

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

In the Matter of the Application of:

Innergex Renewable Development USA,  
LLC (IRD), for  
Wautoma Solar Energy Project, LLC,  
Applicant

DOCKET NO. EF-220355

ORDER COMMENCING AGENCY  
ADJUDICATION; SETTING DEADLINE  
FOR PETITIONS TO INTERVENE (JULY  
12, 2024)

**The Application:**

On June 9, 2022, the Washington State Energy Facility Site Evaluation Council (EFSEC) received an Application for Site Certification (ASC) from Innergex Renewable Development, LLC (Applicant) for a solar photovoltaic (PV) generation facility with battery storage located in unincorporated Benton County, Washington.

The Applicant seeks to develop, construct, and operate the Wautoma Solar Energy Project (Project), a 470 megawatt (MW) solar photovoltaic facility, including a battery energy storage system (BESS). The project is proposed by Innergex Renewable Development USA, LLC (IRD), (Applicant). The Project Lease Boundary spans 5,852 acres of privately owned land. Within the Lease Boundary, the Project Area would occur on 4,573 acres. All construction and operational activities would occur within the Project Area. Within the Project Area, fencing would enclose 2,974 acres.

The Wautoma Solar Project would interconnect with the Bonneville Power Administration (BPA) transmission system at the BPA Wautoma Substation, which is located on BPA federal lands surrounded by Project Area. A 0.25 mile-long overhead 500 kV generation-tie transmission line would extend from the Project substation to the BPA Wautoma substation. The Project is located approximately 12.5 miles northeast of the City of Sunnyside and 1 mile south of the interchange between SR 241 and SR 24 in unincorporated Benton County, WA.

**Notice of Adjudicative Process:**

Pursuant to Washington Administrative Code (“WAC”) 463-030-080, the Energy Facility Site Evaluation Council (“EFSEC” or “Council”) is commencing the adjudication proceedings for the Wautoma Solar Project. The Council will schedule and conduct a public hearing on the proposed Wautoma Solar Energy Project under the Washington Administrative Procedure Act (APA), Chapter 34.05 RCW, and the Council’s rules for adjudicative proceedings set out in WAC Chapter 463-30.

The Council delegates to the Administrative Law Judge (“ALJ”) assigned to this matter by the Office of Administrative Hearings the authority to:

- (a) Enforce appropriate rules of evidence and procedure;

- (b) Administer oaths and affirmations;
- (c) Rule on procedural matters, objections, and motions;
- (d) Rule on offers of proof and receive relevant evidence;
- (e) Provide for discovery and determine its scope consistent with this order and EFSEC rules;
- (f) Enter protective orders to prevent the public disclosure, while still allowing access by adjudication participants who have signed appropriate non-disclosure agreements, of information that is exempt from public disclosure under RCW 42.56.430(2) (sensitive fish and wildlife data), RCW 42.56.300 (archaeological sites and traditional cultural places reports), or other applicable exemptions, with input from EFSEC's public records officer;
- (g) Pursuant to RCW 34.05.449(5), close parts of a hearing to public observation or order the exclusion of witnesses upon a showing of good cause;
- (h) Question witnesses called by the parties in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the matter;
- (i) Call additional witnesses and request additional exhibits deemed necessary to complete the record and receive such evidence subject to full opportunity for cross-examination and rebuttal by all parties;
- (j) Take any appropriate action necessary to maintain order and avoid unnecessary delay during the hearing;
- (k) Regulate the course of the hearing, including the scheduling, recessing, reconvening and adjournment of the hearing;
- (l) Permit or require oral argument or briefs and determine the time limits for submission thereof;
- (m) Take any other action necessary and authorized by any applicable statute or rule;
- (n) Waive any requirement of EFSEC procedural rules unless a party shows that it would be prejudiced by such a waiver;
- (o) At the conclusion of the hearing, issue initial findings of fact and conclusions of law summarizing, and resolving any disputes among the adjudicative parties concerning relevant information presented by parties in support or opposition to the proposed facility.

