

State of Washington

Energy Facility Site Evaluation Council

(name of governing body)

(agency name, if applicable)

Resolution No. _____

Administrative Order No. 78-2

(1) Be it resolved by the Energy Facility Site Evaluation Council acting at Olympia, Washington

(place)

that it does promulgate and adopted the annexed rules relating to:

- (1) Procedure - Applications for Expedited Processing
(2) Fees or Charges for Independent Consultant Study, Regular and Expedited Application Processing, Determining of Compliance and Potential Site Study

(2) ALTERNATIVE A. Use only for Adoption of Permanent Rules.

This action is taken pursuant to Notice No. 78-03-069 filed with the code reviser on 2/23/78. Such rules shall take effect:

- [X] pursuant to RCW 34.04.040(2).
[] at a later date, such date being _____

(2) ALTERNATIVE B. Use only for Adoption of Emergency Rules.

We, _____, find that an emergency exists and that the foregoing order is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to public interest. A statement of the facts constituting such emergency is:

Such rules are therefore adopted as emergency rules to take effect upon filing with the code reviser.

(3) Pursuant to the requirements of RCW 34.04. (1977 c 19 § 2) that "every agency shall incorporate the most specific, but in no case omit all, of the following language alternatives when adopting or amending rules" (fill in statement (a), (b), or (c) as appropriate):

- [X] (a) This rule is promulgated pursuant to RCW 80.50.071 and is intended to administratively implement that statute.
[] (b) This rule is promulgated pursuant to RCW _____ which directs that the

(agency)

has authority to implement the provisions of

(name of act or RCW citation)

- [] (c) This rule is promulgated under the general rule-making authority of the

(agency)

as authorized in RCW _____

(4) The undersigned hereby declares that he has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) or the Higher Education Administrative Procedure Act (chapter 28B.19 RCW), as appropriate, and the State Register Act (chapter 34.08 RCW).

STATE OF WASHINGTON

That the foregoing rules were first recorded in the order register of this governing body is herewith transmitted to the Code Reviser for filing pursuant to chapter 34.04 RCW and chapter 1-12 WAC.

APPROVED AND ADOPTED April 26, 1978

APR 26 1978

By William L. Fitch Executive Secretary

Title

CODE REVISER'S OFFICE

WSR 78-05-054

STATE OF WASHINGTON
ENERGY FACILITY SITE
EVALUATION COUNCIL

Administrative Order No. 78-2

STATEMENT OF PURPOSE AND IMPLEMENTATION

I. NAME OF AGENCY: ENERGY FACILITY SITE EVALUATION COUNCIL

DESCRIPTION OF RULES:

- (1) Concerns the determining of eligibility and procedures for expedited processing
- (2) Concerns the fees or charges connected with agency processing of studies and applications and monitoring compliance with certification agreements

STATUTORY AUTHORITY:

RCW 80.50.071

II. SUMMARY OF RULES:

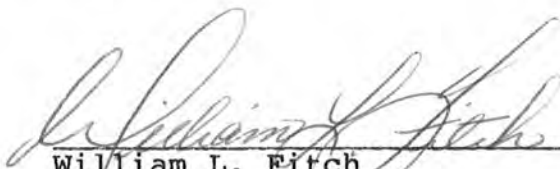
- (1) WAC 463-43 - Sets forth requirements for preparation of applications for energy facility site certification which qualify for expedited processing and delineates certain abbreviated procedures for processing eligible applications.
- (2) WAC 463-58 - Sets forth rules relating to fees or charges for independent consultant study, regular and expedited application processing, determining compliance and potential site study.

