

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

Application Docket No. EF-220355

In the Matter of:

Innergex Renewable Development USA,  
LLC,

Wautoma Solar Energy Project  
Applicant

REPORT TO THE GOVERNOR ON APPLICATION DOCKET NO. EF-220355

## Table of Contents

I. Executive Summary .....	3
A. Application .....	3
B. Recommendation .....	3
II. Detailed Summary of the Application and the Council’s Review Process .....	3
A. Innergex Renewable Energy and the Wautoma Solar Energy Facility .....	3
B. The Council and the Application rReview Process .....	4
C. Informational Public Hearing .....	4
D. Land Use Consistency Hearing .....	5
E. Compliance with Chapter 80.50 RCW and State Environmental Policy Act .....	5
F. Tribal Engagement .....	6
G. Adjudicative Proceeding .....	7
III. RCW 80.50.010 STANDARD FOR RECOMMENDATION .....	8
IV. CONCLUSION AND RECOMMENDATION .....	9
Signatures .....	10
Attachment 1: Final Adjudicative Order .....	11
Attachment 2: Index of Supporting Documentation .....	12
Attachment 3: File Name Abbreviations and Acronyms .....	13
Attachment 4: Certificate of Service .....	14

## **I. Executive Summary**

### **A. Application**

Innergex Renewable Energy, USA, LLC (Innergex or Applicant) has applied under the Energy Facility Site Locations Act, RCW 80.50, for site certification to construct and operate the Wautoma Solar Energy Facility (Project or Facility) in unincorporated, northwest Benton County. Innergex proposes a 470 MW solar photovoltaic (PV) facility that would include a 470 MW battery energy storage system (BESS). The Project would interconnect with the Bonneville Power Administration (BPA) transmission system.

### **B. Recommendation**

The Energy Facility Site Evaluation Council (EFSEC or Council) recommends the Governor approve the Wautoma Solar Energy Project. The Council also recommends that certain conditions be imposed if the application is approved, as detailed in this recommendation.

The Council carefully considered: (1) the policies set forth in RCW 80.50.010 regarding the need for abundant clean energy sources to meet the state's greenhouse gas reduction goals and to mitigate the effects of climate change while ensuring through reasonable methods that all energy facilities will produce minimal adverse impacts on the environment; (2) public comments; (3) the record, findings and conclusions of the Council's adjudicative order; (4) the agency's State Environmental Policy Act review and mitigated determination of nonsignificance; (5) the issues raised during staff-level coordination with affected federally recognized tribes; and (6) commitments made by the Applicant in its Application, at hearings, and in other relevant documents.

The Council concludes that the conditions identified in this report and set forth in the accompanying draft Site Certification Agreement (SCA) are reasonable methods to minimize the adverse impacts of the proposed Project on the environment and to consider the broad interests of the public including affected tribes. The Council finds that with the recommended mitigation measures, the proposed Project meets the requirements of applicable law and comports with the policies and intent of Chapter 80.50 RCW.

## **II. Detailed Summary of the Application and the Council's Review Process**

### **A. Innergex Renewable Energy and the Wautoma Solar Energy Facility**

The Application: Innergex filed its application for site certification for the Project on June 9, 2022, and amended it on August 23, 2024, and October 9, 2024.

The Applicant is a wholly owned subsidiary of Innergex Renewable Energy Inc., headquartered in Longueuil, Canada. Innergex operates 4,328 MW of gross installed capacity from its 88 facilities in Canada, the United States, France, and Chile. Its expertise is in hydroelectricity, wind power, solar energy, and energy storage.

The Project: The Facility is proposed to be located approximately 12.5 miles north of the city of Sunnyside and one mile south of the intersection of State Routes 241 and 24 in unincorporated northwest Benton County. It would be located on 35 privately owned, leased parcels of agriculturally zoned land known as Robert's Ranch. The leased boundary encompasses 5,852 acres. The lands are currently used for sheep grazing with limited crop cultivation.

The Application seeks authority to generate up to 470 MW of solar PV energy from approximately 1.3 million solar panels. A 470 MW battery energy storage system, along with ancillary equipment, is included in the project. The facility would connect to the on-site, BPA owned, Wautoma Substation, via a .25-mile overhead transmission line. The Project footprint will be 2,974 acres.

## **B. The Council and the Application review Process**

EFSEC is an agency of the State of Washington established under RCW 80.50.010. One of the EFSEC Council's responsibilities is to review applications from private developers for authorization to construct and operate specified energy facilities, including alternative energy resource facilities that choose to apply for certification under RCW 80.50.060(1)(b). After reviewing the application and receiving information from the public, other agencies, and affected Tribes, the Council develops a recommendation for the Governor on whether to approve the application, and if so, on what conditions. If the Council recommends approval, it provides a draft site certification agreement that includes its recommended conditions for signature by the Governor and the applicant. In developing a recommendation, the Council's mandate is to balance the need for abundant energy at a reasonable cost with the broad interests of the public. RCW 80.50.010; see also WAC 463-47-110.

