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VIA E-MAIL TO COMMENTS@EFSEC.WA.GOV

Sonia E. Bumpus
EFSEC Executive Director
WA Energy Facility Site Evaluation Council
Post Office Box 43172
Olympia, WA 98503

Re: Comments on Washington Energy Facility Siting Evaluation Council
Draft Programmatic Environmental Impact Statement for High Voltage
Transmission Lines

Dear Director Bumpus :

I am the General Manager for the Branch of Natural Resources for The Confederated Tribes of the Warm Springs Reservation of Oregon (“CTWS” or “Tribe”), a federally-recognized, self-governing, sovereign Indian tribe and the legal successor-in-interest to the Indian signatories of the Treaty with the Tribes of Middle Oregon, dated June 25, 1855, 12 Stat 963 (“Treaty” or “1855 Treaty”). I am writing to provide comments and information in response to the Washington Energy Facility Site Evaluation Council (“EFSEC”), Draft Programmatic Environmental Impact Statement (“DPEIS”). The DPEIS purports to provide a baseline environmental analysis for future high-voltage transmission line projects that may be proposed for development in the foreseeable future within Washington state.

Unfortunately, timelines set by EFSEC to review the DPEIS were inadequate to evaluate and provide comprehensive substantive comments related to the Tribes’ Treaty-protected resources, interests, and cultural resource concerns. Transmission projects have a high likelihood of impacting invaluable tribal resources and we are disappointed that the Tribe was not engaged and consulted with prior to the public release of the DPEIS for review.

We respectfully request that EFSEC withdraw the DPEIS until such time that it completes government-to-government consultation with the Tribe to understand and adequately address the full scope of the Treaty-reserved rights that the DPEIS purports to assess. Absent such consultation, the DPEIS should not be finalized as it is missing critical insight from CTWS that is necessary for the formulation of a comprehensive and accurate baseline environmental assessment.

The heavily constrained timeline provided by EFSEC for review of the programmatic document has prevented a full review and meaningful participation in the decision-making process. Therefore, these comments are preliminary, are provided as an illustrative tool to highlight a sample of deficiencies identified in the DPEIS, and should not be interpreted as

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exhaustive or conclusive. The Tribe supports the comments submitted by the Columbia River Inter-Tribal Fish Commission (“CRITFC”) and incorporates them by reference.

The Tribe reserves all rights to provide further detailed comments and analysis upon the disclosure of additional information and completion of the consultation process, without prejudice to any future legal or administrative actions.

I Overview of the Tribe and Its Interests in Washington State

The Tribe is legally organized under a constitution and bylaws ratified by the members of the Tribe on December 18, 1937, and approved by the Assistant Secretary of the Interior of the United States on February 14, 1938, pursuant to Section 12 of the Act of June 18, 1934, as amended and consists of three confederated Indian tribal groups: the Warm Springs, the Wasco and the Paiute. Pursuant to the 1855 Treaty, the Tribe ceded approximately 10 million acres of land (“ceded lands”) to the United States and reserved approximately 640,000 acres for exclusive use and occupation of the Tribe and our members as a permanent homeland (“Warm Springs Reservation”).

Our people have utilized lands along the Columbia River and within what is now Washington state since time immemorial. The northern boundary of the ceded lands runs down the middle of the Columbia River from Willow Creek east of Arlington, downstream, to approximately Bonneville Dam. The western boundary is the crest of the Cascade Mountain Range south to the 44th parallel and over to the headwaters of Willow Creek in the Blue Mountains. The eastern boundary runs from the headwaters of Willow Creek downstream to its confluence with the Columbia River. In the 1855 Treaty, the Tribe’s predecessors ceded much of those lands to the United States. However, the Tribe retains rights to Treaty-protected resources on lands that the DPEIS covers.

