

Resolution No. 109

WHEREAS, the Energy Facility Site Evaluation Council has promulgated a notice of intent to adopt, amend or repeal rules concerning Procedures for Initial Public Hearings and Contested Case Hearings; and

WHEREAS, notice of such proposed adoption, amendment or repeal was contained in Notice No. 6148 filed September 8, 1976, with the Code Reviser's office and continued by Notice No. 7224 filed October 27, 1976, with the Code Reviser's office;

NOW THEREFORE BE IT RESOLVED by the Energy Facility Site Evaluation Council that WAC 463-08-035, 463-08-045, 463-08-010, 463-08-021, 463-08-022, 463-08-025, 463-08-030, 463-08-040, 463-08-050, 463-08-055 are hereby repealed; and

BE IT FURTHER RESOLVED by the Energy Facility Site Evaluation Council that the rules listed on Exhibit "A" attached hereto, and by this reference made a part hereof, concerning Procedures for Initial Public Hearings and Contested Case Hearings are hereby approved and adopted as permanent rules of the Energy Facility Site Evaluation Council;

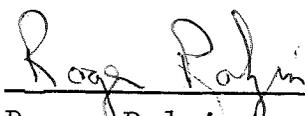
BE IT FURTHER RESOLVED by the Energy Facility Site Evaluation Council that this resolution and annexed regulations, after first being recorded in the Order Register of the Energy Facility Site Evaluation Council, shall be forwarded to the Code Reviser for filing pursuant to RCW 34.04.

Dated this 8th day of November, 1976.



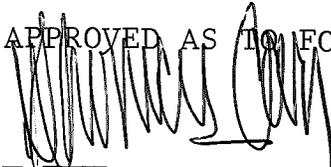
Keith Sherman, Chairman

ATTEST:



Roger Polzin  
Executive Secretary

APPROVED AS TO FORM:



Thomas F. Carr  
Assistant Attorney General

1           PROCEDURE--INITIAL PUBLIC HEARING (NON-CONTESTED)

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3           WAC 463-26-       PURPOSE OF THIS CHAPTER. This chapter sets  
4 forth the procedures to be followed in the conduct of the initial  
5 public hearing held pursuant to RCW 80.50.090(1) and the public  
6 informational meeting described in WAC 463-26-       .

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8           WAC 463-26-       NOTIFICATION OF COUNTY LEGISLATIVE AND PORT  
9 DISTRICT AUTHORITIES. Before scheduling the initial public hearing,  
10 the Council will notify the legislative and port district author-  
11 ities in each concerned county so that the county and port district  
12 representatives may be identified pursuant to RCW 80.50.030(4) and  
13 (5).

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15           WAC 463-26-       NEWS RELEASES. It shall be the responsibility  
16 of the executive secretary to furnish appropriate news releases to  
17 local media outlets at least 10 days in advance of the initial  
18 public hearing and informational meetings conducted pursuant to this  
19 chapter.

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21           WAC 463-26-       ADVERSARY NATURE OF HEARINGS. The initial  
22 public hearing conducted pursuant to this chapter shall be conducted  
23 as adversary proceeding.

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25           WAC 463-26-       PRIMARY PURPOSE FOR HEARING. At the commence-  
26 ment of the initial public hearing, the Council shall explain that  
27 the primary statutory purpose of the initial hearing under RCW  
28 80.50.090(1) is to determine whether the proposed facility is con-  
29 sistent and in compliance with county or regional land use plans  
30 or zoning ordinances and that this matter shall have priority.

1        WAC 463-26-        PUBLIC ANNOUNCEMENT--TESTIMONY. At the out-  
2 set of the initial public hearing, the Council shall publicly  
3 announce that opportunity for testimony by anyone shall be allowed  
4 relative to the consistency and compliance with county or regional  
5 land use plans or zoning ordinances.

6  
7        WAC 463-26-        INTRODUCTION OF COUNSEL FOR THE ENVIROMENT. The  
8 Council shall invite the Counsel for the Environment to be present  
9 at the initial public hearing. Counsel for the Environment shall be  
10 introduced and afforded an opportunity to explain his or her statutory  
11 duties under chapter 80.50 RCW.

