



RULE-MAKING ORDER
(RCW 34.05.360)

CR-103 (10/1/89)

Agency: Energy Facility Site Evaluation Council

- Permanent Rule
 Emergency Rule

(1) Date of adoption: February 12, 1990

(2) Purpose: To bring Title 463 into conformance with the Administrative Procedure Act.

(3) Citation of existing rules affected by this order: ~~Repealed: WAC 463-34-020, 040, and 100.~~
Repealed: WAC 463-30-070, 110, 130, 140, 150, 160, 170, 180, 210, 220, 260, 290, 295, 340, 350, 370 & 380.
Amended: WAC 463-30-010, 020, 050, 060, 080, 085, 090, 100, 120, 190, 200, 230, 240, 250, 270, 300, 310, 320, 330, 335, 410, and 420. WAC 463-34-010, 030, 050, 060, 070, 080 and 090.

(4) Authority for adoption:
Statute: RCW 80.50.040
Other Authority:

(5.1) PERMANENT RULE ONLY

Pursuant to notice filed as WSR 89-24-014 on November 29, 1989 (date).
Describe any changes other than editing from proposed to adopted version: In WAC 463-30-060 reference to RCW 80-50-020(16) was corrected to RCW 80.50.020(3) and reference to RCW 80.50.020(13) was corrected to RCW 80.50.020(12).

(5.2) EMERGENCY RULE ONLY

- Pursuant to RCW 34.05.350 the agency for good cause finds:
- (a) That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
 - (b) That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

(5.3) Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?
 Yes No If yes, explain:
Changes were made from the Office of Administrative Hearings model rules in order to conform to the council's procedures and for reasons of clarity.

(6) Effective date of rule:

Permanent Rules	Emergency Rules
<input checked="" type="checkbox"/> 31 days after filing	<input type="checkbox"/> Immediately
<input type="checkbox"/> Other (specify) _____ *	<input type="checkbox"/> Later (specify) _____

* (If less than 31 days after filing, specific finding in 5.3 under RCW 34.05.380(3) is required)

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Curtis Eschels

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Chairman

DATE
2/12/90

Chapter 463-30 WAC

PROCEDURE--((CONTESTED-CASE-HEARINGS)) ADJUDICATIVE PROCEEDINGSAMENDATORY SECTION (Amending Order 109, filed 11/16/76)

WAC 463-30-010 PURPOSE AND SCOPE OF THIS CHAPTER. The purpose of this chapter is to set forth procedures by which ((contested--case hearings)) adjudicative proceedings are to be conducted before the council under chapter 34.05 RCW. Except as indicated herein, the uniform procedural rules set forth in chapter ((7-08)) 10-08 WAC shall not apply to ((contested--case--hearings)) adjudicative proceedings before the council.

AMENDATORY SECTION (Amending Order 82-2, filed 4/30/82)

WAC 463-30-020 COUNCIL CONDUCTED HEARINGS AND ADMINISTRATIVE LAW JUDGES. The council may conduct ((contested-case-hearings)) adjudicative proceedings pursuant to chapters 34.05 and 80.50 RCW or it may utilize an administrative law judge provided by the office of administrative hearings pursuant to chapter 34.12 RCW. In the event the council elects to conduct the hearing, a presiding officer shall be appointed and the hearing shall be governed by the regulations and procedures contained in this chapter and chapter 34.05 RCW, as applicable.

AMENDATORY SECTION (Amending Order 109, filed 11/16/76)

WAC 463-30-050 STATUS OF AGENCIES AND AGENCY MEMBERS IN ((CONTESTED-CASES)) ADJUDICATIVE PROCEEDINGS. All state agencies having members on the council are deemed to be parties to any ((contested case)) adjudicative proceeding before the council. For purposes of any ((contested--case-hearing)) adjudicative proceeding, however, the agency representative on the council shall be deemed to be a member of the council and not a member of the agency. It shall be proper for the agency representative on the council to ((maintain-liaison-with)) communicate with employees of the represented agency, excepting those agency employees ((actively--involved-in-the-contested-case-proceedings)) who have participated in the proceeding in any manner or who are otherwise disqualified by RCW 34.05.455.