III. The following agency personnel have responsibility for drafting, implementing and enforcing these rules:

- a) Drafting: Legislative, Legal and Rules Committee
Tom Stacer, Chairman 753-6417
%Utilities & Transportation Comm.
Olympia, WA 98504
- b) Implementing: William L. Fitch, Executive Secretary
Energy Facility Site Evaluation Council
820 East Fifth Avenue
Olympia, WA 98504 753-7384
- c) Enforcing: Nicholas D. Lewis, Chairman 753-7384
Energy Facility Site Evaluation Council
820 East Fifth Avenue
Olympia, WA 98504

IV. New sections adopted to cover changes made in existing legislation by SSB 2910 (Chapter 371, Laws of 1977, 1st Extraordinary Session, 45th Legislative Session)

SUBMITTED this 26th of April 1978.

A handwritten signature in cursive script, appearing to read "William L. Fitch", written over a horizontal line.

William L. Fitch
Executive Secretary

Chapter 463-43

PROCEDURE - APPLICATIONS FOR EXPEDITED PROCESSING

WAC

- 463-43-010 Purpose and scope.
- 463-43-020 Standard application required.
- 463-43-030 Eligible proposals.
- 463-43-040 Prior to making a determination of eligibility for expedited processing.
- 463-43-050 Expedited processing determination.
- 463-43-060 Effect of expedited processing.
- 463-43-070 Expedited application processing.
- 463-43-080 Recommendation - Transmittal to Governor.

NEW SECTION

WAC 463-43-010 PURPOSE AND SCOPE. This chapter sets forth requirements for preparation of applications for energy facility site certification which qualify for expedited processing and delineates certain abbreviated procedures for processing eligible applications pursuant to RCW 80.50.075.

NEW SECTION

WAC 463-43-020 STANDARD APPLICATION REQUIRED. An applicant seeking expedited processing shall:

(1) Make application pursuant to chapter 463-42 WAC. The application must address all sections of chapter 463-42 WAC in sufficient detail so the council can determine the impacts under WAC 463-43-030,

(2) Submit those fees for independent consultant review and application processing pursuant to RCW 80.50.071(1)(a) and (b) and chapter 463-58 WAC with the understanding that any unexpended portions thereof shall be returned to the applicant at the completion of application processing, and

(3) Submit a request for expedited processing to the council at the time of application which shall be accompanied by a completed environmental checklist as delineated in WAC 463-46-365.

NEW SECTION

WAC 463-43-030 ELIGIBLE PROPOSALS. An application may be expedited when the council finds that the following are not significant enough to warrant a full review of the application for certification under the provisions of chapter 80.50 RCW:

- (1) The environmental impact of the proposed energy facility,
- (2) The area potentially affected,
- (3) The cost and magnitude of the proposed energy facility, and
- (4) The degree to which the proposed energy facility represents a change in use of the proposed site.

NEW SECTION

WAC 463-43-040 PRIOR TO MAKING A DETERMINATION OF ELIGIBILITY FOR EXPEDITED PROCESSING. The council prior to making a determination of eligibility for expedited processing shall:

- (1) Conduct a public informational meeting in the county of the proposed site within 60 days of receipt of an application to provide information to the public concerning the nature and purpose of the energy facility and the review process to be undertaken by the council and to provide an opportunity for the public to present its views,
- (2) Determine at a public hearing within 60 days of receipt of an application if the proposed site is consistent and in compliance with city, county or regional land use plans or zoning ordinances,
- (3) Review the application pursuant to WAC 463-43-030; in making its review the council may engage pursuant to RCW 80.50.071(1)(a) an independent consultant to provide an assessment of the application and environmental checklist and to conduct any special study deemed necessary by the council, and
- (4) Initiate processing of the applicant's NPDES application, if required, in accordance with chapter 463-38 WAC.

NEW SECTION

WAC 463-43-050 EXPEDITED PROCESSING DETERMINATION. Following the review of an application and land use hearing and within 120 days of receipt of an application or such later time as is mutually agreed by the applicant and the council, the council at a regular or special meeting and by order will grant expedited processing for an application when it has found that:

(1) The proposed site is consistent and in compliance with city, county or regional land use plans or zoning ordinances, and

(2) The environmental impact, area potentially affected, cost and magnitude, and degree of change in use caused by the proposed energy facility are not significant enough to warrant a full review of an application for certification under the provisions of chapter 80.50 RCW.