Council representatives participating in this process are Kathleen Drew, Council Chair; Elizabeth Osborne, Department of Commerce (Commerce); Eli Levitt, Department of Ecology (Ecology); Mike Livingston, Department of Fish and Wildlife, (WDFW); Lenny Young, Department of Natural Resources, (DNR); Stacey Brewster, Washington Utilities and Transportation Commission, (UTC); Paul Gonseth, Department of Agriculture (Ag); and Dave Sharp, Benton County. Administrative Law Judge, Dan Gerrard, was appointed by the Office of Administrative Hearings, through an interagency agreement with EFSEC, to facilitate the adjudicative process.

The Council's review of Innergex's application for site certification consisted of multiple separate and distinct procedural steps. A detailed summary of the activities associated with each step is provided below.

## **C. Informational Public Hearing**

EFSEC must conduct an informational public hearing in the County of the proposed project not later than sixty days following the receipt of an application.<sup>1</sup> This hearing shall consist of a

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<sup>1</sup> RCW 80.50.090(1), WAC 463-26-025.

presentation of the proposed project by the applicant, and the general public shall be afforded an opportunity to provide written or oral comments.<sup>2</sup>

Consistent with this requirement, the Council conducted an informational public hearing on August 8, 2022, in Benton County. Pursuant to RCW 80.50.090(1) and WAC 436-26-025, the Applicant and EFSEC staff gave presentations about the Project proposal and EFSEC application review process, respectively. The Counsel for the Environment was introduced and provided a description of the duties of this position. EFSEC provided public notice and invited the public to comment at this hearing.

The Council received a total of 15 oral comments during the informational public hearing and an additional 17 written comments. The comments included both support and opposition to the Project. Comments expressed concern for wildlife, shrub-steppe habitat, zoning, agricultural lands, traffic, visual impacts, waste disposal, the EFSEC review process, and economic opportunities.

#### **D. Land Use Consistency Hearing**

Subsequent to the informational public hearing, EFSEC must conduct a land use consistency hearing pursuant to RCW 80.50.090(2) and WAC 463-26-050. The Council must then decide whether the proposed site is consistent and in compliance with local land use plans and zoning ordinances.<sup>3</sup>

The Council held a Land Use Consistency hearing on August 8, 2022, to determine whether the Project's use of the proposed site is consistent with local or regional land use plans and zoning ordinances in effect at the time the Application was submitted.<sup>4</sup> Information was provided by both the Applicant and the County during this hearing. The Council determined the Project to be inconsistent with Benton County land use plans and zoning ordinances in effect as of June 8, 2022, the filing date of the application<sup>5</sup>.

#### **E. Compliance with Chapter 80.50 RCW and State Environmental Policy Act**

The Council must comply with State Environmental Policy Act (SEPA), Chapter 43.21C RCW, which requires consideration of probable significant adverse environmental impacts of certain government actions, including approval or denial of an application to site an energy facility, and possible mitigation. EFSEC SEPA rules are set out in Chapter 463-47-WAC. The Council's responsible SEPA official is the EFSEC Director.<sup>6</sup> If the Council's SEPA official finds that any adverse environmental impacts can be mitigated to nonsignificant levels, they may issue a mitigated determination of non-significance.

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<sup>2</sup> WAC 463- 26-025.

<sup>3</sup> RCW 80.50.090(2); see also WAC 463-26-110.

<sup>4</sup> RCW 80.50.090, WAC 463-14-030.

<sup>5</sup> [EFSEC Order 886](#)

<sup>6</sup> WAC 463-47-051.

On May 24, 2024, EFSEC's Director, Sonia Bumpus, issued a Mitigated Determination of Nonsignificance (MDNS) followed by a 14-day public comment period. On June 14, 2024, EFSEC finalized its SEPA threshold determination with minimal changes to the MDNS. All mitigation measures identified in the Revised MDNS (RMDNS) have been included within the draft Site Certification Agreement.<sup>7</sup> Director Bumpus determined these measures can reduce all identified project impacts to a level of nonsignificance.

## **F. Tribal Engagement**

Consistent with RCW 80.50.060(8), EFSEC seeks ways to avoid, minimize, or mitigate any adverse effects on tribal resources and rights and aims to include methods for increased protection of tribal cultural resources, archaeological sites, and sacred sites in its recommended conditions for energy facility siting. EFSEC recognizes that the Wautoma Solar project is located within the traditional territories of the Confederated Tribes and Bands of the Yakama Nation (Yakama Nation) and the Wanapum Tribe, with periodic use of the area from the Nez Perce and Confederated Tribes of the Umatilla Indian Reservation as well.