AMENDATORY SECTION (Amending Order 109, filed 11/16/76)

WAC 463-30-060 DEFINITIONS--PERSONS AND PARTIES. The terms "person" and "party" when used in this chapter shall have the following meanings. The term "person" shall be defined according to RCW 80.50.020(3). The term "party" shall mean and be limited to the following:

- (1) The "applicant" as defined in RCW 80.50.020(1).
- (2) Each "member agency" as defined in RCW ((80.50.020(76))) 80.50.030(3).

(3) The "counsel for the environment" as defined in RCW 80.50.020 ~~((+3))~~ (12).

(4) Each person admitted to ~~((a-contested-case))~~ an adjudicative proceeding as an "intervenor," ~~((provided--that--the--council--order granting--intervention--specifically--provides--that--such--person--shall--be a--party--to--the--proceeding,--and--provided--further--that--such--person--shall be))~~ is a party only for ((such)) the purposes and subject to ((such)) any limitations and conditions ((as-may-be)) specified in the council order granting intervention.

AMENDATORY SECTION (Amending Order 81-1, filed 3/11/81)

WAC 463-30-080 COMMENCEMENT OF ~~((CONTESTED-CASE))~~ ADJUDICATIVE PROCEEDINGS. ~~((Contested-case))~~ Adjudicative proceedings ~~((pursuant to-RCW-80.50.090(3)))~~ shall ~~((be-commenced))~~ commence upon issuance of a formal notice of hearing ~~((by-the-council))~~ or prehearing conference. The notice shall be served upon all parties at least twenty days in advance of the initial hearing date, unless the council finds that an emergency exists requiring the hearing or prehearing conference to be held upon less notice.

The time and place of continued hearing sessions may also be set:

(1) Upon the record without further written notice to the parties; or

(2) By letter from the executive secretary of the council; or

(3) By letter from the presiding officer.

In such instances, twenty days' prior notice is not required.

NEW SECTION

WAC 463-30-085 PROVISIONS REGARDING LIMITED ENGLISH-SPEAKING AND HEARING IMPAIRED PERSONS. Provisions in WAC 10-08-040 (2) and (3)(c), 10-08-045, 10-08-150, and 10-08-160(2) relating to procedures involving limited English-speaking or hearing impaired persons are incorporated in these rules by this reference.

AMENDATORY SECTION (Amending Order 109, filed 11/16/76)

WAC 463-30-090 PUBLICITY--COMMENCEMENT OF ~~((CONTESTED--CASE))~~ ADJUDICATIVE PROCEEDINGS. Upon the filing of an application for certification, the council shall prepare an appropriate statement for dissemination to the news media which shall: (1) Describe all actions taken to date regarding the proposed site, and (2) state clearly that any person may be allowed to present timely written or oral argument for or against the proposed site to be certified and that advance ~~((written))~~ notice within a reasonable time shall be required of persons who desire ((to-argue-orally)) status as intervenors in accordance with WAC 463-30-400.

AMENDATORY SECTION (Amending Order 109, filed 11/16/76)

WAC 463-30-100 APPEARANCE AND PRACTICE BEFORE THE COUNCIL. (~~in determining who shall be entitled to appear and practice before the council, the council will be guided by the provisions of WAC 1-08-040 through 1-08-060.~~) (1) General. In all proceedings in which pleadings are filed and a hearing is held involving the taking of testimony on a record subject to review by the courts, the following persons may appear in a representative capacity:

(a) Attorneys at law duly qualified and entitled to practice before the supreme court of the state of Washington;

(b) Attorneys at law duly qualified and entitled to practice before the highest court of any other state;

(c) Upon permission of the presiding officer, an officer or employee of a party or person seeking party status.

The presiding officer may expel a person who does not have the requisite degree of legal training, experience, or skill to appear in a representative capacity.

(2) Notices of appearance and withdrawal of attorneys. Attorneys or other authorized representatives appearing on behalf of a party or withdrawing from a proceeding shall immediately so notify the council and all parties to the proceeding.