NEW SECTION

WAC 463-43-060 EFFECT OF EXPEDITED PROCESSING. For an application granted expedited processing under WAC 463-43-050 the council shall not:

(1) Conduct any further review of an application by an independent consultant, and

(2) Hold a contested case hearing under chapter 34.04 RCW.

NEW SECTION

WAC 463-43-070 EXPEDITED APPLICATION PROCESSING. The council will prescribe the form, content and necessary supporting documentation for site certification during regular or special meetings of the council. All interested persons and the Counsel for the Environment shall be afforded an opportunity to make presentations on the matters herein.

NEW SECTION

WAC 463-43-080 RECOMMENDATION - TRANSMITTAL TO GOVERNOR. Within 60 days following the granting of expedited processing or such later time as is mutually agreed by the applicant and the council, the council shall forward its recommendation for approval with a copy of the draft site certification agreement to the Governor.

Chapter 463-58

FEEES OR CHARGES FOR INDEPENDENT CONSULTANT STUDY, REGULAR AND EXPEDITED APPLICATION PROCESSING, DETERMINING COMPLIANCE AND POTENTIAL SITE STUDY.

WAC

- 463-58-010 Intent and purpose of this chapter.
- 463-58-020 Fees for the independent consultant study.
- 463-58-030 Fees for regular application processing.
- 463-58-040 Fees for expedited application processing.
- 463-58-050 Fees for determining compliance.
- 463-58-060 Fees for potential site study.
- 463-58-070 Failure to provide necessary fees.
- 463-58-080 Payment, reporting and auditing procedures.

NEW SECTION

WAC 463-58-010 INTENT AND PURPOSE OF THIS CHAPTER.

This chapter sets forth rules relating to fees or charges for independent consultant study, regular and expedited application processing, determining compliance and potential site study.

NEW SECTION

WAC 463-58-020 FEES FOR THE INDEPENDENT CONSULTANT STUDY. Pursuant to RCW 80.50.071, a fee of twenty-five thousand dollars for each proposed site shall accompany the application. This fee shall be applied toward the cost of the independent consultant study authorized by RCW 80.50.070. The determination of the total fees required for the independent consultant shall generally be as follows:

(1) The consultant selected to perform independent consulting services shall be required to provide the council with an estimate of costs required to complete the study. Upon approval of the estimate by the council, the applicant shall be advised of the costs, totally or by phase, required to complete the study,

(2) Should the applicant file amendments or supplements to the application or should the council find that additional study of the application is required, additional cost estimates will be prepared by the consultant and provided to the council. Upon approval of the estimate by the council, the applicant shall be advised of the additional study costs,

(3) If the estimate of the costs, as stated in (1) or (2) above, totally or by phase, exceeds twenty-five thousand dollars, the applicant shall provide prior approval for the expenditure of such excess amounts, and

(4) The council shall authorize the independent consultant to initiate evaluation of the application materials or subsequently filed amendatory or supplementary materials when the applicant has provided agreement to pay the required costs, and the council has provided the applicant with a statement of amount due.

NEW SECTION

WAC 463-58-030 FEES FOR REGULAR APPLICATION PROCESSING.

Pursuant to RCW 80.50.071 each applicant for energy facility site certification shall at the time of application submission deposit twenty thousand dollars for costs related to processing of the application. Such processing costs shall consist of those determined by the council to be reasonable and necessary including:

(1) A hearing examiner(s) who may be retained by the council for the duration of the application processing period or for such portion of the processing period as the council may consider necessary,

(2) A court reporter(s) for the recording and preparation of transcripts of the contested case hearing, council meetings or public sessions which the council shall consider necessary,

(3) Additional staff salaries consisting of at least one application processing officer placed on the council staff for the duration of the application processing period--provided that the council may in the interest of efficiency and effectiveness assign one application processing officer to more than one application, and

(4) Such overhead and support costs including wages and employee benefits, goods and services, travel expenses within the state and miscellaneous expenses as arise directly from application processing.