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13        WAC 463-26-        EXPLANATION OF ENTIRE CERTIFICATION PROCESS.  
14 At the commencement of the hearing, the Council shall generally  
15 explain the entire hearing process as set forth in RCW 80.50.090 and  
16 these regulations.

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18        WAC 463-26-        PROCEDURE WHERE CERTIFICATES AFFIRMING COMPLIANCE  
19 WITH ZONING ORDINANCES OR LAND USE PLANS ARE PRESENTED. This rule  
20 contemplates that applicants will enter as exhibits, at the hearing,  
21 certificates from local authorities attesting to the fact that the  
22 proposal is consistent and in compliance with county or regional  
23 land use plans or zoning ordinances. In cases where this is done,  
24 such certificates will be regarded as prima facie proof of consistency  
25 and compliance with such zoning ordinances or land use plans absent  
26 contrary demonstration by anyone present at the hearing.

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28        WAC 463-26-        PROCEDURE WHERE NO CERTIFICATES RELATING TO  
29 ZONING ORDINANCES OR LAND USE PLANS ARE PRESENTED. In cases where  
30 no certificates relating to zoning or land use are presented to the  
31 Council, then the applicant will be required to demonstrate compli-  
32 ance with local zoning or land use plans as part of its present-  
33 ation. Local authorities shall then be requested to testify on the

1 question of consistency and compliance with county or regional land  
2 use plans or zoning ordinances.

3

4 WAC 463-26- DETERMINATION REGARDING ZONING OR LAND USE.

5 Prior to the conclusion of the hearing, the Council shall make a  
6 determination as to whether the proposed site is consistent and in  
7 compliance with land use plans or zoning ordinances pursuant  
8 to RCW 80.50.090(2).

9

10 WAC 463-26- INITIAL DETERMINATION SUBJECT TO REVIEW. At the  
11 time that the determination on zoning or land use planning is made,  
12 the Council shall explain that this determination may be reopened  
13 later during the course of a contested case hearing by the parties.  
14 to that proceeding when good cause is shown.

15

16 WAC 463-26- PUBLIC INFORMATION MEETING. The Council shall  
17 conduct at least one public information meeting concerning each  
18 application. At this meeting, the Council will present the general  
19 procedure to be followed in processing the application including a  
20 tentative sequence of Council actions, the rights and methods of  
21 participation by local government in the process, and the means and  
22 opportunities for the general public to participate.

23 The applicant shall make a presentation of the proposed project  
24 utilizing appropriate exhibits. The presentation shall include: a  
25 general description of the project and the proposed site; reasons  
26 why the proposed site or location was selected; and a summary of  
27 anticipated environmental, social, and economic impacts.

28 The general public will be afforded an opportunity to present  
29 written or oral comments relating to the proposed project. The com-  
30 ments will not be part of the contested case record.

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1           The informational meeting will be held in the general proximity  
2 of the proposed project. Whenever feasible it will be held in  
3 conjunction with the land use or zoning hearing as a separate and  
4 independent order of business.

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PROCEDURE--CONTESTED CASE HEARINGS

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3 WAC 463-30- PURPOSE AND SCOPE OF THIS CHAPTER. The purpose  
4 of this chapter is to set forth procedures by which contested case  
5 hearings are to be conducted before the Council. Except as indicated  
6 herein, the Uniform Procedural Rules set forth in chapter 1-08 WAC  
7 shall not apply to contested case hearings before the Council.  
8

9 WAC 463-30- HEARING EXAMINERS AND PANELS. The Council may  
10 appoint a single hearing examiner or multimember panel of Council  
11 members to conduct contested case hearings. Panels may consist of  
12 Council members or hearing examiners or both. This shall not pre-  
13 clude the full participation of any other Council member.  
14