The 1855 Treaty recognizes the Tribe as a sovereign entity, possessing inherent rights to provide for the general welfare of our people, including the right to manage our natural resources and the right to take salmon, lamprey, sturgeon and other fish. The Treaty expressly reserves rights, to the Tribe, for our members to go outside (or “off”) the Warm Springs Reservation to all of the lands and waters that it had used prior to the treaty to hunt, fish, gather roots and berries, and to pasture livestock.

The 1855 Treaty protects rights in areas beyond the ceded lands if those areas were used by Tribal members from time to time at or before they entered into the Treaty. This includes without limitation lands and waters on the Washington side of the Columbia River including Stevenson, North Bonneville, Bingen, Dallesport, and the Vancouver area; as well as downstream of Bonneville Dam on the Oregon side such as the Willamette River and Portland, Oregon.

Retaining the Tribe’s right to continue our fishing practices was a primary objective of the Tribe during the treaty negotiations, and tribal rights to fish, unimpeded, at all usual and accustomed places was enforced in the federal court litigation known as *United States v. Oregon*.



In fact, those rights have been defined and upheld by federal courts since the early 1900's, meaning that the Tribe has legally enforceable Treaty-protected rights in areas contemplated by the DPEIS's review. The Tribe's goal is to maintain and enhance traditional and Treaty-protected fish and wildlife resources throughout its ceded lands, and the Tribe is integrally involved in the five major institutional structures governing anadromous fish restoration in the upper Columbia Basin: the 2018-2027 *United States v. Oregon* Management Agreement; the Pacific Salmon Treaty; the Fish and Wildlife Plan adopted under the authority of the Pacific Northwest Power Planning and Conservation Act of 1980 (Northwest Power Act); the orders of the Federal Energy Regulatory Commission, and the processes authorized under the Endangered Species Act ("ESA"), specifically the processes growing out of the continuing jurisdiction federal court case of *National Wildlife Federation, et al. and Oregon v. National Marine Fisheries Services, et al.*; and the Columbia River System ("CRS"), and implementation of the December 14, 2023, Resilient Columbia Basin Agreement.

The Tribe owns multiple lands along and within the Columbia River. Without limitation, it is also a member of the Columbia River Inter-Tribal Fish Commission, formed in 1977 by the four sovereign treaty tribes of the Columbia Basin and dedicated to protecting and restoring tribal fisheries; a member of the Wana Pa Koot Koot Cooperating Group for cultural resources affected by the operation of the CRS in the Zone 6 area of the Columbia River; and a regulatory participant as a rotating tribal member of the Columbia River Gorge Commission.

The Tribe's off-reservation hunting rights are explicitly protected under the 1855 Treaty with the Tribes of Middle Oregon and the Tribe's practices and co-management authority over of these resources are further detailed in the 2018 Memorandum of Agreement (MOA) between the Confederated Tribes of Warm Springs and the State of Oregon.¹ The collaborative management approach embodied in this agreement underscores the Tribe's ongoing commitment to sustainable practices while safeguarding our treaty-protected rights—which are integral to both our cultural identity and subsistence practices. Any project that threatens wildlife resources or the Tribe's ability to exercise these rights must be carefully scrutinized and should not proceed without thorough consultation and appropriate mitigation measures. This is true for projects that may occur in Washington as well.

II Comments on the Draft PEIS

As noted, the Tribe offers the following comments to illustrate issues and deficiencies with the DPEIS. The comments are not exhaustive and the Tribe reserves its right to assert and defend its legally protected interests in any future administrative or judicial proceeding.

As a preliminary matter, there are terms in the document we found to be inconsistently used, unclear, and/or that need further consideration and updating, including:

¹ OAR 635-043-0140 ("MOA").



