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Department of Community, Trade and Economic Development  
Office of Trade and Economic Development, Energy Division  
Proposed Greenhouse Gases Rule for EFSEC

**WAC 463-XX-010 Greenhouse Gases – Carbon Dioxide**

**(1) Introduction.** This rule establishes a carbon dioxide (CO<sub>2</sub>) emissions standard for natural gas power plants under Council jurisdiction. The rule is divided into a standard for emissions (for base load gas plants and for non-base load gas plants), and multiple pathways to meet the standard. To issue a site certificate, the Council must find that the energy facility complies with this standard.

**(2) Policy.** These rules are based on the following principles:

- (a) Promote facility fuel efficiency;
- (b) Promote efficiency in the resource mix;
- (c) Reduce net carbon dioxide emissions;
- (d) Promote cogeneration that reduces net carbon dioxide emissions;
- (e) Promote innovative technologies and creative approaches to mitigating, reducing or avoiding carbon dioxide emissions;
- (f) Minimize transaction costs;
- (g) Include an alternative process that separates decisions on the form and implementation of offsets from the final decision on granting a site certificate;
- (h) Allow either the applicant or third parties to implement offsets;

(i) Be attainable and economically achievable for various types of power plants; (j)

Promote public participation in the selection and review of offsets;

(k) Promote prompt implementation of offset projects;

(l) Provide for monitoring and evaluation of the performance of offsets;

(m) Promote reliability of the regional electric system.

**(3) Standard for Base Load Gas Plants** To issue a site certificate for a base load gas plant, the Council must find that the net carbon dioxide emissions rate of the proposed facility does not exceed 0.675 pounds of carbon dioxide per kilowatt hour of net electric power output, with carbon dioxide emissions and net electric power output measured on a new and clean basis. For a base load gas plant designed with power enhancement or augmentation options that increase the capacity and the heat rate of the plant above the capacity and heat rate that the base load gas plant can achieve on a new and clean basis, the Council shall apply the standard for a non-base load power plant, as described in subsection (7), to the incremental carbon dioxide emissions from the designed operation of the power enhancement or augmentation options. The Council shall determine whether the base load carbon dioxide emissions standard is met as follows:

(a) The Council shall determine the gross carbon dioxide emissions that are reasonably likely to result from the operation of the proposed energy facility. The Council shall base such determination on the proposed design of the energy facility. The Council shall adopt site certificate conditions to ensure that the predicted carbon dioxide emissions are not exceeded on a new and clean basis;

(b) For any remaining emissions reduction necessary to meet the applicable standard, the applicant may elect to use any of the means described in subsection (4), or any combination thereof. The Council shall determine the amount of carbon dioxide emissions reduction that is reasonably likely to result from the applicant's offsets and whether the resulting net carbon dioxide emissions meet the applicable carbon dioxide emissions standard;

(c) If the applicant elects to comply with the standard using the means described in subsection (4), the Council shall determine the amount of carbon dioxide emissions reduction that is reasonably likely to result from each of the proposed offsets based on the criteria in subsection (i) to (iii) below. In making this determination, the Council shall not allow credit for offsets that have already been allocated or awarded credit for carbon dioxide emissions reduction in another regulatory setting. The applicant may not trade or receive any compensation for carbon dioxide offsets produced as a result of this requirement. The fact that an applicant or other parties involved with an offset may derive benefits from the offset other than the reduction of carbon dioxide emissions is not, by itself, a basis for withholding credit for an offset. The Council shall base its determination of the amount of carbon dioxide emission reduction on the following criteria:

(i) Certainty: The degree of certainty that the predicted quantity of carbon dioxide emissions reduction will be achieved by the offset;

(ii) Quantity: The ability of the Council to determine the actual quantity of carbon dioxide emissions reduction resulting from the offset, taking into consideration any proposed measurement, monitoring and evaluation of mitigation measure performance;

(iii) Non Duplication: The extent to which the reduction of carbon dioxide emissions would occur in the absence of the offsets;

(d) Before beginning construction, the certificate holder shall notify the Council in writing of its final selection of a gas turbine vendor and shall submit a written design information report to the Council sufficient to verify the facility's designed new and clean heat rate and its nominal electric generating capacity at average annual site conditions for each fuel type. In the report, the certificate holder shall include the proposed limits on the annual average number of hours of facility operation on distillate fuel oil, if applicable. In the site certificate, the Council may specify other information to be included in the report. The Council shall use the information the certificate holder provides in the report as the basis for calculating, according to the site certificate, the amount of carbon dioxide emissions reductions the certificate holder must provide.

