,

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the plan or ordinances must expressly, or by operation, clearly, convincingly, and unequivocally prohibit the facility site.

- 64 (8) The Applicant has met its burden of proof of demonstrating that the site is consistent and in compliance with Kittitas County's Comprehensive Plan and applicable zoning ordinances as required by RCW 80.50.075(1).
- 65 (9) The environmental impact of the proposed TUUSSO energy facility will be mitigated to a nonsignificant level under RCW 43.21C.031 as required by RCW 80.50.075(1).
- 66 (10) The criteria for expedited processing set forth in RCW 80.50.090 and WAC 463-43-050 as of the date of the Application have been satisfied, and therefore, the Applicant's request for expedited processing should be granted.

ORDER

THE COUNCIL ORDERS:

- 67 TUUSSO Energy, LLC's request for expedited processing is GRANTED; EFSEC will evaluate TUUSSO ENERGY, LLC's Application for site certification of the Columbia Solar Project in an expedited process consistent with the requirements of RCW 80.50.075 and WAC chapter 463-43. In addition, Staff will develop a means to receive information akin to what the County would receive during a conditional use hearing as to site-specific conditions and criteria.

DATED at Olympia, Washington, and effective April 17, 2018.

WASHINGTON STATE ENERGY FACILITY SITE EVALUATION COUNCIL

KATHLEEN DREW, Chair

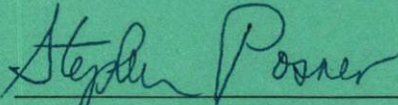
Energy Facility Site Evaluation Council

Non Direct Cost Allocation for 4th Quarter FY 2018 April 1, 2018 – June 30, 2018

The EFSEC Cost Allocation Plan (Plan) was approved by the Energy Facility Site Evaluation Council in September 2004. The Plan directed review of the past quarter's percentage of EFSEC technical staff's average FTE's, charged to EFSEC projects. This along with anticipated work for the quarter is used as the basis for determining the non-direct cost percentage charge, for each EFSEC project.

Using the procedures for developing cost allocation, and allowance for new projects, the following percentages shall be used to allocate EFSEC's non direct costs for the 4th quarter of FY 2018:

Kittitas Valley Wind Power Project	8%
Wild Horse Wind Power Project	8%
Columbia Generating Station	20%
Columbia Solar	18%
WNP-1	4%
Whistling Ridge Energy Project	3%
Grays Harbor 1&2	12%
Chehalis Generation Project	9%
Desert Claim Wind Power Project	15%
Grays Harbor Energy 3&4	3%


Stephen Posner, EFSEC Manager

Date: 4/6/2018