(3) Unethical conduct. All persons appearing in proceedings before the council in a representative capacity shall conform to the standards of ethical conduct required of attorneys before the courts of Washington. If any representative fails to conform to these standards, the council may decline to permit the person to appear in a representative capacity in any proceeding before the council.

AMENDATORY SECTION (Amending Order 109, filed 11/16/76)

WAC 463-30-120 FILING AND SERVICE (~~--BY WHOM SERVED~~). (~~The council shall cause to be served all orders, notices, and other papers issued by it, together with any other papers which it is required by law to serve. Every other paper shall be served by the party filing it.~~) (1) Filing. Filing of any document shall be deemed complete only upon receipt by the executive secretary or other authorized agent of the council. Receipt in the council's telefax machine, or similar device, does not constitute filing. Unless in a particular case the council specifies a different number of copies, every pleading submitted to the council shall be filed with two copies. Filing a document with the council does not constitute service upon the office of the attorney general or any other party. Likewise, service on the office of the attorney general does not constitute a filing with the council.

(a) Applications. Applications for a site certificate shall be filed in the manner prescribed by the rules governing such applications.

(b) Other pleadings. All pleadings shall be legible and a copy shall be served upon each party to the proceeding.

(2) Service.

(a) Service by parties. Service of pleadings by parties shall be made by delivering one copy to each party in person, by mail, properly addressed with postage prepaid, by commercial parcel delivery company properly tendered with fees prepaid, or by telefacsimile transmission, where originals are mailed simultaneously. Except as otherwise provided, when any party has appeared by attorney or other authorized representative, service upon such attorney or representative will be deemed valid service upon the party of all future pleadings before the council. Service of pleadings by mail shall be complete when a true copy of the document is properly addressed and stamped and deposited in the United States mail. Service by commercial parcel delivery company shall be complete when accepted for delivery by the company.

(b) Service by the council. All notices, findings of fact, decisions, and orders required to be served by the council may be served in person, by mail, by commercial parcel delivery company, properly tendered with fees prepaid, or by telefacsimile transmission, when originals are mailed simultaneously. Service of documents shall be complete when a true copy of the document, properly addressed and stamped, is deposited in the United States mail with first class postage affixed, or accepted for delivery by the parcel delivery company.

(c) Certificate of service. There shall appear on the original of every pleading when filed with the council in accordance with this subsection, either an acknowledgment of service, or the following certificate:

"I hereby certify that I have this day served the fore-

going document upon all parties of record in this proceeding, by authorized method of service pursuant to WAC 463-30-120 (2)(a).

Dated at this day of
(signature)

AMENDATORY SECTION (Amending Order 109, filed 11/16/76)

WAC 463-30-190 ((LIMITED)) DISCOVERY PRACTICE. ((Formal-discovery-devices-in-contested-case-proceedings-shall-consist-of--subpoenas, depositions, interrogatories, and requests-for-production.)) Discovery is available when permitted by the presiding officer and shall be conducted in accordance with RCW 34.05.446.

AMENDATORY SECTION (Amending Order 109, filed 11/16/76)

WAC 463-30-200 SUBPOENAS--PRACTICE. ((The--council--practice regarding-subpoenas-shall-substantially-conform-to-the--provisions--of WAC--1-00-150--through--1-00-220.)) (1) Subpoenas shall be issued and enforced, and witness fees paid, as provided in RCW 34.05.446.

(2) Every subpoena shall identify the party causing issuance of the subpoena and shall state the name of the agency and the title of the proceeding and shall command the person to whom it is directed to attend and give testimony or produce designated books, documents, or things under his or her control at the time and place set for the hearing.

(3) A subpoena may be served by any suitable person over eighteen years of age, by exhibiting and reading it to the witness, or by giving him or her a copy thereof, or by leaving such copy at the place of his or her abode. When service is made by any other person than an officer authorized to serve process, proof of service shall be made by affidavit.

(4) The presiding officer, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may:

(a) Quash or modify the subpoena if it is unreasonable and oppressive; or

(b) Condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(5) No subpoena shall be issued or given effect to require the attendance and testimony of, or the production of evidence by, any member of the council or any member of the council staff in any proceeding before the council.