**(4) Means of Compliance for Base Load Gas Plants** The applicant may elect to use any of the following means, or any combination thereof, to comply with the carbon dioxide emissions standard for base load gas plants. For a base load gas plant designed with power enhancement or augmentation options that increase the capacity and the heat rate of the plant above the capacity and heat rate that the base load gas plant can achieve on a new and clean basis, the applicant shall comply with the standard for a non-base load power plant in the manner as described in subsection (8) for the incremental carbon dioxide emissions from the designed operation of the power enhancement or augmentation options.

(a) Cogeneration or Combined Heat and Power: Designing and operating the facility to produce electrical and thermal energy sequentially from the same fuel source and using the thermal energy to displace another source of carbon dioxide emissions that would have otherwise continued

to occur. The Council shall adopt site certificate conditions ensuring that the carbon dioxide emissions reduction will be achieved;

(b) Offset Projects: Implementing offset projects directly or through a third party. The Council may adopt site certificate conditions ensuring that the proposed offset projects are implemented by the date specified in the site certificate, but shall not require that predicted levels of avoidance, displacement or sequestration of carbon dioxide emissions be achieved;

(c) Offset Funds: Providing offset funds, directly or through a third party, in an amount deemed sufficient to produce the reduction in carbon dioxide emissions necessary to meet the applicable carbon dioxide emissions standard. The applicant or third party shall use the funds as specified in subsection (10). The Council shall deem the payment of the monetary offset rate, pursuant to subsection (6), to result in a reduction of one ton of carbon dioxide emissions. The Council shall determine the offset funds using the monetary offset rate and the level of emissions reduction required to meet the applicable standard. If the Council issues a site certificate based on this section, the Council may not adjust the amount of the offset funds based on the actual performance of offsets;

(d) Any other means that the Council adopts by rule for demonstrating compliance with the carbon dioxide emissions standard;

(e) If the Council or a court on judicial review concludes that the applicant has not demonstrated compliance with the applicable carbon dioxide emissions standard under subsections (3)(a), (3)(b) or (3)(d) of this rule, or any combination thereof, and the applicant agrees to meet the requirements of subsection (3)(c) for any deficiency, the Council or a court shall find compliance based on such agreement.

**(5) Modification of the Standard for Base Load Gas Plants** Notwithstanding the net carbon dioxide emissions rate in subsection (3), no sooner than two years after January 1, 2003, the Council may by rule modify the carbon dioxide emissions standard for base load gas plants if the Council finds that the most efficient stand-alone combined cycle, combustion turbine, natural gas-fired energy facility that is commercially demonstrated and operating in the United States has a net heat rate of less than 6,955 Btu per kilowatt hour higher heating value adjusted to ISO conditions. In modifying the carbon dioxide emission standard, the Council shall determine the rate of carbon dioxide emissions per kilowatt hour of net electric output of such energy facility, adjusted to ISO conditions and reset the carbon dioxide emissions standard at 17 percent below this rate.

**(6) Monetary Offset Rate** The monetary offset rate is 85 cents per ton of carbon dioxide emissions. After two years from January 1, 2003, the Council may by rule increase or decrease the monetary offset rate. The Council shall base any change to the monetary offset rate on empirical evidence of the cost of carbon dioxide offsets and the Council's finding that the standard will be economically achievable with the modified rate for natural gas-fired power plants. The Council may increase or decrease the monetary offset rate no more than 50 percent in any two-year period.

