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Delegating Certain Plan Approvals to the EFSEC Director

Policy #16-01

Adopted March 25, 2016

Revision Adopted July 16, 2025

Second Revision Adopted November 19, 2025

POLICY PURPOSE

To establish a consistent and timely review and approval process for energy facility plans submitted by certificate holders that do not require an amendment to a site certification agreement.

General Discussion

The Legislature intended, as part of the energy facility siting process, for EFSEC to preserve and protect the quality of the environment, assure that sufficient operational safeguards are in place, and avoid costly duplication in the siting process and ensure that decisions are made in a timely manner. See RCW 80.50.010.

A number of specific powers implementing this legislative intent are set forth in both statutes and rules. RCW 80.50.040(2) gives the Council the power “[t]o develop and apply environmental and ecological guidelines in relation to the type, design, location, construction, and operational conditions of certification of energy facilities subject to this chapter.” Similarly, RCW 80.50.040 (9) authorizes the Council “[t]o prescribe the means for monitoring of the effects arising from the construction and the operation of energy facilities to assure continued compliance with terms of certification and/or permits issued by the council. . . .” WAC 463-68-050 states: “at least ninety days prior to start of construction . . . a certificate holder shall provide the plans and specifications required by the site certification agreement to the council for approval.” WAC 463-70-020 and 463-70-030 address compliance monitoring procedures and compliance determinations as prescribed by the council.

A certificate holder must submit many types of plans to EFSEC for review and approval to ensure that the appropriate protocols are met. Many of the plans are detailed and contain technical/engineering documents for which EFSEC staff and state and local agencies have expertise. To ensure EFSEC has access to additional expertise when needed, interagency agreements have been developed with appropriate agencies.

The Legislature has recognized that some work of the Council will be performed by Council staff (RCW 80.50.360). The Council's rules also recognize the propriety and necessity of delegating some tasks to EFSEC staff. WAC 463-10-010 ("Council" means the energy facility site evaluation council ... and, where appropriate to the staff of the council"). Agency heads are presumed to have the authority to delegate decision making to subordinates unless the agency's enabling 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 (10th Cir. 2014). Approval of this policy implements the legislature's directive by delegating to the EFSEC Council Director the authority to review and approve technical plans related to facility construction and operation when an amendment to a site certification is not required.

Implementing this policy will contribute to timely completion of the plan review process and is consistent with EFSEC's past practice of delegating certain review and approval authorities to the EFSEC Director. The adoption of this policy formalizes the delegation of this authority to the EFSEC Director and specifies the type of plans to which this delegated authority extends.

Approval of plans by the EFSEC Director may only 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. As a prerequisite to plan approval, EFSEC staff will obtain written verification from the appropriate agency documenting that review has taken place to ensure plans are compliant with applicable requirements. Deficiencies noted by EFSEC staff or reviewing agencies must be addressed before a plan may be considered for approval. The Director will also consider advice from a pre- or post-construction technical advisory committee when site certification agreement requires it. EFSEC staff will update the Council of any plans which have been approved by the EFSEC Director.

For plans subject to EFSEC Director approval, the Director shall consider whether any individual plan should be forwarded to the Council for review and, at the Council's discretion, Council approval. Review and approval by the Council may be appropriate where resolution of the plan details involves a high degree of policy discretion and may substantially affect the interests of third parties.

Staff will provide updates to the Council at an open meeting when a certificate holder has submitted a plan to the Director for approval. The Council may, by motion and majority vote, require that any plan submitted by the certificate holder for EFSEC's approval be elevated from a decision by the Director to a decision by the Council. To ensure the public is aware of any plans approved by the EFSEC Director or Council, staff will post approved plans on EFSEC's public website and notify all website subscribers of the approval of such plans.

I. Plans Subject to EFSEC Director Approval:

- Construction Best Management Practices Plan
- Construction and Operations Emergency Plans
- Construction Management Plan
- Construction Phase and Operations Phase Health and Safety Plans
- Construction Phase and Operations Phase Site Security Plans
- Construction Phase and Operations Phase Stormwater Pollution Prevention Plans
- Construction Phase and Operations Phase Spill Prevention, Control and Countermeasures Plans
- Construction Phase and Operations Phase Soil Management Plans
- Construction Phase and Operations Phase Traffic Management Plans
- Habitat and Movement Corridor Mitigation and Restoration Plans
- Hunting, Fishing, and Outdoor Recreation Plan
- Livestock and Agricultural Plan
- Pre and Post Construction Technical Advisory Committee Rules of Procedure
- Construction Phase and Operations Phase Erosion and Sedimentation Control Plans
- Cultural and Archeological Resources Plan
- Construction Phase and Operations Phase Fire Control Plan
- Other Non-Specified Construction Plans
- Noise and Shadow Flicker Modeling, Monitoring, and Mitigation Plan
- Greenhouse Gases Mitigation Plan

- Environmental Monitoring Stop Work Criteria Plan
- Rare Plant Survey/Plant Conservation Plan
- Forest Practices Application Class I and II
- Solid Waste Control Plan
- Pre or Post Construction species-specific monitoring and mitigation plans.

II. **Plans/Actions Requiring Council Approval**

- Initial Site Restoration Plan
- Forest Practices Application – Class III and IV
- Wetlands Compensation Mitigation Plan
- Post Construction Bald Eagle/Golden Eagle Plan
- Detailed Site Restoration Plan
- Site Preservation Plan