Council members observing the hearing shall have the opportunity to ask questions of witnesses, either following questioning by counsel for the parties, or at such time as determined by the ALJ in the exercise of the ALJ's discretion to regulate the course of the hearing.

Following the adjudicative hearing, and possible post-hearing briefs from the parties, the ALJ shall issue initial findings of fact and conclusions of law resolving disputed issues raised in the adjudication. The ALJ's findings and conclusions shall not address the ultimate recommendation that is reserved for the Council, specifically whether the evidence and arguments presented warrant the Council recommending that the Application be approved, denied or approved subject to conditions.

Any party of right or intervener party may file a petition for review of the ALJ's initial findings of fact and conclusions of law. The procedure for such petitions shall be as follows:

- (a) The petition for review shall be filed with the council within twenty days of the date of service of the initial findings and conclusions unless a different place and time limit for filing the petition are specified. Copies of the petition shall be served upon all other parties or their representatives at the time the petition is filed.
- (b) The petition for review shall specify the portions of the initial findings and conclusions to which exception is taken and shall refer to the evidence of record which is relied upon to support the petition.
- (c) Any party may file a reply to a petition for review. The reply shall be filed with the office where the petition for review was filed within ten days of the date of service of the petition and copies of the reply shall be served upon all other parties or their representatives at the time the reply is filed.

The Council will consider and decide any timely petitions for review either prior to, or as part of its final adjudicative order.

**Actions Taken to Date:**

On June 9, 2022, Innergex Renewable Development USA, LLC (“Applicant”), filed an Application for Site Certification (“ASC”) to construct and operate Wautoma Solar Energy Project (“Project”), a commercial solar photovoltaic (PV) project with a battery storage system.

On August 8, 2022, the Council conducted a land use consistency hearing, to hear testimony regarding whether the Project was consistent and in compliance with Benton County’s local land use provisions.

On November 15, 2022, the Council issued the “Order Finding Project Inconsistent with Land Use Regulations”. Specifically, the Order concluded, upon concession of the Applicant, that the Project is not consistent or compliant with Benton County land use provisions.

On May 20, 2024, the EFSEC SEPA Responsible Official issued a Mitigated Determination of Non-Significance (MDNS) and initiated a minimum 14 day public comment period. Following the review of comments received, a Revised MDNS was issued on June 14, 2024. The issued MDNS, Environmental Review and Staff Recommendation, and the Application for Site Certification (ASC) are available at the EFSEC website: <https://www.efsec.wa.gov/energy-facilities/wautoma-solar-project>.

**Issues for Adjudication:**

RCW 80.50.090(4)(b) provides that, if the environmental impact of the proposed facility in an application for certification is not significant or will be mitigated to a nonsignificant level under RCW 43.21C.031, the Council may limit the topic of the public hearing conducted as an adjudicative proceeding under this section to whether any land use plans or zoning ordinances with which the proposed site is determined to be inconsistent should be preempted.

Consistent with RCW 80.50.090(4)(b), WAC 463-28-060 and 070, the EFSEC Director’s MDNS under RCW 43.21C.031, and this Council’s November 15, 2022, “Order Finding Project

Inconsistent with Land Use Regulations,” the Council hereby limits the topic of this adjudicative proceeding to:

- i. Whether the Council should recommend to the Governor that the state preempt the land use plans, zoning ordinances, or other development regulations for the site for the alternative energy resource proposed by the Applicant, and
- ii. If the Council approves the Applicant’s request for preemption, what conditions the Council should include, if any, in a draft certification agreement to consider state or local governmental or community interests affected by the construction or operation of the alternative energy resource and the purposes of laws or ordinances, or rules or regulations promulgated thereunder that are preempted pursuant to RCW 80.50.110(2).

The adjudication will consider other disputed issues identified by the Parties during an upcoming prehearing conference (*see below*).