**(7) Standard for Non-Base Load Power Plants** To issue a site certificate for a non-base load power plant, the Council must find that the net carbon dioxide emissions rate of the proposed facility does not exceed 0.675 pounds of carbon dioxide per kilowatt hour of net electric power output, with carbon dioxide emissions and net electric power output measured on a new and clean

basis. For a base load gas plant designed with power enhancement or augmentation options that increase the capacity and the heat rate of the plant above the capacity and heat rate that the base load gas plant can achieve on a new and clean basis, the Council shall apply this standard to the incremental carbon dioxide emissions from the designed operation of the power enhancement or augmentation options. The Council shall determine whether the carbon dioxide emissions standard is met as follows:

(a) The Council shall determine the gross carbon dioxide emissions that are reasonably likely to result from the operation of the proposed energy facility. The Council shall base such determination on the proposed design of the energy facility, the limitation on the hours of generation for each fuel type and the average temperature, barometric pressure and relative humidity at the site during the times of the year when the facility is intended to operate. For a base load gas plant designed with power enhancement or augmentation options that increase the capacity and the heat rate of the plant above the capacity and heat rate that the base load gas plant can achieve on a new and clean basis, the Council shall base its determination of the incremental carbon dioxide emissions on the proposed design of the facility, the proposed limitation on the hours of generation using the power enhancement or augmentation options and the average temperature, barometric pressure and relative humidity at the site during the times of the year when the facility is intended to operate. The Council shall adopt site certificate conditions to ensure that the predicted carbon dioxide emissions are not exceeded on a new and clean basis; however, the Council may modify the parameters of the new and clean basis to accommodate average conditions at the times when the facility is intended to operate and technical limitations, including operational

considerations, of a non-base load power plant or power enhancement or augmentation options or for other cause;

(b) For any remaining emissions reduction necessary to meet the applicable standard, the applicant may elect to use any of the means described in subsection (8) or any combination thereof.

The Council shall determine the amount of carbon dioxide emissions reduction that is reasonably likely to result from the applicant's offsets and whether the resulting net carbon dioxide emissions meet the applicable carbon dioxide emissions standard;

(c) If the applicant elects to comply with the standard using the means described in subsection (8)(b), the Council shall determine the amount of carbon dioxide emissions reduction that is reasonably likely to result from each of the proposed offsets based on the criteria in subsection (i) to (iii) below. In making this determination, the Council shall not allow credit for offsets that have already been allocated or awarded credit for carbon dioxide emissions reduction in another regulatory setting. The applicant may not trade or receive any compensation for carbon dioxide offsets produced as a result of this requirement. The fact that an applicant or other parties involved with an offset may derive benefits from the offset other than the reduction of carbon dioxide emissions is not, by itself, a basis for withholding credit for an offset. The Council shall base its determination of the amount of carbon dioxide emission reduction on the following criteria:

(i) The degree of certainty that the predicted quantity of carbon dioxide emissions reduction will be achieved by the offset;

(ii) The ability of the Council to determine the actual quantity of carbon dioxide emissions reduction resulting from the offset, taking into consideration any proposed measurement, monitoring and evaluation of mitigation measure performance;

(iii) The extent to which the reduction of carbon dioxide emissions would occur in the absence of the offsets;

(d) Before beginning construction, the certificate holder shall notify the Council in writing of its final selection of an equipment vendor and shall submit a written design information report to the Council sufficient to verify the facility's designed new and clean heat rate and its nominal electric generating capacity at average annual site conditions for each fuel type. For a base load gas plant designed with power enhancement or augmentation options that increase the capacity and the heat rate of the plant above the capacity and heat rate that the base load gas plant can achieve on a new and clean basis as defined in WAC 345-XXX-XXX(5), the certificate holder shall include in the report information sufficient to verify the facility's designed new and clean heat rate, tested under parameters the Council orders pursuant to subsection (a) above, and the nominal electric generating capacity at average annual site conditions for each fuel type from the operation of the proposed facility using the power enhancement or augmentation options. The certificate holder shall include the proposed limit on the annual average number of hours for each fuel used, if applicable. The certificate holder shall include the proposed total number of hours of operation for all fuels, subject to the limitation that the total annual average number of hours of operation per year is not more than 6,600 hours. In the site certificate, the Council may specify other information to be included in the report. The Council shall use the information the certificate holder provides in the report as the basis for calculating, according to the site certificate, the gross carbon dioxide emissions from the facility and the amount of carbon dioxide emissions reductions the certificate holder must provide;

(e) Every five years after commencing commercial operation, the certificate holder shall report to the Council the facility's actual annual hours of operation by fuel type. If the actual gross carbon dioxide emissions, calculated using the new and clean heat rate and the actual hours of operation on each fuel during the five-year period, exceed the projected gross carbon dioxide emissions for the five-year period calculated under subsection (d) above, the certificate holder shall offset any excess emissions for that period and shall offset estimated future excess carbon dioxide emissions using the monetary path as described in subsection (8)(c) and (d) or as approved by the Council.