15 WAC 463-30- USE OF THE TERM "COUNCIL." The term "Council,"  
16 for purpose of this chapter, shall mean the Council, hearing panel,  
17 or hearing examiner, whichever is appropriate in context.  
18

19 WAC 463-30- HEARING EXAMINER DESIGNATION. An attorney  
20 appointed to fulfill the function of hearing examiner under these  
21 rules shall be designated "Administrative Law Judge."  
22

23 WAC 463-30- STATUS OF AGENCIES AND AGENCY MEMBERS IN  
24 CONTESTED CASES. All state agencies having members on the Council  
25 are deemed to be parties to any contested case before the Council.  
26 For purpose of any contested case hearing, however, the agency  
27 representative on the Council shall be deemed to be a member of the  
28 Council and not a member of the agency. It shall be proper for the  
29 agency representative on the Council to maintain liaison with the  
30 represented agency, excepting those agency employees actively  
31 involved in the contested case proceedings.  
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1           WAC 463-30-       DEFINITIONS--PERSONS AND PARTIES. The terms  
2 "person" and "party" when used in this chapter shall have the fol-  
3 lowing meanings. The term "person" shall be defined according to  
4 RCW 80.50.020(3). The term "party" shall mean and be limited to  
5 the following:

6           (1) The "Applicant" as defined in RCW 80.50.020(1).

7           (2) Each "Member Agency" as defined in RCW 80.50.020(16).

8           (3) The "Counsel for the Environment" as defined in RCW 80.50-  
9 .020(13).

10           (4) Each person admitted to a contested case proceeding as an  
11 "Intervenor," provided that the Council order granting intervention  
12 specifically provides that such person shall be a party to the  
13 proceeding, and provided further that such person shall be a party  
14 only for such purposes and subject to such limitations and conditions  
15 as may be specified in the Council order granting intervention.

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17           WAC 463-30-       PLEADINGS--LEGIBILITY. All pleadings shall  
18 be typewritten, mimeographed, or printed except for good cause  
19 shown.

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21           WAC 463-30-       COMMENCEMENT OF CONTESTED CASE PROCEEDINGS.  
22 Contested case proceedings pursuant to RCW 80.50.090(3) shall be  
23 commenced on receipt of the application.

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25           WAC 463-30-       PUBLICITY--COMMENCEMENT OF CONTESTED CASE PRO-  
26 CEEDINGS. Upon the filing of an application for certification, the  
27 Council shall prepare an appropriate statement for dissemination to  
28 the news media which shall: (1) describe all actions taken to date  
29 regarding the proposed site, and (2) state clearly that any person  
30 may be allowed to present timely written or oral argument for or  
31 against the proposed site to be certified and that advance written  
32 notice within a reasonable time shall be required of persons who  
33 desire to argue orally.

1            WAC 463-30-            APPEARANCE AND PRACTICE BEFORE THE COUNCIL. In  
2 determining who shall be entitled to appear and practice before the  
3 Council, the Council will be guided by the provisions of WAC 1-08-040  
4 through WAC 1-08-060.

5  
6            WAC 463-30-            NOTICE AND OPPORTUNITY TO BE HEARD--TIME. In  
7 all cases where a hearing is requested by a party or directed by the  
8 Council, parties shall be served with notice within the time required  
9 by any governing statute. In the absence of a statutory requirement,  
10 then notice shall be given not less than 20 days prior to the date  
11 set for hearing. The notice shall state the time, place, and issues  
12 involved. These notice provisions may be waived by the Council for  
13 good cause shown after assurance that waiver would not substantially  
14 affect the rights of any other party.

15  
16            WAC 463-30-            SERVICE--BY WHOM SERVED. The Council  
17 shall cause to be served all orders, notices, and other papers  
18 issued by it, together with any other papers which it is required by  
19 law to serve. Every other paper shall be served by the party filing  
20 it.

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22            WAC 463-30-            SERVICE--UPON WHOM SERVED. All papers served  
23 in connection with an application shall be served upon all members  
24 of the Council and upon parties, their counsel of record, or upon  
25 agents designated to receive service, subject to the exceptions set  
26 forth in the following section.