(6) The council shall only be responsible for paying the witness fees of the witnesses which it subpoenas. Each subpoena shall bear the name of the party requesting or issuing the subpoena and the party responsible for paying the witness fees.

AMENDATORY SECTION (Amending Order 109, filed 11/16/76)

WAC 463-30-230 OFFICIAL NOTICE(~~(--MATTERS--OF-LAW)~~). (1) Upon written or oral motion(~~(7)~~) the council may officially notice (~~(any matter of law. The council will be guided by WAC 1-00-370)~~);

- (a) Any judicially cognizable facts;
- (b) Technical or scientific facts within the council's specialized knowledge; and
- (c) Codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association.

(2) Parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material so noticed and the sources thereof, including any staff memoranda and data, and they shall be afforded an opportunity to contest the facts and material so noticed.

(3) A party proposing that official notice be taken may be required to produce a copy of the material to be noticed.

AMENDATORY SECTION (Amending Order 109, filed 11/16/76)

WAC 463-30-240 OFFICIAL NOTICE(~~(MATERIAL-FACTS)~~) EVALUATION OF EVIDENCE. ((Upon written or oral motion, the council may officially notice relevant facts in the absence of controverting evidence. In implementing this rule, the council will be guided by WAC 1-00-380)) WAC 463-30-230 shall not be construed to preclude the council from utilizing its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.

AMENDATORY SECTION (Amending Order 109, filed 11/16/76)

WAC 463-30-250 STIPULATIONS AND (~~(ADMISSIONS-OF-RECORD)~~) SETTLEMENT. ((The existence or nonexistence of a material fact, as made or agreed in a stipulation or in an admission of record, will be conclusively presumed against any party bound thereby, and no other evidence with respect thereto will be received upon behalf of such party. Any party bound by a stipulation or admission of record may withdraw the same by showing that it was made inadvertently or under a bona fide mistake of fact and that withdrawal will not unjustly prejudice the rights of other parties to the proceeding.)) (1) Stipulations are encouraged. The parties to any adjudicative proceeding before the council may, by stipulation in writing filed with the council or entered into the record, agree upon the facts or any portion thereof involved in the proceeding. This stipulation, if accepted by the council, shall be binding upon the parties thereto and may be used by the council as evidence at the hearing. The council may reject the stipulation or require proof by evidence of the stipulated facts, notwithstanding the stipulation of the parties.

(2) Before or after a formal hearing, parties to a proceeding may enter into discussions leading to a voluntary settlement. In furtherance of a voluntary settlement, the council may invite the parties to confer among themselves or with a designated person. Settlement conferences shall be informal and without prejudice to the rights of the parties. No statement, admission, or offer of settlement made at a settlement conference shall be admissible in evidence in any formal hearing before the council. Any resulting settlement or stipulation shall be stated on the record or submitted in writing and is subject to approval by the council.

AMENDATORY SECTION (Amending Order 109, filed 11/16/76)

WAC 463-30-270 PREHEARING CONFERENCE ((S--PRIOR--TO--HEARING)).
((On its own motion or at the request of a party the council may direct the parties to appear at a specified time and place for prehearing conferences regarding any scheduled hearing. Primary emphasis shall be on the simplification of issues prior to hearing. In the discretion of the council, the following matters may also be taken up:
(1) The necessity of amendments to the pleadings;
(2) The possibility of obtaining stipulations, admissions of facts, or documents;
(3) The limitation of the number of expert witnesses;
(4) Other matters which may aid in disposition of the proceeding, including scheduling of the hearing and determination of sequence of the subject matter.)) (1) The presiding officer upon his or her own motion or upon request of a party may direct the parties or their representatives to engage in a prehearing conference or conferences to consider:

(a) Simplification of issues;
(b) The necessity or desirability of amendments to the pleadings;
(c) The possibility of obtaining stipulations, admissions of fact, and admissions of the genuineness of documents which will avoid unnecessary proof;
(d) Limitations on the number and consolidation of the examination of witnesses;
(e) Procedural matters;
(f) Distribution of written testimony and exhibits to the parties prior to the hearing;
(g) The disposition of petitions for leave to intervene in the proceeding filed pursuant to WAC 463-30-400 may be ruled upon at a prehearing conference;
(h) Such other matters as may aid in the disposition or settlement of the proceeding including scheduling the hearing and determination of the sequence of the subject matter.