(f) For a base load gas plant designed with power enhancement or augmentation options that increase the capacity and the heat rate of the plant above the capacity and heat rate that the base load gas plant can achieve on a new and clean basis, every five years after commencing commercial operation, the certificate holder shall report to the Council the facility's actual hours of operation using the power enhancement or augmentations options for each fuel type. If the actual gross carbon dioxide emissions, calculated using the new and clean heat rate, tested under parameters the Council orders pursuant to subsection (a) above, and the actual hours of operation using the power enhancement or augmentations options on each fuel during the five-year period exceed the projected gross carbon dioxide emissions for the five-year period calculated under subsection (d) above, the certificate holder shall offset any excess emissions for that period and shall offset estimated future excess carbon dioxide emissions using the monetary path as described in subsections (8)(c) and (d) or as approved by the Council.

**(8) Means of Compliance for Non-Base Load Power Plants** The applicant may elect to use any of the following means, or any combination thereof, to comply with the carbon dioxide emissions standard for non-base load power plants or for the incremental carbon dioxide emissions from the operation of a base load gas plant with power enhancement or augmentation options in a manner that increases the capacity and the heat rate of the plant above the capacity and heat rate that the base load gas plant can achieve on a new and clean basis:

(a) Designing and operating the facility to produce electrical and thermal energy sequentially from the same fuel source and using the thermal energy to displace another source of carbon dioxide emissions that would have otherwise continued to occur. The Council shall adopt site certificate conditions ensuring that the carbon dioxide emissions reduction will be achieved;

(b) Implementing offset projects directly or through a third party. The Council may adopt site certificate conditions ensuring that the proposed offset projects are implemented by the date specified in the site certificate, but shall not require that predicted levels of avoidance, displacement or sequestration of carbon dioxide emissions be achieved;

(c) Providing offset funds, directly or through a third party, in an amount deemed sufficient to produce the reduction in carbon dioxide emissions necessary to meet the applicable carbon dioxide emissions standard. The applicant or third party shall use the funds as specified in subsection (10). The Council shall deem the payment of the monetary offset rate, pursuant to subsection (6), to result in a reduction of one ton of carbon dioxide emissions. The Council shall determine the offset funds using the monetary offset rate and the level of emissions reduction required to meet the applicable standard. If the Council issues a site certificate based on this

section, the Council may not adjust the amount of the offset funds based on the actual performance of offsets;

(d) Notwithstanding subsections (a), (b) or (c) above, if the certificate holder exceeds the projected gross carbon dioxide emissions calculated under subsection (7)(d) during any five-year reporting period described in subsection (7)(e), the certificate holder shall offset excess emissions for the specific reporting period according to subsection (i) below and shall offset the estimated future excess emissions according to subsection (ii) below. The certificate holder shall offset excess emissions using the monetary path as described in subsection (10) or as approved by the Council;

(i) In determining the excess carbon dioxide emissions that the certificate holder must offset for a five-year period, the Council shall credit the certificate holder with offsets equal to the difference between the carbon dioxide emissions allowed by the site certificate in previous periods and actual emissions, if actual emissions were lower than allowed. Once a certificate holder has used a credit, the certificate holder shall not use it again. The certificate holder shall pay for the excess emissions at a rate per ton of carbon dioxide emissions that has the same present value per ton of carbon dioxide as the monetary path offset rate of the year in which the Council issued the final order applying the carbon dioxide standard. The Council shall specify in the site certificate the methodology for calculating the present value per ton of carbon dioxide and the qualified organization. The Council shall calculate excess carbon dioxide emissions and notify the certificate holder of the amount of payment required, using the monetary path, to offset them;

