



Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

June 18, 2025

Sent via Email

ENERGY FACILITY SITE EVALUATION COUNCIL
comments@efsec.wa.gov

Re: EFSEC Policy #16-01

Dear Energy Facility Site Evaluation Council,

I write on behalf of the Confederated Tribes and Bands of the Yakama Nation ("Yakama Nation")¹ regarding Energy Facility Site Evaluation Council ("EFSEC") Policy #16-01 ("Policy"), "Delegating Certain Plan Approvals to the EFSEC Director." The Policy has been placed on EFSEC's regular monthly meeting agenda scheduled for June 25, 2025.

After preliminary review of the Policy, Yakama Nation objects to it because the Policy allows EFSEC to delegate ultimate decision-making authority on 23 types of plans to one, non-councilmember, and because it blocks Yakama Nation from evaluating, commenting on, and protecting their Treaty reserved resources. Yakama Nation requests additional time to fully evaluate the Policy's impacts and provide further comment to EFSEC given the extremely abbreviated notice and comment period for the Policy. In the alternative, Yakama Nation urges EFSEC not to adopt the Policy's overbroad delegation of authority.

First, Yakama Nation acknowledges delegation of certain tasks to staff is both appropriate and necessary to run a functional agency – however, the breadth and scale of this Policy's proposed delegation exceeds any rational interpretation of the Council's delegation authority.² This Policy proposes giving one staff member the ultimate decision-making authority to approve 23 types of plans.³ This delegation is even more egregious when considering it is applicable to proposed energy facility projects with State Environmental Policy Act ("SEPA") Determinations of Nonsignificance ("DNS").⁴ Under SEPA, a DNS gives the developer the latitude to move forward with the proposed project without completing an

¹ In submitting this comment, Yakama Nation does not waive its sovereign immunity from suit nor does it waive, alter, or otherwise diminish its sovereign rights, privileges, or remedies guaranteed by the Treaty with the Yakama of 1855 (12 Stat. 951). Furthermore, submission of this comment does not substitute for formal Consultation with Yakama Nation.

² In fact, one of the main statutory authorities cited in the Policy memo was repealed by the Washington legislature in 2022. See Law of 22, ch. 183, § 3; Policy, pg. 2.

³ Policy, pgs. 2-3.

⁴ Policy, pg. 2.

Environmental Impact Statement.⁵ To thereafter delegate evaluation of project specific plans, and give one individual ultimate authority to approve them, is inconsistent with the stated objective of forming EFSEC and the founding principle of creating a Council with representatives and prospectives from all so many agencies.⁶

Second, this Policy limits Yakama Nation's ability to evaluate, comment, and protect its Treaty-reserved resources. Under the proposed Policy, plans such as the "Hunting, Livestock Grazing Plan," "Habitat and Movement Corridor Mitigation and Restoration Plans," and "Cultural and Archeological Resource Plan," are not subject to a comment and review process by Yakama Nation.⁷ Rather, the current Policy proposal suggests that review will be limited to "EFSEC staff and contractors, which may include state and local agencies" whereby excluding Yakama Nation from the evaluation process completely. Yakama Nation's reservation encompasses more than 1.3 million acres.⁸ Yakama Nation's ceded territory includes more than 12 million acres.⁹ This Policy allows the EFSEC Director to approve 23 types of plans without Yakama Nation's input or feedback.

Finally, Yakama Nation objects to the Policy because it does not confer a policy at all.¹⁰ On its face, the Policy is a flagrant attempt to implement new EFSEC rules without exercising the applicable rule making procedure. Even assuming EFSEC has the authority to delegate such enormous authority to the EFSEC Director, which Yakama Nation refutes,¹¹ the shift in authority must be appropriately reflected and publicly noted within EFSEC's rules.¹² As such, EFSEC should not approve the Policy without going through the designated rulemaking process.

In conclusion, Yakama Nation respectfully requests EFSEC set this Policy on the July agenda to allow sufficient time for review of the Policy's implications and set a sufficient comment period of at least three weeks. Alternatively, we urge the Council to reject proposed Policy 16-01 so that EFSEC may more thoroughly engage in project evaluations, and allow Yakama Nation to do the same.

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⁵ WAC 197-11-734

⁶ RCW 80.50.010; 80-50-030.

⁷ Policy, pg. 3.

⁸ Treaty with the Yakama of 1855 (12 Stat. 951).

⁹ *Id.*

¹⁰ RCW 34.05.010(15); RCW 34.05.230(1).

¹¹ EFSEC issued a similar policy memo in 2016 to which Yakama Nation also objects to as an unauthorized delegation of EFSEC authority to the EFSEC Director. See https://www.efsec.wa.gov/sites/default/files/181034/00027/20160304_Delegationplanapproval.pdf. (Last visited June 18, 2025).

¹² RCW 34.05.230(1).

Respectfully,



Gerald Lewis, Chairman
YAKAMA NATION TRIBAL COUNCIL

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