



Confederated Tribes and Bands  
of the Yakama Nation

Established by the  
Treaty of June 9, 1855

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July 14, 2025

Sent via email

Energy Facility Site Evaluation Council  
comments@efsec.wa.gov

**Re: EFSEC Policy # 16-01, Revised July 16, 2025**

Dear Energy Facility Site Evaluation Council,

I write on behalf of the Confederated Tribes and Bands of the Yakama Nation ("Yakama Nation")<sup>1</sup> regarding Energy Facility Site Evaluation Council ("EFSEC") Policy #16-01 ("Revised Policy").<sup>2</sup> The Revised Policy has been placed on EFSEC's regular monthly meeting agenda scheduled for July 16, 2025, with even less time for review and comment than a previous version of the draft revisions.<sup>3</sup> Based upon a preliminary review of the Revised Policy, Yakama Nation again urges the Council to reject the over-broad delegation of authority proposed in Policy #16.01.

As a threshold matter, Yakama Nation continues to stridently object to the abbreviated comment period for the Revised Policy. A redlined version of the Revised Policy<sup>4</sup>, a clean version of the Revised Policy, and a staff memo regarding the Revised Policy changes were published on EFSEC's website on the afternoon of July 10, 2025, with a comment deadline of 11:59pm on July 14, 2025. Four days, including two weekend days, is not sufficient time for Yakama Nation to appropriately evaluate and respond to the significant changes proposed in the Revised Policy. Yakama Nation requests additional time to provide further feedback.

Yakama Nation urges EFSEC to reject the Revised Policy because it improperly delegates facility siting plan approval to the EFSEC Director rather than retaining that authority where it belongs - with the appointed Council Members. To justify this blatant delegation, the Revised Policy cites two cases, alleging they show that "[a]gency heads are presumed to have the authority to delegate decision making to subordinates unless the agency's enabling

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<sup>1</sup> In submitted this comment, Yakama Nation does not waiver its sovereign immunity from suit nor does it waive, alter, or otherwise dimmish 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.

<sup>2</sup> Note three version of #16-01 have been published: the first version was published in March of 2016, the second version was published in June of 2025, and the latest was published in July of 2025.

<sup>3</sup> Yakama Nation's June 18, 2025 comments on the previous version of Policy #16-01 are incorporated with respect to the Revised Policy.

<sup>4</sup> The Revised Policy redlines compare changes made to the March 25, 2016 version of Policy #16-01.

statute indicates it is forbidden. See *Jackstadt v. Washington State Patrol*, 96 Wash.App. 501, 512-13 (1999); *Kobach v. U.S. Election Assistance Com'n*, 772 F.3d 1183, 1190-91 (10<sup>th</sup> Cir. 2014).<sup>5</sup> Those cases are distinguishable from the delegation that the Revised Policy is proposing. First, in *Jackstadt*, that case involved a police Chief that, one-time only, delegated employment decision making authority to an assistant Chief due to a conflict of interest. Similarly, in *Kobach*, the case involved a limited sub-delegation of authority from a federal official. The Revised Policy does not propose a delegation of authority that is remotely akin to the cited precedent. Rather, the Revised Policy proposes to delegate significant authority on over 20 types of plans that have the potential to greatly impact the size, design, and scope of energy facility projects.

As written, the Revised Policy also vests extensive authority in the EFSEC Director to be gatekeeper for the Council, claiming the “EFSEC Director shall consider whether any individual plan should be forwarded to the Council for review and, at the Council’s discretion, Council approval.”<sup>6</sup> By removing plan decisions from Council evaluation, and allowing a single staff member to decide what plans are reviewed by the Council, the entire process becomes arbitrary and secretive. Such a secretive process restricts Yakama Nation’s ability to evaluate, comment on, and protect their Treaty-reserved resources. In the Revised Policy, “[a]pproval of plans by the EFSEC director *may* occur after EFSEC staff and contractors or subject matter experts, which *may* include state and local agencies and tribal governments, have identified and the certificate holder has addressed areas of concern.”<sup>7</sup> The Revised Policy’s noncommittal language enshrines procedure which would justify shutting Yakama Nation out of the evaluation process, contrary to EFSEC’s mandate to encourage meaningful public comment and participation in energy facility siting decisions.

In conclusion, Yakama Nation respectfully requests EFSEC reject the Revised Policy as overbroad and inappropriate for the reasons articulated above and in Yakama Nation’s June 18, 2025 letter. If EFSEC wishes to move forward in delegating its authority to the Director in certain limited circumstances, it should direct EFSEC staff to initiate rulemaking and ensure that all impacted parties have an opportunity to engage meaningfully in the rulemaking procedure in order to inform the parameters of when delegation is appropriate.

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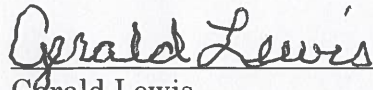
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<sup>5</sup> Revised Policy, pg. 2.

<sup>6</sup> Revised Policy, pg. 3.

<sup>7</sup> Revised Policy, pg. 2 (emphasis added).

Sincerely,

A handwritten signature in cursive script that reads "Gerald Lewis". The signature is written in dark ink and is positioned above a horizontal line.

Gerald Lewis  
Yakama Nation Tribal Council Chairman

CC: Ami Hafkemeyer, Director of Siting and Compliance ([ami.hafkemeyer@efsec.wa.gov](mailto:ami.hafkemeyer@efsec.wa.gov))  
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Enclosure(s): Yakama Nation letter to EFSEC (June 18, 2025).





Confederated Tribes and Bands  
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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")<sup>1</sup> 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.<sup>2</sup> This Policy proposes giving one staff member the ultimate decision-making authority to approve 23 types of plans.<sup>3</sup> 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").<sup>4</sup> Under SEPA, a DNS gives the developer the latitude to move forward with the proposed project without completing an

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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> Policy, pgs. 2-3.

<sup>4</sup> Policy, pg. 2.

Environmental Impact Statement.<sup>5</sup> 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.<sup>6</sup>

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.<sup>7</sup> 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.<sup>8</sup> Yakama Nation's ceded territory includes more than 12 million acres.<sup>9</sup> 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.<sup>10</sup> 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,<sup>11</sup> the shift in authority must be appropriately reflected and publicly noted within EFSEC's rules.<sup>12</sup> 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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<sup>5</sup> WAC 197-11-734

<sup>6</sup> RCW 80.50.010; 80-50-030.

<sup>7</sup> Policy, pg. 3.

<sup>8</sup> Treaty with the Yakama of 1855 (12 Stat. 951).


<sup>9</sup> *Id.*

<sup>10</sup> RCW 34.05.010(15); RCW 34.05.230(1).

<sup>11</sup> 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](https://www.efsec.wa.gov/sites/default/files/181034/00027/20160304_Delegationplanapproval.pdf). (Last visited June 18, 2025).

<sup>12</sup> RCW 34.05.230(1).

Respectfully,

  
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\* Gerald Lewis, Chairman  
YAKAMA NATION TRIBAL COUNCIL

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