**Parties:**

The following are deemed to be parties to the adjudicative proceeding, without need to petition for intervention:

Pursuant to WAC 463-30-060(1), the applicant, Innergex Renewable Development USA, LLC (IRD)

Pursuant to RCW 80.50.080 and WAC 463-30-060(3), Counsel for the Environment, representing the public and its interest in protecting the quality of the environment

Pursuant to WAC 463-30-050 and WAC 463-30-060(2), the following state agencies and local governments are also deemed to be parties:

State of Washington agencies:

- The Department of Agriculture
- The Department of Commerce
- The Department of Ecology
- The Department of Fish and Wildlife
- The Department of Natural Resources
- Utilities and Transportation Commission

Local governments:

Benton County

WAC 463-30-050; WAC 463-30-060(2).

All of the above listed parties of right wishing to actively participate in the adjudication of this Application shall file a written notice of party participation with the Council at the address below

and serve a copy of the notice on all other existing parties no later than **July 12, 2024**. This notice shall include addresses for communications in both electronic and paper form.

**Intervention as a Party:**

Participation as a party includes specific rights and responsibilities in the adjudication, including the sponsorship of expert witnesses, cross-examination of other parties' experts and the filing of briefs. Persons wishing only to state support for or opposition to the Project may do so by public comment (*see below*) and need not petition for intervention.

Persons wishing to formally participate as a party in the adjudication must review and comply with WAC 463-30-091 and file a petition for intervention with the Council at the address below and serve a copy of their petition on all other existing parties no later than **July 12, 2024**.

Electronic filing of petitions for intervention is allowed and encouraged, provided that one hard copy is placed in the United States Mail addressed to the Council on the same day as filing.

Energy Facility Site Evaluation Council  
ATTN: Wautoma Adjudication  
621 Woodland Square Loop SE  
P.O. Box 43172  
Olympia, WA 98504-3172

Electronic filing address: [adjudication@efsec.wa.gov](mailto:adjudication@efsec.wa.gov)

In accordance with WAC 463-30-091, all petitions to intervene in this adjudication shall be verified under oath by the petitioner and must (1) adequately identify the petitioner; (2) establish with particularity the petitioner's interest in the subject matter; and (3) explain how the petitioner's ability to protect its interest may be impaired or impeded if not granted intervenor status in the adjudicative proceeding.

Petitions for intervention will be granted or denied per the Council's discretion. No oral argument will be permitted. To ensure an orderly and efficient adjudication, petitions for intervention may be conditionally granted or limited as authorized by WAC 463-30-092.

**Pre-Hearing Conference and Organization of the Adjudicative Proceeding:**

The administrative law judge will conduct a pre-hearing conference on July 22, 2024 at 1:30pm. This conference will develop a list of disputed issues and establish procedures for the pre-hearing phase of this adjudication, to include general organization of the adjudication, preparation of evidence, hearing procedures, and scheduling the time and place of the adjudication itself. Attendance at the conference is required of all parties and petitioners for intervention. The Council will also publish separate Notice of this pre-hearing conference and provide specific information regarding attendance and call-in procedures.

**Public Participation:**

Pursuant to RCW 80.50.080, the Counsel for the Environment represents “the public and its interest in protecting the quality of the environment.” Assistant Attorney General Yuriy Korol has been appointed Counsel for the Environment in this case. His contact information is:

AAG Yuriy Korol  
Office of the Attorney General  
800 5th Avenue, Suite 2000  
Seattle, WA 98104-3188  
yuriy.korol@atg.wa.gov  
206-332-7098

During the course of the adjudication, the Council will set a time for public comment in accordance with RCW 80.50.090(4)(a).

**Additional Information:**

Council staff is not permitted to give legal advice but can answer procedural questions about the adjudication and intervention process. The Council’s mailing and e-mail addresses are set out above. The Council’s telephone number is (360) 664-1345.

More information about the Wautoma Solar Energy Project is available on the Council’s website at <https://www.efsec.wa.gov/energy-facilities/wautoma-solar-project>.

DATED and effective at Olympia, Washington, on the 20th day of June, 2024.

WASHINGTON ENERGY FACILITY  
SITE EVALUATION COUNCIL



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Kathleen Drew, Chair