Cultural Resources – in Section 1.5 “Scope of Analysis” cultural resources have been defined as, “*Cultural resources and elements of the environment relevant to tribal rights, interests, and resources including tribal cultural resources, and fish, wildlife, and their habitat*”. This definition does not include all natural resources protected under the Treaty of 1855 and the inherent rights of CTWS, including gathering of roots and berries, and should acknowledge culturally significant plants. While the definition in the document needs to be updated to include traditional plants, the intertwinement of archeological and historic sites with the treaty protected natural, cultural resources has caused an inconsistency in the document. Section 3.15 “Historic and Cultural Resources” specifically address cultural resources in the sense of archeological and historic sites. Another example is AVOID-21 (p. 3-10). Additionally, the document language needs to be consistent. In some locations cultural resources appear to be also categorized as tribal resources. While not technically wrong, there is an expectation this document be used by the public, stakeholders, project proponents and various state agencies. Keeping language consistent reduces confusion and negates the potential for resources to be missed.

Section 1.1

Under the “Programmatic Environmental Impact Statement Purpose and Overview”, EFSEC asserts that this is a comprehensive evaluation of environmental impacts; however, there are factors missing from this document that relate specifically to Cascade Renewable Transmission (CRT). If constructed, CRT would use novel technologies not previously used in the Columbia River. The document does not have a pathway for evaluating underwater transmission lines. It is specified that this PEIS is for overhead and underground transmission lines (Section 1.4.1). Since CRT is named in the document as a “Reasonably Foreseeable Action” there needs to be further review of the document by EFSEC to ensure that the likely impacts of this project are captured within the general conditions, avoidance criteria and mitigation measures of this document.

Section 1.2: Background

The “Enhanced resources for Tribes” bullet point needs additional clarity – due to confusion with the cultural resources definition within the “Scope of Analysis” and it’s inconsistent use in the document, it is unclear if these funds would be sought and made available for natural resource reviews. We would advocate funds be made available for review of documents that impact both treaty-protected natural, cultural resources as well as archeological and cultural historic sites. This funding should not be limited to Washington tribes.

Executive Summary (ES) 2.1 Purpose and Need

Bullet 5 may be in opposition to avoiding cultural resource impacts by not providing adequate review by tribes. While planning routes could minimize impacts, coordination with the Tribe is imperative. This would need to be coupled with our comment about and advocacy for enhanced resources (Section 1.2).



Bullet 8 - While we realize this language comes from a pre-existing document, it's very unclear how a "win" for tribes and their cultural resources is defined and don't believe this language can be defined by the State. This language is awkward and concerning at best. In order to meet the "Purpose and Need", regular and meaningful consultation and coordination with tribes are necessary.

ES 2.4: Decision Tree

The "Decision Tree" does not provide for consultation or engagement with tribes and does not indicate where and when a SEPA Lead Agency should meet with a tribe to assess a specific project in the event that no additional environmental analysis is planned. This creates the potential for a vacuum where a project moves forward without tribal consultation.

ES 3.0: Recommendations for this Draft Programmatic Environmental Impact Statement

Bullet 1, 2, and 3 do not mention how EFSEC and other state agencies will engage with the Tribe or tribes in general. Given the unique role of tribes in the Columbia River Basin and their relationship to natural and cultural resources, tribal engagement needs to be included. We also encourage adding a bullet that is specific to tribal engagement and consultation.

Bullet 6 needs to ensure that actions taken do not harm the Tribe's treaty rights, archeological and historic cultural sites as well as ensuring that tribal communities do not hold a disproportionate burden.

Bullet 8 should be more specific and identify processes or information that prompt updates to the PEIS. Due to the scope of this document, reviews need to happen on at timed, regular intervals and include tribes prior to any public review period.

ES 4.0: Summary of Impacts

It is unclear what information was used to define the summary of impacts found in Table ES-1. There are omissions from the table that may be grouped into the potential impact analyzed column that are not clear. For example, water temperature is not included as a potential impact.

Section 1.6.3.1

This list is incomplete and should have further review. For example, it does not include the following archeological and historic site regulations and policies: National Historic Preservation Act, Native American Graves Protection and Repatriation Act, Moss-Bennet Act, Archeological Resources Protection Act, and American Indian Religious Freedom Act.