(ii) The Council shall specify in the site certificate a methodology for estimating future excess carbon dioxide emissions. The Council shall calculate estimated future excess emissions

and notify the certificate holder of the amount of payment required, using the monetary path, to offset them, according to the site certificate. To estimate excess emissions for the remaining period of the deemed life of the facility, the Council shall use the annual average number of hours of operation during the five-year period in which the certificate holder exceeded the estimated gross carbon dioxide emissions described in subsection (7)(e) and the new and clean heat rate and capacity for the facility, adjusted for the average temperature, barometric pressure and relative humidity at the site during the times of the year when the facility is intended to operate. If the annual average hours exceed 6,600, the Council shall estimate emissions at 100 percent capacity for the remaining period of a deemed 30-year life of the facility. In estimating future excess carbon dioxide emissions, the Council shall not credit lower emissions from earlier reporting periods. However, the Council shall credit offsets already provided when it estimated base load operation for the hours being adjusted. The certificate holder shall pay for the remaining excess emissions at a rate per ton of carbon dioxide emissions that has the same present value per ton of carbon dioxide as the monetary path offset rate of the year in which the Council issued the final order applying the carbon dioxide standard. The Council shall specify in the site certificate the methodology for calculating the present value of the offset fund rate. At the request of the certificate holder, the Council may, by amendment of the site certificate, use an alternative methodology to estimate future excess carbon dioxide emissions;

(e) Any other means that the Council adopts by rule for demonstrating compliance with the carbon dioxide emissions standard;

(f) If the Council or a court on judicial review concludes that the applicant has not demonstrated compliance with the applicable carbon dioxide emissions standard under subsections

(a), (b) or (e) of this rule, or any combination thereof, and the applicant agrees to meet the requirements of sections (c) and (d) for any deficiency, the Council or a court shall find compliance based on such agreement.

**(9) Modification of the Standard for Non-Base Load Power Plants** Notwithstanding the net carbon dioxide emissions rate specified in subsection (7), the Council may by rule modify the carbon dioxide emissions standard for non-base load power plants so that the standard remains equivalent to the standard for the net carbon dioxide emissions rate of a base load gas plant, subject to the principles described in subsection (2).

**(10) Monetary Path Payment Requirement** (a) If the applicant elects to meet the applicable carbon dioxide emissions standard in whole or in part under subsections (4)(c) or (7)(c), the applicant shall provide a bond or letter of credit in a form reasonably acceptable to the Council to ensure the payment of the offset funds and the additional funds required under subsection (d). The applicant shall provide such security by the date specified in the site certificate. In the site certificate, the Council shall specify a date no later than the commencement of construction of the facility for base load gas plants and non-base load power plants. In no case shall the applicant diminish the bond or letter of credit or receive a refund from a qualified organization based on the calculations of the facility's emissions on a new and clean basis for a fossil-fueled power plant. A qualified organization shall not refund any offset funds to a certificate holder based on the operation or performance of a non-base load power plant during any five-year period reported under subsection (7)(e).

(b) In the site certificate, the Council shall require the certificate holder to disburse the offset funds and other funds required as specified in subsection (c) and (d), unless the Council finds that no qualified organization exists, in which case the Council shall require the certificate holder to disburse the offset funds as specified in subsection (11)(b).

(c) When the certificate holder receives written notice from the qualified organization certifying that the qualified organization is contractually obligated to pay any funds to implement offsets using the offset funds, the certificate holder shall make the requested amount available to the qualified organization unless the total of the amount requested and any amounts previously requested exceeds the offset funds, in which case the certificate holder shall make available only the remaining amount of the offset funds. The qualified organization shall use at least 80 percent of the offset funds for contracts to implement offsets. The qualified organization may use up to 20 percent of the offset funds for monitoring, evaluation, administration and enforcement of contracts to implement offsets.

(d) At the request of the qualified organization and in addition to the offset funds, the certificate holder shall pay the qualified organization an amount equal to 10 percent of the first \$500,000 of the offset funds and 4.286 percent of any offset funds in excess of \$500,000. The certificate holder for a base load gas plant shall pay not less than \$50,000, unless the Council specifies a lesser amount in the site certificate. In the site certificate, the Council may specify a minimum amount that other fossil-fueled power plants or nongenerating energy facilities must pay. This payment compensates the qualified organization for its costs of selecting offsets and contracting for the implementation of offsets.