(2) Prehearing conferences may be held by telephone conference call or at a time and place specified by the presiding officer.

(3) Following the prehearing conference, the presiding officer shall issue an order reciting the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties concerning all of the matters considered. If no objection to such notice is filed within ten days after the date such notice is mailed, it shall control the subsequent course of the proceeding unless modified for good cause by subsequent order.

(4) In any proceeding the presiding officer may, at his or her discretion, conduct a conference prior to the taking of testimony, or may recess the hearing for such conference, for the purpose of carrying out the purpose of this section. The presiding officer shall state on the record the results of such conference.

(5) Nothing in this section shall be construed to limit the right of the council to order a prehearing conference or other settlement procedure prior to issuance of a notice of hearing.

AMENDATORY SECTION (Amending Order 109, filed 11/16/76)

WAC 463-30-300 HEARING SCHEDULE GUIDELINES. In any ((contested case)) adjudicative site certification proceeding ((on-certification)) the council shall, after consultation with the parties schedule the hearing process so that the following general subject areas may be heard separately at specified times, to the extent they are in issue:

- (1) The description of the particular energy facility and the proposed site.
- (2) Consistency of the proposal with zoning and land use regulations.
- (3) Physical site suitability and related safety considerations.
- (4) NPDES permit or permits.
- (5) On-site and local impacts (physical): Such as aquatic, terrestrial and atmospheric.
- (6) On-site and local impacts (societal): Such as housing, services, recreation, economics, transportation, health, and tax base.
- (7) Peripheral area impacts (all categories).
- (8) Adverse impacts minimization and consideration of conditions of certification.

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

AMENDATORY SECTION (Amending Order 109, filed 11/16/76)

WAC 463-30-310 RULES OF EVIDENCE. ((In ruling upon evidentiary matters, the council shall be guided by the provisions of WAC 4-08-450 through 4-08-530.)) (1) All rulings upon objections to the admissibility of evidence shall be made in accordance with the provisions of RCW 34.05.452.

(2) Where practicable, the presiding officer may order:

(a) That all documentary evidence which is to be offered during the hearing or portions of the hearing be submitted to the presiding officer and to the other parties sufficiently in advance to permit study and preparation of cross-examination and rebuttal evidence;

(b) That documentary evidence not submitted in advance as required in (a) of this subsection be not received in evidence in the absence of a clear showing that the offering party had good cause for his or her failure to produce the evidence sooner, unless it is submitted for impeachment purposes;

(c) That the authenticity of all documents submitted in advance in a proceeding in which such submission is required be deemed admitted unless written objection thereto is filed prior to the hearing, except that a party will be permitted to challenge such authenticity at a later time upon a clear showing of good cause for failure to have filed such written objection.

(3) When portions only of a document are to be relied upon, the offering party shall identify the pertinent excerpts and state the purpose for which such materials will be offered. Only the excerpts, in the form of copies, shall be received in the record. However, the whole of the original documents, except any portions containing confidential material protected by law, shall be made available for examination and for use by all parties.

(4) No former employee of the council shall appear, except with the permission of the council, as an expert witness on behalf of other parties in a proceeding in which the former employee participated.

(5) The refusal of a witness to answer any question which has been ruled to be proper shall, in the discretion of the presiding officer, be grounds for striking all testimony of the witness.

(6) Any party bound by stipulation or admission of record may, at any time prior to closure of the record, be permitted to withdraw its agreement in whole or in part by showing to the satisfaction of the presiding officer that such stipulation or admission was made inadvertently or under a bona fide mistake of fact contrary to the true fact and that its withdrawal at the time proposed will not unjustly prejudice the rights of other parties to the proceeding.