RCW 80.50.060(8) requires EFSEC to provide early and meaningful participation and input from federally recognized tribal governments that possess resources, rights, or interests reserved or protected by federal treaty, statute, or executive order in the area where an energy facility is proposed, including early and meaningful participation and input during the siting review process and in ongoing compliance monitoring of proposed energy facilities.

Following the receipt of the Application for Site Certification on June 9, 2022, EFSEC notified affected tribal governments and provided directions for application review on July 18, 2022. Government-to-government consultation is distinct from the required regulatory public comment periods and staff-level engagement. For this Wautoma Solar Project, in response to EFSEC's invitation, neither the Yakama Nation nor other recognized Tribes requested formal government-to-government consultations; rather, technical-level staff coordination occurred. Feedback from the Yakama Nation Cultural Resource Program (CRP) staff was considered during the development of the mitigation measures identified in the Revised MDNS. EFSEC provided continued notifications to affected tribal governments throughout the process, including notices of public meetings, the land use consistency hearing, and the SEPA comment period.

The Department of Archeological and Historic Preservation's (DAHP) predictive model for cultural resources identified areas as having potential for cultural resources. EFSEC, DAHP, and Yakama Nation CRP staff engaged in coordination and technical level review. Yakama Nation CRP staff provided comments regarding the cultural resource surveys. Feedback from Yakama Nation CRP staff was considered into the SEPA threshold determination and issuance of the RMDNS. In their technical review of the applicant's cultural resources survey and in review of the project overall, Yakama Nation CRP staff requested full avoidance of precontact archaeological resources.

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<sup>7</sup> See Wautoma RMDNS, dated June 14, 2024.

The following mitigation measures included in the RMDNS, the ASC, and/or the draft SCA address some of the mitigation requests<sup>8</sup> presented by Yakama Nation CRP:

- If a site identified as being avoided within the Wautoma Project Boundary Area is going to be altered during construction or operations, the Applicant must consult with DAHP, any concerned Tribes, and EFSEC. An archaeological excavation permit through DAHP is required prior to any alteration.
- Prior to the start of construction, the applicant must submit to EFSEC a Concurrence Letter from DAHP stating approval of the revised Cultural Resources Survey Reports.
- Prior to the start of construction, the Applicant must submit updated Unanticipated Discovery plans outlining steps taken to avoid precontact archaeological resources, including avoidance mechanisms proposed in the initial cultural resource reports. These plans must be developed in coordination with EFSEC, DAHP, and the Yakama Nation.
- Mitigation discussions must be ongoing once site impacts are fully assessed by EFSEC, the Yakama Nation, and DAHP. These discussions should occur on a case-by-case basis and include both the Yakama Nation and DAHP.

## **G. Adjudicative Proceeding**

The Council's adjudicative process, its participants, and the Council's findings and conclusions regarding the contested issues are set out in detail in the Adjudicative Order, Order No. 896, Attachment 1 to this Recommendation.<sup>9</sup>

The Adjudicative Order, pursuant to RCW 34.05.461(4), confined its scope to two issues: (1) whether the Council should recommend that the state preempt, for the site, Benton County's zoning ordinances prohibiting major solar facilities on agricultural land, and (2) if so, what conditions the Council should include in a draft certification agreement to consider the purposes of the preempted ordinances.

Based on legal arguments and testimony presented by the Applicant and Benton County and public comments presented in the adjudication, the Council determined that it was appropriate to recommend preemption of Benton County's zoning ordinances as to the proposed Facility. The Council also determined that the conditions included in the Revised MDNS for decommissioning, gravel use, soil monitoring, and soil management sufficiently consider the purposes of the preempted Benton County zoning provisions that would be affected by the construction and operation of the Facility.

RCW 80.50.110 grants the Governor the authority to preempt state and local laws governing the regulation of energy facilities. This authority was upheld by *Residents Opposed to Kittitas Turbines v. EFSEC*, 165 Wn.2d 275, 197 P.3d 1153 (2008), and subsequently with *Friends of the Columbia Gorge, Inc. and Save our Scenic Area vs. Energy Facility Site Evaluation Council and Governor Gregoire, et. al.*, 178 Wash.2d 320 (2013) No. 88089-1, when the Court affirmed not only the Governor's authority to preempt local land use provisions but also unequivocally agreed

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<sup>8</sup> Yakima Nation CRP requested more mitigation for potential impacts to traditional cultural places and cumulative impacts than was incorporated. Please see the RMDNS and the associated staff memo for more detail on the EFSEC Director's reasoning for not including all Yakama Nation CRP's requests.