(e) Notwithstanding any provision to the contrary, a certificate holder subject to this rule has no obligation with regard to offsets, the offset funds or the funds required by subsection (d) other than to make available to the qualified organization the total amount required under subsections (4)(c), (8)(c) and (d) and subsection (d) of this rule. The Council shall not base a revocation of the site certificate or any other enforcement action with respect to the certificate holder on any nonperformance, negligence or misconduct by the qualified organization.

(f) For monetary path payments a certificate holder must make before beginning construction, the certificate holder shall make all offset fund payments and all payments required by subsection (d) to the qualifying organization in real dollars of the year in which the Council issues a final order applying the carbon dioxide emissions standard to the energy facility. In the site certificate, the Council shall specify an appropriate inflation index for calculating real dollars. For a non-base load power plant, if a certificate holder must make a payment as described in subsection (8)(d), the certificate holder shall make a payment that has the same present value per ton of carbon dioxide as the monetary path offset rate of the year in which the Council issued the final order applying the carbon dioxide standard. In the site certificate, the Council shall specify the methodology for calculating present value.

**(11) Qualified Organization** (a) If the applicant elects to meet the applicable carbon dioxide emissions standard in whole or in part under subsections (4)(c) and (8)(c) and (d), the applicant shall identify the qualified organization. The applicant may identify an organization that has applied for, but has not received, an exemption from federal income taxation, but the Council may not find that the organization is a qualified organization unless the organization is exempt from

federal taxation under section 501(c)(3) of the Internal Revenue Code as amended and in effect on December 31, 1996.

(b) If the Council finds there is no qualified organization, the certificate holder shall disburse the offset funds according to one or more contracts for implementation of offsets as determined by the following process:

(i) The Council shall establish criteria for selection of offsets, based on the reduction of net carbon dioxide emissions and the criteria set forth in subsection (3)(c) for base load plants, and subsection (7)(c) for non-base load plants. The Council may consider the costs of particular types of offsets in relation to the expected benefits of such offsets. In establishing criteria, the Council shall not require the certificate holder to select particular offsets and shall allow the certificate holder a reasonable range of choices in selecting offsets;

(ii) Based on the criteria established by the Council, the certificate holder shall select one or more offsets. The certificate holder shall give written notice of its selections to the Council and to any person requesting notice. For the purposes of this rule, the date of notice is the date the certificate holder places the notice in the United States mail, with first-class postage prepaid;

(iii) On petition by the Council or by any person adversely affected or aggrieved by the certificate holder's selection of offsets, or on the Council's own motion, the Council may review the selection. The petition must be received by the Council within 30 days of the date of notice;

(iv) The Council shall approve the certificate holder's selection unless it finds that the selection is not consistent with criteria established under subsection (i);

(v) The certificate holder shall execute one or more contracts to implement the selected offsets within 18 months after commencing construction of the facility unless the Council allows

additional time based on a showing of good cause by the certificate holder. If a certificate holder would have made a payment to a qualified organization as described in subsections (8)(d), the certificate holder shall instead execute one or more contracts to implement the selected offsets, by a method acceptable to the Council, within 18 months after reporting to the Council as subsection (7)(e) or within 18 months after the Council notifies the certificate holder that the certificate holder must replenish the offset credit account. The certificate holder shall, under such contracts, obligate the expenditure of at least 85 percent of the offset funds for the implementation of offsets. The certificate holder may spend no more than 15 percent of the offset funds on monitoring, evaluation and enforcement of such contracts;

(vi) Notwithstanding any provision to the contrary, the certificate holder shall have no financial liability for implementation, monitoring, evaluation and enforcement of offsets under this section beyond the amount contractually obligated and the amount of any remaining offset funds not already contractually obligated. The Council shall not base a revocation of the site certificate or any other enforcement action with respect to the certificate holder on any nonperformance, negligence or misconduct by the person or persons implementing, monitoring or evaluating the selected offsets.