Section 1.6.3.2



This list also appears to be incomplete and requires further review. For example, archeological and historic site State regulations and policies in RCW 27.44 and 27.53 are not included.

Chapter 3 – Affected Environment, Significant Impacts, and Mitigation

Overall, the avoidance criteria could use greater specificity and addition of tribally specific avoidances. For example:

AVOID-1: This only covers known areas, but does not address how to deal with additional areas that have the potential to cause harm to the environment and human health. For example, as proposed, CRT would move out of the Columbia River channel, upland around Bonneville Dam and re-enter downstream of the Bradford Island Superfund Site. The specific bounds of the Comprehensive Environmental Response, Compensation and Liability Act Superfund site at that location is not known in the downstream area.

There are no avoidance criteria for tribal lands or resources outside of reservations, such as Treaty Fishing Access Sites and In-Lieu Fishing Sites.

Mitigation Measures:

The following comments also apply to Gen-10 “Mitigation and Management Plans” section. Mitigation for the loss of tribal natural and cultural resources should be done in coordination with Tribes. Tribes are the experts in their treaty-protected resources. Our unique relationships with natural resources may not be in common with the general public or existing environmental laws and regulations.

For natural resources, if mitigation scoping and scale are gauged toward the general public this may negate a species of importance to the tribe or inadequately address tribal concerns. Both natural and cultural resources are invaluable to the tribes. For example:

- The Treaty Tribes and CRITFC have been the most active proponents for Pacific lamprey restoration in the Columbia River. Pacific lamprey may be harmed in ways that are not evident due to their unique niche within the environment, long freshwater juvenile life-stages, and difficulty in detection and collection.
- Revegetation plans should specify that native plants will be used and have an accompanying monitoring plan for a minimum of 10-years, with specific performance criteria and an adaptive management plan.

Because of the unique and irreplaceable nature of tribal archaeological and historic cultural sites to the Tribe, mitigation cannot be approached the same way as other environmental impacts. Prescribing mitigation for the loss of tribal cultural resources must be determined in consultation with THPO offices. If not completed, losses of these resources may not receive the significance deserved.



- An example of a specificity that needs to be added to mitigation in Section 3.15 is Hist/Cultural-1 which does not describe the area of affect. This should include both direct and indirect (e.g., visually) information.

Suitability Maps

Suitability maps need to be updated on a regular basis and with transparency about where the information was gathered from to develop the maps with links where appropriate. The DPEIS should include provisions for regular consultation with tribes to update the suitability maps to ensure that the maps do not become outdated as new information or changing circumstances arise. For example:

Fish maps included at pages 3-363 and 3-365, do not appear accurate or to include all relevant information. There is extremely minimal conflict indicated on the maps which would lead to the assumption that both overhead and underground transmission lines would have little to no impact on fish.

The map on page 3-728 for historic resources also appear inaccurate and only including specific information sets. Since they are included in the section that discusses both tribal cultural resources and other historic properties, these maps would be misleading for proponents, specifically. Information about tribal cultural resources needs to be done in coordination with Tribal Historic Preservation Offices and DAHP. This caveat should be clearly noted in the section and on the maps.

Individual Suitability Maps need to be developed for the mainstem Columbia River. At the current scale it is not possible to identify any conflicts.

Section 3.15

We suggest that EFSEC take a different approach to this section. While historic and cultural resource reviews may follow a parallel path, we would suggest that historic resources have its own section separate from tribal archeological, historic, and traditional cultural places. This decoupling would streamline understanding and be consistent with the existing Suitability map.

- Any specific changes to section 3.15 needs to be done in coordination with the Tribe to ensure that general considerations, avoidances, and mitigation is consistent with tribal values and interests.