AMENDATORY SECTION (Amending Order 82-2, filed 4/30/82)

WAC 463-30-320 ((PROPOSED--COUNCIL--ORDER--OR--RECOMMENDATION)) ENTRY OF INITIAL AND FINAL ORDERS. ((In any case where a contested case proceeding is conducted by an administrative law judge or a panel of council members less than a majority, there shall be prepared a proposed council order, supported by written findings of fact and conclusions of law, copies of which shall be served upon all parties. The proposed order, findings and conclusions shall be transmitted to the council. In a site certification proceeding, the proposed council order shall be designated a proposed council recommendation and shall be styled accordingly.)) Every decision and order whether initial or final shall:

(1) Be correctly captioned to identify the council and name of the proceeding;

(2) Identify all parties and representatives participating in the proceeding;

(3) Include a concise statement on the nature and background of the proceeding;

(4) Contain appropriate numbered findings of fact meeting the requirements of RCW 34.05.461;

(5) Contain appropriate numbered conclusions of law, including citations to statutes and rules relied upon;

(6) Contain an initial or final order disposing of all contested issues;

(7) If applicable, contain a statement describing the parties' rights to reconsideration or other administrative relief.

AMENDATORY SECTION (Amending Order 109, filed 11/16/76)

WAC 463-30-330 ((PROPOSED---ORDER--EXCEPTIONS)) PETITION FOR REVIEW AND REPLIES. ((Any party of record may file exceptions to a proposed council order. Exceptions must be filed with the council and one copy must be served upon all parties of record within 10 days of the date of service of the proposed council order.)) (1) Any party to an adjudicative proceeding may file a petition for review of an initial order.

(2) The petition for review shall be filed with the executive secretary of the council within twenty days of the date of service of the initial order unless a different place and time limit for filing the petition are specified in the initial order in its statement describing available procedures for administrative relief. Copies of the petition shall be served upon all other parties or their representatives at the time the petition is filed.

(3) The petition for review shall specify the challenged portions of the initial order and shall refer to the evidence of record which is relied upon to support the petition.

(4) Any party may file an answer to a petition for review. The answer shall be filed with the executive secretary of the council within fourteen days after the date of service of the petition and copies of the answer shall be served upon all other parties or their representatives at the time the answer is filed.

NEW SECTION

WAC 463-30-335 RECONSIDERATION. A petition for reconsideration of a final order under RCW 34.05.470 shall be filed with the executive secretary of the council.

AMENDATORY SECTION (Amending Order 109, filed 11/16/76)

WAC 463-30-410 PARTICIPATION BY INTERVENOR. In general, it is the policy of the council to allow any intervenor broad procedural latitude. To the extent that the council determines that numerous intervenors might unduly delay the proceedings or prejudice the rights of existing parties, intervenor status may be conditioned upon assent by the prospective intervenor and counsel for the environment to ~~((allowing))~~ allow the counsel for the environment to act as lead counsel for the balance of the hearing, where the intervenor's interests more closely align with those of the counsel for the environment. Intervenor status may also be conditioned upon allowance of other parties to act as lead parties, where appropriate. The council reserves the right to prescribe other limitations and conditions, where appropriate. ~~((It is the intent and purpose of this section to prevent unwarranted proliferation of issues leading, in turn, to delay and prejudice to existing parties.))~~

AMENDATORY SECTION (Amending Order 78-9, filed 8/28/78)