27  
28            WAC 463-30-            WAIVER OF SERVICE--FILING. Any party may file  
29 a waiver of service with the Council in any contested case proceeding.  
30 In the event of such filing, there shall be no further requirement  
31 to effect service upon such party. It is the intent and purpose of  
32 this section to enable parties to effect a sizeable reduction in  
33

1 required service upon parties who are and wish to remain inactive in  
2 the contested case proceeding.

3  
4 WAC 463-30- SERVICE--METHOD OF SERVICE. Service of papers  
5 may be made personally or by first-class, registered or certified  
6 mail, or by telegraph.

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8 WAC 463-30- SERVICE--WHEN SERVICE COMPLETE. Service by  
9 mail shall be deemed complete upon deposit in the U. S. Mail,  
10 properly stamped and addressed. Service by telegraph shall be  
11 deemed complete when deposited with a telegraph company, properly  
12 addressed with charges prepaid.

13  
14 WAC 463-30- PROOF OF SERVICE--FILING WITH COUNCIL. Papers  
15 required to filed with the Council shall be deemed filed upon actual  
16 receipt by the Council at its office accompanied by proof of service  
17 upon parties required to be served.

18  
19 WAC 463-30- PROOF OF SERVICE--METHOD. Proof of service  
20 should be made in the same manner as in the Superior Court of the  
21 State of Washington.

22  
23 WAC 463-30- LIMITED DISCOVERY PRACTICE. Formal discovery  
24 devices in contested case proceedings shall consist of subpoenas,  
25 depositions, interrogatories, and requests for production.

26  
27 WAC 463-30- SUBPOENAS--PRACTICE. The Council practice  
28 regarding subpoenas shall substantially conform to the provisions of  
29 WAC 1-08-150 through WAC 1-08-220.

30  
31 WAC 436-30- DEPOSITIONS AND INTERROGATORIES--PRACTICE.  
32 Council practice regarding depositions and interrogatories shall be  
33 governed by the provisions of WAC 1-08-230 through WAC 1-08-360.

1        WAC 463-30-        REQUEST FOR PRODUCTION. Any party may request  
2 of any other party the production of original records, documents or  
3 other written material, or copies thereof, wherever the request  
4 materials are not reasonably available to the requesting party  
5 through other sources. Where the cost to produce becomes signifi-  
6 cant the Council may, upon motion, determine which party shall bear  
7 the burden of cost. The scope of requests for production shall be  
8 limited to the matters specified in WAC 1-08-240 and protection  
9 shall be afforded comparable to that available under WAC 1-08-270.

10  
11        WAC 463-30-        OFFICIAL NOTICE--MATTERS OF LAW. Upon written  
12 or oral motion, the Council may officially notice any matter of law.  
13 The Council will be guided by WAC 1-08-370.

14  
15        WAC 463-30-        OFFICIAL NOTICE--MATERIAL FACTS. Upon written  
16 or oral motion, the Council may officially notice relevant facts in  
17 the absence of controverting evidence. In implementing this rule,  
18 the Council will be guided by WAC 1-08-380.

19  
20        WAC 463-30-        STIPULATIONS AND ADMISSIONS OF RECORD. The  
21 existence or nonexistence of a material fact, as made or agreed in  
22 a stipulation or in an admission of record, will be conclusively  
23 presumed against any party bound thereby, and no other evidence with  
24 respect thereto will be received upon behalf of such party. Any  
25 party bound by a stipulation or admission of record may withdraw the  
26 same by showing that it was made inadvertently or under a bona fide  
27 mistake of fact and that withdrawal will not unjustly prejudice the  
28 rights of other parties to the proceeding.

29  
30        WAC 463-30-        DEFINITION OF ISSUES BEFORE HEARING. In all con-  
31 tested case proceedings the issues to be decided shall be made as pre-  
32 cise as possible so that the Council may promptly conduct the hearing  
33 on relevant and material matter only. It is the intent and purpose

1 of this section to foster agreement by the parties to the issue to  
2 be decided. In the event of failure of the parties to agree to  
3 definition and refinement of the issues for hearing, the Council may  
4 require submission of statements and briefs by the parties defining  
5 the principal issues. In such event, the Council shall define the  
6 issues for hearing and may limit the scope of hearing to those pre-  
7 determined issues.

