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4 **WAC 463-30-250 Stipulations, Settlement and Mediation**
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6 (1) **Stipulations.** Stipulations are strongly encouraged by the council. The parties to any
7 adjudicative proceeding before the council may, by stipulation in writing filed with the council
8 or entered into the record, agree upon the facts or any portion thereof involved in the proceeding.
9 This stipulation, if accepted by the council, shall be binding upon the parties thereto and may be
10 used by the council as evidence at the hearing. The council may reject the stipulation or require
11 proof by evidence of the stipulated facts, notwithstanding the stipulation of the parties.

12 (2) **Settlement.** The council favors the voluntary settlement of disputes between parties
13 to adjudication. Parties may enter into settlement discussions at any time they deem appropriate.
14 In furtherance of a voluntary settlement, the council may invite the parties to confer among
15 themselves or with a designated person. Settlement conferences shall be informal and without
16 prejudice to the rights of the parties. Any resulting settlement or stipulation shall be stated on the
17 record or submitted in writing to the council. All settlements are subject to approval by the
18 council. No statement, admission, or offer of settlement made at a settlement conference shall be
19 admissible in evidence in any formal hearing before the council.

20 (3) **Alternate dispute resolution.** The council supports parties' efforts to resolve disputes
21 without the need for litigation when doing so is lawful and consistent with the public interest.
22 Alternate dispute resolution (ADR) includes any mechanism to resolve disagreement without full
23 contested hearings or litigation.¹

24 (a) The council will not delegate to parties the power to make final decisions, but will
25 retain the authority to approve any proposed settlement or agreement.

26 (b) Parties to a dispute or disagreement on a matter that is under the council's
27 jurisdiction² may agree to negotiate with any other parties at any time without council oversight.

¹ As presently drafted, these rules would apply to all EFSEC proceedings, not just those involving the siting of thermal power projects.

² In this subsection, "parties" may not have to be "parties to a proceeding" and accordingly, this subsection could be used prior to the initiation of adjudicative proceedings.

1 The council may direct parties to meet or consult under WAC 463-***-006(1) and may establish
2 a collaborative process under WAC 463-***-007. The council encourages parties to use and
3 experiment with other forms of ADR subject to the council’s approval.

4 (c) The council may direct parties to a proceeding³ to enter negotiations aimed at
5 resolving issues in the proceeding.

6 (d) In any negotiation, the following apply unless all participants agree otherwise:

7 (i) The parties, as their first joint act will consider any council’s guidelines for
8 negotiations, and shall determine the ground rules governing the negotiation; such ground
9 rules shall address at a minimum allocation of costs associated with the negotiations,
10 qualifications of any mediator or other facilitator, and admissibility or other use of
11 statements made in the course of negotiations, and decision-making authority of persons
12 participating in the negotiations; and provision for termination of negotiations and
13 reporting of results.

14 (ii) No statement, admission, or offer of settlement shall be admissible in evidence
15 in any formal hearing before the council without the consent of the participants or unless
16 necessary to address the process of the negotiations;

17 (iii) Parties may agree that information be treated as confidential to the extent
18 provided in a council protective order; and

19 (iv) Participants should advise each other, any mediator or facilitator, and the
20 council, if the negotiation is sanctioned by the council, if the negotiation is without
21 substantial prospects of resolving the issue or issues under negotiation.

22 (4) **Collaboratives.**⁴ (a) A collaborative is a negotiation sanctioned by the council in
23 which interested persons work with each other and representatives of council staff to achieve

³ This section, which authorizes the council to “order” negotiations, requires that parties be “parties to a proceeding.” Until a party has become a party to a particular proceeding, the council may lack jurisdiction over that party sufficient to require the party to participate in negotiations. Thus it may be impossible for the council to mandate ADR for anyone other than the Applicant until the council has taken interventions in a proceeding.

⁴ These rules relating to collaboratives could be used in the pre-intervention phase of a proceeding, although there would be a risk that parties later seeking intervention would assert that their interests were not adequately represented by the participants in the collaborative.

1 consensus on one or more issues assigned to or identified by the collaborative participants.
2 Membership in the collaborative must reflect the interests reasonably expected to be substantially
3 affected by the result of the collaborative.

4 (b) When beginning a collaborative, participants must address procedural guidelines for
5 negotiations that the council has set out in a policy statement. Communication between the
6 council and the collaborative participants may be made through the council secretary. Changes in
7 the orientation or membership of the collaborative, the issues it will address, or similar matters,
8 may be made with council knowledge and consent by letter from the secretary or by other means
9 with the agreement of collaborative participants and the council.

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