(c) Every qualified organization that has received funds under this rule shall, at five-year intervals beginning on the date of receipt of such funds, provide the Council with the information the Council requests about the qualified organization's performance.

### **Special Definitions**

(1) "Adjusted to ISO conditions" means carbon dioxide emissions and net electric power output as determined at 59 degrees Fahrenheit, 14.7 pounds per square inch atmospheric pressure and 60 percent humidity.

(2) "Base load gas plant" means a generating facility that is fueled by natural gas, except for periods during which an alternative fuel may be used and when such alternative fuel use shall not exceed 10 percent of expected fuel use in Btu, higher heating value, on an average annual basis, and where the applicant requests and the Council adopts no condition in the site certificate for the generating facility that would limit hours of operation other than restrictions on the use of alternative fuel. The Council shall assume a 100-percent capacity factor for such plants and a 30-year life for the plants for purposes of determining gross carbon dioxide emissions.

(3) "Gross carbon dioxide emissions" means the predicted carbon dioxide emissions of the proposed energy facility. The Council shall measure the gross carbon dioxide emissions of a fossil-fueled power plant on a new and clean basis.

(4) "Net carbon dioxide emissions" means gross carbon dioxide emissions of the proposed energy facility, less carbon dioxide emissions avoided, displaced or sequestered by any combination of cogeneration or offsets.

(5) "New and clean basis" means the average carbon dioxide emissions rate per hour and net electric power output of the energy facility, without degradation. The site certificate holder shall determine the new and clean basis:

(a) By a 100-hour test at full power that the site certificate holder completes during the first 12 months of commercial operation of the energy facility, unless the Council specifies a different testing period for a non-base load power plant;

(b) With the results adjusted for the average annual site condition for temperature, barometric pressure and relative humidity and use of alternative fuels;

(c) Using a rate of 117 pounds of carbon dioxide per million Btu of natural gas fuel; and

(d) Using a rate of 161 pounds of carbon dioxide per million Btu of distillate fuel, if such fuel use is proposed by the applicant.

(e) Notwithstanding subsection (a) and including subsections (b) through (d), for a facility that employs major power generating equipment that has previously been used, the new and clean basis shall mean average carbon dioxide emissions rate and net electric power output for the first use of the equipment at the site, as determined by historical data from the previous usage or by testing on site.

(1) "Non-base load power plant" means a fossil-fueled generating facility that is limited by the site certificate to an average number of hours of operation per year of not more than 6,600 hours. The Council shall assume a 30-year life for the plants for purposes of determining gross carbon dioxide emissions, unless the applicant requests and the Council approve a shorter operational life in the site certificate. If the Council approves a shorter operational life, the certificate holder shall operate the facility for no longer than the approved operational life or, before the expiration of the approved operational life, shall request an amendment of the site certificate to extend the operational life.

(2) "Qualified organization" means an organization that:

(a) Is exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code as amended and in effect on December 31, 1996;

(b) Either is incorporated in the State of Washington or is a foreign corporation authorized to do business in the State of Washington;

(c) Has in effect articles of incorporation that:

(A) Require that offset funds received under EFSEC administrative code are used for offsets that will result in the direct reduction, elimination, sequestration or avoidance of carbon dioxide emissions;

(B) Require that decisions on the use of such funds are made by a body composed of seven voting members of which three are appointed by the Council, three are Washington residents appointed by an environmental nonprofit organization named by the body, and one is appointed by the applicants for site certificates that are subject to WAC 463-XXX-XXX and the holders of such site certificates; and

(C) Require nonvoting membership on the decision-making body for holders of site certificates that have provided funds not yet disbursed under WAC 463-XXX-XXX.

(D) Has made available on an annual basis, beginning after the first year of operation, a signed opinion of an independent certified public accountant stating that the qualified organization's use of funds pursuant to WAC conforms with generally accepted accounting procedures except that

the qualified organization shall have one year to conform with generally accepted accounting principles in the event of a nonconforming audit;

(E) Has to the extent applicable, except for good cause, entered into contracts obligating at least 60 percent of the offset funds to implement offsets within two years after the commencement of construction of the facility; and

(F) Has to the extent applicable, except for good cause, complied with WAC 345-XXX-XXX subsection (10)(c).