8  
9 WAC 463-30- PREHEARING CONFERENCES. PRIOR TO HEARING.

10 On its own motion or at the request of a party the Council may  
11 direct the parties to appear at a specified time and place for  
12 prehearing conferences regarding any scheduled hearing. Primary  
13 emphasis shall be on the simplification of issues prior to hearing.  
14 In the discretion of the Council, the following matters may also be  
15 taken up:

16 (1) The necessity of amendments to the pleadings;

17 (2) The possibility of obtaining stipulations, admissions of  
18 facts, or documents;

19 (3) The limitation of the number of expert witnesses;

20 (4) Other matters which may aid in disposition of the proceeding,  
21 including scheduling of the hearing and determination of sequence  
22 of the subject matter.

23  
24 WAC 463-30- ATTENDANCE BY COUNCIL MEMBERS AT PREHEARING  
25 CONFERENCES. Individual Council members may be present but not  
26 participate in prehearing conferences.

27  
28 WAC 463-30- PREHEARING CONFERENCE RECORD OF ACTION. The  
29 Council shall make an order reciting actions taken during any informal  
30 consultation. As appropriate, the order shall also recite amendments  
31 to pleadings or stipulations. The order shall control the subsequent  
32 course of the proceedings unless modified by subsequent Council  
33 action.

2 case proceeding on certification the Council shall, after consulta-  
3 tion with the parties schedule the hearing process so that the  
4 following general subject areas may be heard separately at specified  
5 times, to the extent they are in issue:

6            (1) The description of the particular energy facility and the  
7 proposed site.

8            (2) Consistency of the proposal with zoning and land use regu-  
9 lations.

10           (3) Physical site suitability and related safety considerations.

11           (4) NPDES permit or permits.

12           (5) On-site and local impacts (physical): such as aquatic,  
13 terrestrial and atmospheric.

14           (6) On-site and local impacts (societal): such as housing,  
15 services, recreation, economics, transportation, health, and tax  
16 base.

17           (7) Peripheral area impacts (all categories).

18           (8) Adverse impacts minimization and consideration of conditions  
19 of certification.

20           The Council may alter the sequence in which the foregoing  
21 matters are to be considered in any given case. At the commencement  
22 of the contested case hearing, the Council shall publicly announce  
23 the proposed schedule by which the hearing is to be conducted. It  
24 is the intent and purpose of this section to accomplish two equally  
25 important objectives. First, interested persons may avail themselves  
26 of the opportunity to attend and hear only those segments of the  
27 whole hearing process which are of keen personal interest. Second,  
28 applicants and other parties may determine the specific nature of  
29 Council concern regarding critical issues without the necessity of  
30 proceeding through the entire hearing process.

1        WAC 463-30-        RULES OF EVIDENCE. In ruling upon evidentiary  
2 matters, the Council shall be guided by the provisions of WAC 1-08-  
3 450 through WAC 1-08-530.

4  
5        WAC 463-30-        PROPOSED COUNCIL ORDER OR RECOMMENDATION. In  
6 any case where a contested case proceeding is conducted before a  
7 hearing panel or a hearing examiner, there shall be prepared a pro-  
8 posed Council order, supported by written findings of fact and con-  
9 clusions of law, copies of which shall be served upon all parties.  
10 The proposed order, findings and conclusions shall be transmitted to  
11 the Council. In a site certification proceeding, the proposed  
12 Council order shall be designated a Proposed Council Recommendation  
13 and shall be styled accordingly.

14  
15        WAC 463-30-        PROPOSED ORDER--EXCEPTIONS. Any party of record  
16 may file exceptions to a proposed Council order. Exceptions must be  
17 filed with the Council and one copy must be served upon all parties  
18 of record within 10 days of the date of service of the proposed  
19 Council order.