WAC 463-30-420 PARTICIPATION BY COUNTY, CITY AND PORT DISTRICT REPRESENTATIVES. In any ~~((contested case to the extent that council action involves site certification matters relating to any county, city or port district or any combination thereof in which an energy facility is sought to be located, they shall be separated and divided to allow individual county, city and/or port district representatives to participate in discussion and county and city representatives shall vote only with regard to matters specifically affecting the concerned county or city. Port districts are nonvoting members of the council))~~ adjudicative site certification proceeding, designated council members representing local jurisdictions may discuss and, if authorized, vote only on issues affecting their jurisdictions. Issues shall be separated for purposes of discussion and voting.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 463-30-070	PLEADINGS--LEGIBILITY.
WAC 463-30-110	NOTICE AND OPPORTUNITY TO BE HEARD--TIME.
WAC 463-30-130	SERVICE--UPON WHOM SERVED.
WAC 463-30-140	WAIVER OF SERVICE--FILING.
WAC 463-30-150	SERVICE--METHOD OF SERVICE.
WAC 463-30-160	SERVICE--WHEN SERVICE COMPLETE.
WAC 463-30-170	PROOF OF SERVICE--FILING WITH COUNCIL.
WAC 463-30-180	PROOF OF SERVICE--METHOD.
WAC 463-30-210	DEPOSITIONS AND INTERROGATORIES--PRACTICE.
WAC 463-30-220	REQUEST FOR PRODUCTION.
WAC 463-30-260	DEFINITION OF ISSUES BEFORE HEARING.
WAC 463-30-290	PREHEARING CONFERENCE RECORD OF ACTION.
WAC 463-30-295	ORDERS REGARDING PROCEDURE, SCHEDULING AND SUB-
STANTIVE	ISSUES.
WAC 463-30-340	PROPOSED ORDER--CONTENTS OF EXCEPTIONS.
WAC 463-30-350	REPLIES TO EXCEPTIONS.
WAC 463-30-360	REPLIES TO EXCEPTIONS--CONTENTS.
WAC 463-30-370	EXCEPTIONS AND REPLIES TO EXCEPTIONS--BRIEFS AND
ARGUMENTS.	
WAC 463-30-380	ADOPTION OF PROPOSED ORDER.

Chapter 463-34 WAC

PROCEDURE--PETITIONS FOR RULE MAKING AND DECLARATORY ((RULINGS))
ORDERSAMENDATORY SECTION (Amending Order 107, filed 11/4/76)

WAC 463-34-010 PURPOSE AND SCOPE OF THIS CHAPTER. This chapter sets forth procedures to be followed in ~~((rule-making--proceedings before--the-council-and-further-specifies-the-manner-in-which-declaratory-rulings-may-be-sought))~~ petitions for rule making and for declaratory orders pursuant to chapter ~~((34-04))~~ 34.05 RCW.

AMENDATORY SECTION (Amending Order 107, filed 11/4/76)

WAC 463-34-030 PETITIONS FOR RULE MAKING--((CONTENTS)) FORM, CONTENT, AND FILING. ~~((Where--the-petition-requests-amendment-to-or-promulgation-of-a-rule,-the-amended-or-proposed-rule-must-be-set-out-in-full,-The-petition-must-also-include-the-reasons-for-the-request,-Where-the-petition-requests-repeal-of-an-existing-and-identified-rule,-the-reasons-for-the-proposed-repeal-must-be-set-out-in-the-petition.))~~ A petition for adoption, amendment, or repeal of a rule may be filed pursuant to RCW 34.05.330 and shall generally adhere to the following form:

(1) At the top of the page, centered, shall appear the wording "before the energy facility site evaluation council." On the left side of the page below the foregoing the following caption shall be set out: "In the matter of the petition of (name of petitioning party) for rule making." Opposite the caption shall appear the word "petition."

(2) The body of the petition shall be set out in numbered paragraphs:

(a) The first paragraph shall state the name and address of the petitioner and whether the petition seeks the adoption of a new rule or amendment or repeal of an existing rule.

(b) The second paragraph, in case of a proposed new rule or amendment of an existing rule, shall set forth the desired rule in its entirety. If the petition seeks repeal of an existing rule, the rule proposed to be repealed shall be set forth in full.

(c) The third paragraph shall set forth concisely the reasons for the proposal and shall state the petitioner's interest in the subject matter of the rule. The petition should in subsequent paragraphs state a full explanation of reasons supporting the proposal.

(3) Petitions shall be dated and signed by the petitioner or its attorney. The original and two legible copies shall be filed with the council.

AMENDATORY SECTION (Amending Order 107, filed 11/4/76)

WAC 463-34-050 ((CONSIDERATION--OF--PETITION--FURTHER--HEARING)) PETITION FOR RULE MAKING--CONSIDERATION AND DISPOSITION. ~~((All-petitions-shall-be-considered-by-the-council,-which-may-order-a-hearing-for-the-further-consideration-and-discussion-of-the-requested-promulgation,-amendment,-or-repeal-of-the-rule*))~~ (1) Each petition for the adoption, amendment, or repeal of a rule shall be considered by the

council, and the council may, in its discretion, solicit comments or invite discussion concerning the matter prior to disposition of the petition.