The context given in Section 3.15.2.2 “Tribal Resources” section, feels awkwardly placed within Section 3.15. The section does not talk about cultural, natural resources nor does it provide general conditions for tribal natural resources, avoidances, or mitigation. This information is best represented within other sections in Chapter 3 that have impacts to



treaty-protected resources. This should be done by developing of general considerations, avoidance and mitigation specific to the tribes.

We suggest that starting from Section 3.15.2.2 “Tribal Resources” through Section 3.15.2.3, be removed from the section and be moved into its own Chapter or included in the Chapter 1 Introduction.

This section should be reviewed and updated to include HRPCSITs in more locations particularly associated with language about TCPs. For example, this should be considered and updated in 3.15.2.2 “Cultural Resources” and “Traditional Cultural Places”

Additional comments on Section 3.15:

There should be a language change on p. 3-695 in the last paragraph, first sentence – “*Since the establishment of Washington State, Indigenous communities have fought to **secure** access to their Tribal resources as established by the treaties*”. Secure should be changed to retained.

Starting in Section 3.15.3.2 “Impact Determinations” are included in multiple locations. These should include language that identifies the need to contact affected Tribes at the earliest possible time to assist in development of avoidance and/or mitigation measures.

Table 3.15.23 needs additional review and updated, for example:

- The comments in “removal of existing overhead transmission structures and rebuilding some structures” should reflect the following:

Rebuilding of structures would be seen as a continued, negative impact, and be greater than negligible (likely moderate to high).

The concept of 'previously undisturbed ground' is not applicable here; a TCP/HPRCSIT is important because of the activities and relationship at that place, not merely because the ground hasn't been disturbed before.

- In the “Development/expansion of existing substations/access roads” the following should be considered:

The concept of 'previously undisturbed ground' is not applicable here; a TCP/HPRCSIT is important because of the activities and relationship at that place, not merely because the ground hasn't been disturbed before

AVOID-21 - avoidance buffers (usually 30 meters) should be included to help protect sites.

AVOID-23 - the definition of TCP is wrong. It should be Traditional Cultural Place; not Tribal Cultural Place. This avoidance should include HPRICSITs.



Mitigation measures do not provide any measures to mitigate adverse impacts on tribal cultural resources. A statement such as "and any mitigation measures developed in discussion with affected Tribes to account for adverse impacts to TCPs, HPRCSITs, archaeological and cultural resources, Treaty protected rights, and any other affected resources." should be included. See comment about mitigation.

The language in Vis-1 needs to be more specific and clear about avoiding siting facilities in the identified locations.

III Conclusion and Request for Meaningful Consultation

CTWS tribal members have utilized and inhabited our ancestral lands since time immemorial. While tribal sites and significant areas have been negatively impacted by development, many areas of cultural significance remain in Washington state to which the Tribe retains inherent and Treaty-reserved rights. For example, the Tribe, and other Columbia River treaty tribes, have deep cultural ties to the Columbia River as well as federally-protected rights and ongoing pervasive co-management obligations and expertise.

In order to provide a complete analysis of impacts, EFSEC must consult with the Tribe to incorporate the Tribe's technical and traditional knowledge and expertise related to the management and preservation of Treaty-protected resources that are threatened by the development of high-voltage transmission lines. Based on the lack of consultation completed prior to the issuance of the DPEIS, the Tribe believes that EFSEC should withdraw the DPEIS until such time that it consults with affected tribes and incorporates tribal knowledge and expertise into the document. The broad scope of the document and potential irreversible ramifications of development predicated on the DPEIS counsel against finalizing the environmental review without taking the minimum steps necessary to guard against harms to tribal communities. The Tribe respectfully asks that EFSEC withdraws the DPEIS and engage in government-to-government consultation.

The Tribe appreciates the opportunity to provide these initial comments.

Sincerely,



Austin L. Smith, Jr.
General Manager, Branch of Natural Resources
The Confederated Tribes of the Warm Springs
Reservation of Oregon

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cc:

