

**Respondent No:** 2**Login:** Anonymous**Email:** n/a**Responded At:** Jun 22, 2025 16:41:59 pm**Last Seen:** Jun 22, 2025 16:41:59 pm**IP Address:** n/a**Q1. First & Last Name**

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Q3. Are you part of an Agency or Organization?**Yes (please specify)**

Tri-Cities C.A.R.E.S.

Q4. Share any comment

June 22, 2025 Tri-Cities C.A.R.E.S.' Comments on the proposed EFSEC Director Policy #16-01 We are writing to express our concerns and objections to proposed Energy Facility Site Evaluation Council (EFSEC) Delegating Certain Plan Approvals to the EFSEC Director Policy #16-01. 1. Delegation of Authority The policy represents a major change in energy facility pre-construction and pre-project design completion permit reviews and processing delegating the authority to review and approve a wide range of technical plans to the EFSEC Director when those plans do not require an amendment to a site certification agreement. We believe this constitutes an improper delegation of authority. This policy framework is not identified in the existing RCW 80.50.030(2)(b) and is not consistent with any reasonable interpretation of RCW 80.50.040, RCW 80.50.360(2), as well as the accompanying Washington Administrative Codes (WAC) including AC 463-06-050(3). Any delegation of authority this sweeping must strictly fall within the powers granted by statute. Were it to exceed these statutory limits, decisions made under the delegation could be challenged on the grounds of being ultra vires (beyond the granted authority). We believe that the proposed delegation is a proposed rule change without following rule making procedures and is best suited for a new legislative proposal and not as a Director's Policy. 2. Procedural Requirements and Documentation Central to the policy is the requirement that:

- - EFSEC staff and external reviewing agencies first identify any areas of concern, and
- - The certificate holder must address deficiencies before plan approval.
- - Written verification from the appropriate agency is required to confirm compliance.

These procedural safeguards serve a dual legal purpose. First, they help ensure that the Director's decisions are not arbitrary but are backed by expert review and interagency cooperation. Second, the detailed documentation creates a robust and clearly reviewable administrative record, which is crucial if decisions are later subject to judicial review. Failure, however, to adhere to these procedural prerequisites could expose the agency to legal challenges regarding due process and the proper implementation of statutory requirements. 3. Efficiency Versus Accountability By delegating plan approvals to the EFSEC Director for certain projects, the policy aims to expedite the review process and prevent duplication of efforts. However, concentrating decision-making in the hands of one official (the Director) also increases the risk of legal scrutiny on two fronts:

- Reviewability and Appeal: The decisions by the EFSEC Director, achieved by internal staff technical review, will frequently be challenged by certificate holders or interested parties, who will justifiably argue that the streamlined process compromised the thoroughness of environmental or safety reviews.
- Concentration of Liability: This process creates a higher concentration of legal accountability. A plan approved by the Director that leads to environmental or operational issues, will result in legal liability by both the certificate holder but also to the Director—and, by extension, the Council—for failing to meet statutory or procedural standards. This new policy fails to define accountability that explains the limits of delegated authority in a crystal-clear manner that can withstand judicial review.

4. Due Process and Public Involvement Considerations Because EFSEC decisions can significantly affect public welfare—ranging from environmental quality to property values to public safety and health—the delegation must align with principles of administrative due process. We are extremely concerned that the policy fails to be expressly consistent with statutory requirements for the following:

- Legislatively Defined: Confined to and based on explicit statutorily defined powers and responsibilities.
- Transparency: Clear documentation of the review process and the rationale for delegation.
- Opportunity for Engagement and Input: Ensuring that relevant agencies and the public have ample opportunity to express concerns and that affected parties have a clear path for recourse, whether through internal agency appeals or judicial review. The proposed delegation process will basically allow EFSEC and energy project developers to sidestep necessary public or interagency engagement steps, reduce the quality and adequacy of technical evaluations and analyses, will trigger expensive, detailed, and heightened legal challenges asserting that procedural fairness was compromised. Impacts to the

environment, safety and health will be increased due to inadequate evaluation of impacts in the balancing process presently required by the RCW and WAC. 5. Inappropriate Document Decisions for Director Approval We believe that given that the RCW and WAC do not expressly address or contemplate the Director taking this action, EFSEC must get legislative approval of its proposed list of documents for Director Approval. The existing regulatory framework gives the EFSEC Council the power and authority to make these decisions. The proposed delegation significantly weakens the very first pillar of legislative intent from RCW 80.50.1 which states: (1) To assure Washington state citizens that, where applicable, operational safeguards are at least as stringent as the criteria established by the federal government and are technically sufficient for their welfare and protection. Placing Draft and Final Site Certification Agreement approval in the hands of the Director is an improper delegation of authority as it is presently conducted by the Council under existing laws. EFSEC staff approval of the PTAG Rules of Procedure and membership by Director Bumpus without Council approval is an improper action outside and beyond any existing delegation of authority by the legislature or the EFSEC Council. The PTAG Rules of Procedure and membership, and the PTAG Recommendation must be included on the list of Plans/Action Requiring EFSEC Council Approval. The Aircraft Detection Lighting System (ADLS) Project Construction Plan must be included on the list of Plans/Actions Requiring Council Approval. Draft Environmental Impact Statements, Final Environmental Impact Statements, and Draft and Final Site Certification Agreements must be included on the list of Plans/Actions Requiring Council Approval. The Policy Proposal should not be approved and placed into service unless the Washington State legislature makes appropriate revisions to the Revised Code of Washington and Washington Administrative Code to expressly define and explicitly delegate EFSEC and its director the authorities contained in this proposal. 6. Potential Legal Challenges The policy will trigger heightened legal disputes which will likely focus on several key themes: • Exceeding Statutory Authority: If stakeholders argue that the EFSEC Director's delegated power extends beyond what the Legislature intended. • Arbitrary Decision-Making: Challenges may allege that the process for identifying and remediating plan deficiencies wasn't sufficiently rigorous, resulting in approval of plans that fail to meet environmental or safety standards. • Inadequate Record-Keeping: If the requisite documentation or written verifications from reviewing agencies is incomplete, this could undermine the administrative record essential for defending decisions in court. Conclusion: We object to this policy change because it was not explicitly contemplated by the legislature and will largely operate outside the existing statutory framework. There will be no reasonable way for plan review and approval by the affected interested parties and the public in a manner that assures: • Strict adherence to the detailed procedural safeguards, • Transparent documentation of the review process, • Clear limits on the scope of delegated authority, and • An effective mechanism to escalate decisions that merit broader review. The new policy does not provide for the continuous and adequate Council oversight of EFSEC that is necessary to protect the environment, safety, health and welfare of the public. Legislation is needed if this type of policy framework is to be adopted. /s/ Paul Krupin, Pam Minelli, Dave Sharp, Karen Brun Tri-Cities C.A.R.E.S.

Q5. Upload your document or picture (optional)	https://s3-us-west-1.amazonaws.com/ehq-production-us-california/36668eadb1a8fc8f64a3b27023ee04c97bc8ac02/original/1750634440/27fca96f5005489b04deda1c473d4d7c_TC%20CARE%20Comment%20email%20to%20EFSEC%20on%20Policy%2016-01%20062125%20final.pdf?1750634440
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Q8. Upload your document or picture (optional)	not answered



June 22, 2025

Comments on the proposed EFSEC Director Policy #16-01

We are writing to express our concerns and objections to proposed Energy Facility Site Evaluation Council (EFSEC) Delegating Certain Plan Approvals to the EFSEC Director Policy #16-01.

1. Delegation of Authority

The policy represents a major change in energy facility pre-construction and pre-project design completion permit reviews and processing delegating the authority to review and approve a wide range of technical plans to the EFSEC Director when those plans do not require an amendment to a site certification agreement.

We believe this constitutes an improper delegation of authority. This policy framework is not identified in the existing RCW 80.50.030(2)(b) and is not consistent with any reasonable interpretation of RCW 80.50.040, RCW 80.50.360(2), as well as the accompanying Washington Administrative Codes (WAC) including AC 463-06-050(3).

Any delegation of authority this sweeping must strictly fall within the powers granted by statute. Were it to exceed these statutory limits, decisions made under the delegation could be challenged on the grounds of being ultra vires (beyond the granted authority).

We believe that the proposed delegation is a proposed rule change without following rulemaking procedures and is best suited for a new legislative proposal and not as a Director's Policy.

2. Procedural Requirements and Documentation

Central to the policy is the requirement that:

- - EFSEC staff and external reviewing agencies first identify any areas of concern, and
- - The certificate holder must address deficiencies before plan approval.
- - Written verification from the appropriate agency is required to confirm compliance.

These procedural safeguards serve a dual legal purpose. First, they help ensure that the Director's decisions are not arbitrary but are backed by expert review and interagency cooperation. Second, the detailed documentation creates a robust and clearly reviewable administrative record, which is crucial if decisions are later subject to judicial review. Failure, however, to adhere to these procedural prerequisites could expose the agency to legal challenges regarding due process and the proper implementation of statutory requirements.

3. Efficiency Versus Accountability

By delegating plan approvals to the EFSEC Director for certain projects, the policy aims to expedite the review process and prevent duplication of efforts. However, concentrating decision-making in the hands of one official (the Director) also increases the risk of legal scrutiny on two fronts:

- **Reviewability and Appeal:** The decisions by the EFSEC Director, achieved by internal staff technical review, will frequently be challenged by certificate holders or interested parties, who will justifiably argue that the streamlined process compromised the thoroughness of environmental or safety reviews.

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- **Concentration of Liability:** This process creates a higher concentration of legal accountability. A plan approved by the Director that leads to environmental or operational issues, will result in legal liability by both the certificate holder but also to the Director—and, by extension, the Council—for failing to meet statutory or procedural standards. This new policy fails to define accountability that explains the limits of delegated authority in a crystal-clear manner that can withstand judicial review.

4. Due Process and Public Involvement Considerations

Because EFSEC decisions can significantly affect public welfare—ranging from environmental quality to property values to public safety and health —the delegation must align with principles of administrative due process. We are extremely concerned that the policy fails to be expressly consistent with statutory requirements for the following:

- **Legislatively Defined:** Confined to and based on explicit statutorily defined powers and responsibilities.
- **Transparency:** Clear documentation of the review process and the rationale for delegation.
- **Opportunity for Engagement and Input:** Ensuring that relevant agencies and the public have ample opportunity to express concerns and that affected parties have a clear path for recourse, whether through internal agency appeals or judicial review.

The proposed delegation process will basically allow EFSEC and energy project developers to sidestep necessary public or interagency engagement steps, reduce the quality and adequacy of technical evaluations and analyses, will trigger expensive, detailed, and heightened legal challenges asserting that procedural fairness was compromised. Impacts to the environment, safety and health will be increased due to inadequate evaluation of impacts in the balancing process presently required by the RCW and WAC.

5. Inappropriate Document Decisions for Director Approval

We believe that given that the RCW and WAC do not expressly address or contemplate the Director taking this action, EFSEC must get legislative approval of its proposed list of documents for Director Approval. The existing regulatory framework gives the EFSEC Council the power and authority to make these decisions. The proposed delegation significantly weakens the very first pillar of legislative intent from RCW 80.50.1 which states:

(1) To assure Washington state citizens that, where applicable, operational safeguards are at least as stringent as the criteria established by the federal government and are technically sufficient for their welfare and protection.

Placing ***Draft and Final Site Certification Agreement*** approval in the hands of the Director is an improper delegation of authority as it is presently conducted by the Council under existing laws.

EFSEC staff approval of the ***PTAG Rules of Procedure and membership*** by Director Bumpus without Council approval is an improper action outside and beyond any existing delegation of authority by the legislature or the EFSEC Council.

The ***PTAG Rules of Procedure and membership***, and the ***PTAG Recommendation*** must be included on the list of Plans/Action Requiring EFSEC Council Approval.

The Aircraft Detection Lighting System (***ADLS***) ***Project Construction Plan*** must be included on the list of Plans/Actions Requiring Council Approval.

Draft Environmental Impact Statements, Final Environmental Impact Statements, and Draft and Final Site Certification Agreements must be included on the list of Plans/Actions Requiring Council Approval.

The Policy Proposal should not be approved and placed into service unless the Washington State legislature makes appropriate revisions to the Revised Code of Washington and Washington Administrative Code to expressly define and explicitly delegate EFSEC and its director the authorities contained in this proposal.

6. Potential Legal Challenges

The policy will trigger heightened legal disputes which will likely focus on several key themes:

- **Exceeding Statutory Authority:** If stakeholders argue that the EFSEC Director's delegated power extends beyond what the Legislature intended.
- **Arbitrary Decision-Making:** Challenges may allege that the process for identifying and remediating plan deficiencies wasn't sufficiently rigorous, resulting in approval of plans that fail to meet environmental or safety standards.
- **Inadequate Record-Keeping:** If the requisite documentation or written verifications from reviewing agencies is incomplete, this could undermine the administrative record essential for defending decisions in court.

Conclusion

We object to this policy change because it was not explicitly contemplated by the legislature and will largely operate outside the existing statutory framework. There will be no reasonable way for plan review and approval by the affected interested parties and the public in a manner that assures:

- Strict adherence to the detailed procedural safeguards,
- Transparent documentation of the review process,
- Clear limits on the scope of delegated authority, and
- An effective mechanism to escalate decisions that merit broader review.

The new policy does not provide for the continuous and adequate Council oversight of EFSEC that is necessary to protect the environment, safety, health and welfare of the public.

Legislation is needed if this type of policy framework is to be adopted.

/s/

Paul Krupin, Pam Minelli, Dave Sharp, Karen Brun

TriCities CARES