20  
21        WAC 463-30-        PROPOSED ORDER--CONTENTS OF EXCEPTIONS. Excep-  
22 tions to proposed Council orders shall be specific and shall be  
23 stated and numbered separately. Exceptions to findings of fact must  
24 be supported by reference to the portion of the record or the evi-  
25 dence relied upon and shall be accompanied by a recommended findings  
26 of fact. Exceptions to conclusions of law must be supported by  
27 specific reference to the appropriate legal authority and accompanied  
28 by a suggested corrected conclusion of law. When exceptions are  
29 taken to statements in the proposed Council order itself, there  
30 shall be included a full written justification for such exceptions.

31  
32        WAC 463-30-        REPLIES TO EXCEPTIONS. Any party of record may  
33 file replies to exceptions with the Council. One copy shall be

1 served on all parties within 10 days of the date of service of the  
2 exception.

3  
4 WAC 463-30- REPLIES TO EXCEPTIONS--CONTENTS. Replies to  
5 exceptions shall be specific, shall be stated and numbered separately  
6 and shall be supported by reference to that page or part of the  
7 record or evidence or legal authority relied upon to support the  
8 reply.

9  
10 WAC 463-30- EXCEPTIONS AND REPLIES TO EXCEPTIONS--BRIEFS  
11 AND ARGUMENTS. Briefs or written arguments shall accompany excep-  
12 tions and replies to exceptions. The Council may, by order, direct  
13 oral argument on exceptions at a time and place to be designated by  
14 it.

15  
16 WAC 463-30- ADOPTION OF PROPOSED ORDER. After fully consi-  
17 dering all objections to the proposed Council order, the Council may  
18 approve it in its proposed form or modify it as appropriate.

19  
20 WAC 463-30- RECOMMENDATION--TRANSMITTAL TO GOVERNOR.  
21 Upon the adoption by the Council of its recommendations as to the  
22 approval or disapproval of an application for certification, the  
23 Council shall forward such recommendations to the governor.

24  
25 WAC 463-30- INTERVENTION. On timely application in writing  
26 to the Council, intervention shall be allowed to any person upon  
27 whom a statute confers a right to intervene and, in the discretion  
28 of the Council, to any person having an interest in the subject  
29 matter and whose ability to protect such interest may be otherwise  
30 impaired or impeded. All petitions to intervene shall be verified  
31 under oath by the petitioner, shall adequately identify the peti-  
32 tioner, and shall establish with particularity an interest in the  
33 subject matter and that the ability to protect such interest may be

1 otherwise impaired or impeded. In exercising discretion with  
2 regard to intervention, the Council shall consider whether interven-  
3 tion by the petitioner would unduly delay the proceeding or prejudice  
4 the rights of the existing parties.

5  
6 WAC 463-30- PARTICIPATION BY INTERVENOR. In general, it is  
7 the policy of the Council to allow any intervenor broad procedural  
8 latitude. To the extent that the Council determines that numerous  
9 intervenors might unduly delay the proceedings or prejudice the  
10 rights of existing parties, intervenor status may be conditioned  
11 upon assent by the prospective intervenor and Counsel for the  
12 Environment to allowing the Counsel for the Environment to act as  
13 lead counsel for the balance of the hearing, where the intervenor's  
14 interests more closely align with those of the Counsel for the  
15 Environment. Intervenor status may also be conditioned upon allow-  
16 ance of other parties to act as lead parties, where appropriate.  
17 The Council reserves the right to prescribe other limitations and  
18 conditions, where appropriate. It is the intent and purpose of this  
19 section to prevent unwarranted proliferation of issues leading, in  
20 turn, to delay and prejudice to existing parties.

21  
22 WAC 463-30- PARTICIPATION BY COUNTY REPRESENTATIVES. The  
23 Council shall divide and segregate matters in any contested case in  
24 a manner which will enable county representatives to participate  
25 only in those decisions relating to matters directly affecting the  
26 county represented.