(2) If the council denies the petition, the denial shall be in writing and shall be served upon the petitioner.

AMENDATORY SECTION (Amending Order 107, filed 11/4/76)

WAC 463-34-060 DISPOSITION TIME. ((The council shall notify the petitioning party within 30 days of the disposition, if any, of the petition.)) Within sixty days after the petition's submission, the council shall deny the petition in writing, stating its reasons for the denial or initiate rule-making proceedings.

AMENDATORY SECTION (Amending Order 107, filed 11/4/76)

WAC 463-34-070 ((PETITIONS--FOR--DECLARATORY--RULINGS--POSSIBLE DISPOSITION)) DECLARATORY ORDERS--FORM, CONTENT, AND FILING. ((Any interested person may petition the council for a declaratory ruling. The council shall consider the petition and, within a reasonable time:

(1) Issue a nonbinding declaratory ruling; or

(2) Notify the person that no declaratory ruling is to be issued;

or

(3) Set a reasonable time and place for oral hearing or submission of written evidence upon the matter.)) A petition for a declaratory order may be filed pursuant to RCW 34.05.240 and shall generally adhere to the following form:

(1) At the top of the page, centered, shall appear the wording "before the energy facility site evaluation council." On the left side of the page below the foregoing the following caption shall be set out: "In the matter of the petition of (name of petitioning party) for a declaratory order." Opposite the caption shall appear the word "petition."

(2) The body of the petition shall be set out in numbered paragraphs:

(a) The first paragraph shall state the name and address of the petitioning party.

(b) The second paragraph shall state all rules or statutes that may be brought into the issue by the petition.

(c) Succeeding paragraphs shall set out the facts relied upon and the reasons for granting its relief.

(d) The concluding paragraph shall specify the relief sought by the petitioner.

The petition shall be subscribed and verified in the manner prescribed for verification of complaints in the superior courts of this state.

(3) The original and two legible copies of the petition shall be filed with the council.

AMENDATORY SECTION (Amending Order 107, filed 11/4/76)

WAC 463-34-080 ((ORAL HEARING)) DECLARATORY ORDERS--PROCEDURAL RIGHTS OF PERSONS IN RELATION TO PETITION. ((If an oral hearing is conducted on a petition for declaratory ruling, the council shall, within a reasonable time thereafter:

~~{1} Issue a binding declaratory ruling; or
 {2} Issue a nonbinding declaratory ruling; or~~

~~{3} Notify the person that no declaratory ruling is to be issued.)~~ (1) If a petition for a declaratory order is set for specified proceedings under RCW 34.05.240 (5) (b), the agency shall give not less than seven days' advance written notice of the proceeding to the petitioner and all persons described in RCW 34.05.240(3). The notice shall specify the time, date, place, and nature of the proceeding and shall describe how interested persons may participate.

(2) The council may order that RCW 34.05.410 through 34.05.494 and chapter 463-30 WAC shall apply in a proceeding under this section.

AMENDATORY SECTION (Amending Order 107, filed 11/4/76)

WAC 463-34-090 DECLARATORY ((RULING--CONTENTS)) ORDERS--DISPOSITION OF PETITION. ((Any person petitioning for declaratory ruling shall state all legal rules or statutes which may bear upon the petition and shall also state all facts relied upon. If a binding declaratory ruling is sought, then the petition must be subscribed and verified in the manner prescribed for verification of complaints in the superior court of this state.)) A declaratory order entered by the council or a decision by the council to decline to enter a declaratory order shall be in writing and shall be served upon the petitioner and all other persons described in RCW 34.05.240(3).

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 463-34-020 SCOPE OF PETITIONS FOR RULE MAKING.
- WAC 463-34-040 RULE-MAKING PETITIONS--REQUEST FOR SPECIFIC TIME.
- WAC 463-34-100 FORM OF PETITIONS.