NEW SECTION

WAC 463-58-040 FEES FOR EXPEDITED APPLICATION PROCESSING.

Applicants filing applications for expedited processing shall provide fees in accordance with WAC 463-58-020 and 030 above with the understanding that any unexpended portions thereof shall be returned to the applicant at the completion of application processing.

NEW SECTION

WAC 463-58-050 FEES FOR DETERMINING COMPLIANCE. Pursuant to RCW 80.50.071 each certificate holder shall pay

such reasonable costs as are actually and necessarily incurred by the council for inspection and determination of compliance by the certificate holder with the terms and conditions of the certificate. The amount of funds required to be placed on deposit by the certificate holder shall be determined as follows:

(1) For the period subsequent to the date of execution of the site certification agreement until the beginning of construction or until the beginning of any work covered by an NPDES permit, five hundred dollars, and

(2) For the period subsequent to beginning of construction or beginning of any work covered by an NPDES permit, twenty thousand dollars.

NEW SECTION

WAC 463-58-060 FEES FOR POTENTIAL SITE STUDY. A fee

of ten thousand dollars shall accompany the study request and be a condition precedent to any action by the council. In the event that the council determines that the initial fee of ten thousand dollars is insufficient to adequately fund the potential site study, the council shall so advise the potential applicant and shall furnish an estimate of the supplemental fees needed to complete the study. In no event shall the study be allowed to continue if the potential applicant has not agreed to pay the cost thereof.

NEW SECTION

WAC 463-58-070 FAILURE TO PROVIDE NECESSARY FEES.

Failure to provide the initial deposit or subsequently required payments within thirty days following receipt of a statement from the council may result, in the case of an applicant, in suspension of all application processing activities or, in the case of a certificate holder, in suspension of the certification agreement. At the conclusion of the thirty-day period allowed for making necessary payments, the council will notify any delinquent applicant or certificate holder to appear at the next regularly scheduled meeting or a subsequent meeting to show cause why the council should not suspend application processing of the certificate. In the event of suspension, action to reinstate application processing or the certificate will be taken by the council at the next regularly scheduled meeting following deposit of all required fees.

NEW SECTION

WAC 463-58-080 PAYMENT, REPORTING AND AUDITING PROCEDURES.

(1) Following payment of initial deposits for application processing and determination of compliance, the council will provide each applicant or certificate holder a statement of expenditures actually made during the preceding calendar quarter; the statement will be in sufficient detail to explain reasonable and necessary expenditures made against the deposited funds. Within thirty days of the receipt of the council's statement the applicant or certificate holder will pay an amount necessary to restore the total amount on deposit to the originally established level provided that:

(a) An applicant may be requested by the council to increase the amount of funds on deposit to cover anticipated expenses during peak periods of application processing. The council will provide to the applicant written justification for an increased deposit,

(b) Any funds remaining unexpended at the conclusion of application processing shall be refunded to the applicant or, at the applicant's option, credited against required deposits of certificate holders, and

(c) If actual reasonable and necessary expenditures for inspection and determination of compliance in a calendar quarter have exceeded the amount of funds on deposit, such excess costs, pursuant to RCW 80.50.071, will be paid by the certificate holder. A statement will be provided to the certificate holder by the council in sufficient detail to provide an adequate explanation of these expenditures.

(2) All payments shall be made by a cashier's check payable to the state treasurer and delivered to the council office. The council will establish and maintain separate accounts for each application and certificate. All funds will be subject to state auditing procedures. The council will provide copies of such audits to the affected applicants and certificate holders as they are completed by the state auditor.