<sup>9</sup> See Attachment 1, Order 892.

the Energy Facility Site Location Act (EFSLA – RCW 8.50) supersedes the Growth Management Act (GMA – RCW 36.70A). The Department of Commerce, the agency charged with administering the GMA, itself concluded that its regulations should accommodate situations where the state has explicitly preempted all local land use regulations, as for example, in the siting of major energy facilities under RCW 80.50.110. WAC 365-195-745(1).

### **III. RCW 80.50.010 STANDARD FOR RECOMMENDATION**

State law establishes policies that inform how the Council is to exercise its authority to develop a recommendation to the Governor on an application for site certification.

With regard to the need for clean energy facilities and the interests of the public, RCW 80.50.010 provides as follows:

It is the policy of the state of Washington to reduce dependence on fossil fuels by recognizing the need for clean energy in order to strengthen the state's economy, meet the state's greenhouse gas reduction obligations, and mitigate the significant near-term and long-term impacts from climate change while conducting a public process that is transparent and inclusive to all with particular attention to overburdened communities. It is the policy of the state of Washington to recognize the pressing need for increased energy facilities, and to ensure through available and reasonable methods that the location and operation of all energy facilities . . . will produce minimal adverse effects on the environment, ecology of the land and its wildlife, and the ecology of state waters and their aquatic life.

It is the intent to seek courses of action that will balance the increasing demands for energy facility location and operation in conjunction with the broad interests of the public.

State policy mandates the development of power that satisfies renewable energy requirements. Washington's greenhouse gas emissions reduction requirements include a statewide 45 percent reduction by 2030, 70 percent reduction by 2040, and 95 percent reduction by 2050.<sup>10</sup> The Climate Commitment Act contemplates that meeting Washington's climate goals will require coordinated, comprehensive, and multisectoral implementation of policies, programs, and laws.<sup>11</sup> Among the State's economic and climate policies is the Clean Energy Transformation Act (CETA), which requires all electric utilities serving retail customers in Washington to be greenhouse gas neutral by 2030. By 2045, utilities cannot use offsets anymore and must supply Washington customers with electricity that is 100 percent renewable or non-emitting. It is amid this broader policy context, that the Washington legislature recognizes in RCW 80.50.010 the need for clean energy and has directed the Council to encourage the development of clean energy sources and the provision of abundant clean energy at reasonable cost.

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<sup>10</sup> RCW 70A.45.020(1)(a)(ii)–(iv).

<sup>11</sup> RCW 70A.65.005(2).



In summary, in its recommendation to the Governor, the Council must carefully consider the evidence in the record and seek a balance between the need for clean energy at a reasonable cost and the need to ensure that the location of energy facilities will produce minimal adverse effects on the environment.

#### **IV. CONCLUSION AND RECOMMENDATION**

The Council has considered the application for site certification, the adjudicative record, the RMDNS, the public comments, and staff coordination with Yakama Nation staff. As a result of this review, the Council finds that the Project should be approved as conditioned. The Council is persuaded that the Project presents no significant impacts to wildlife movement corridors, shrub-steppe habitat, agricultural lands, visual aesthetics, archaeological and architectural resources, traditional cultural properties, and water resources among other factors

The record before the Council supports the decision to recommend approval, subject to the restrictions and other mitigations, and protective measures identified in the SCA, RMDNS, and ASC. These elements will, in the Council's judgement, minimize the adverse local impacts of the Project as much as is reasonable consistent with the balancing of policies described in RCW 80.50.010.

## Signatures

### WASHINGTON ENERGY FACILITY SITE EVALUATION COUNCIL

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Kathleen Drew, Chair

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Elizabeth Osborne  
Department of Commerce

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Eli Levitt  
Department of Ecology

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Stacey Brewster  
Utilities and Transportation Commission

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Mike Livingston  
Department of Fish and Wildlife

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Lenny Young  
Department of Natural Resources

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Paul Gonseth  
Department of Agriculture

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David Sharp  
Benton County

**NOTICE TO PARTIES:** In accordance with WAC 463-30-335, administrative relief may be available through a petition for reconsideration of the Recommendation Package to the Governor. The Council requires requests for reconsideration to address all of the filing party's concerns raised by the Recommendation Package in a single petition. Petitions for reconsideration must be filed within 20 days of the service of this Order and the Recommendation Package to the Governor. If any such petition for reconsideration is filed timely, the deadline for answers is fourteen days after the date of service of each such petition. The formatting of petitions for reconsideration shall be governed by WAC 463-30-120 and shall be limited to 50 pages.

## **Attachment 1: Final Adjudicative Order**

## **Attachment 2: Index of Supporting Documentation**

### **Attachment 3: File Name Abbreviations and Acronyms**

**Attachment 4: Certificate of Service**