

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

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))~~) (19). The term "party" shall mean and be limited to the following:

(1) The "applicant" as defined in RCW 80.50.020(~~((+1))~~) (2).

(2) Each "member agency" as specified in RCW 80.50.030 (3) through (6).

(3) The "counsel for the environment" as defined in RCW 80.50.020(~~((+12))~~) (10).

(4) Each person admitted to an adjudicative proceeding as an "intervenor(~~((+7))~~)" is a party only for the purposes, and is subject to any limitations and conditions, specified in the council order granting intervention.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-30-080 Commencement of adjudicative proceedings. Adjudicative proceedings shall commence upon issuance of a formal notice of hearing or prehearing conference. The notice shall be served upon all parties at least (~~((twenty))~~) 20 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 council (~~((manager))~~) director; or

(3) By letter from the presiding officer.

In such instances, (~~((twenty))~~) 20 days' prior notice is not required.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-30-090 Publicity—Commencement of 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))~~) project, and (2) state clearly that any person may be allowed to present timely written or oral argument for or against the proposed (~~((site))~~) project to be certified and that advance notice within a reasonable time shall be required of persons who desire status as intervenors in accordance with WAC 463-30-091.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-30-093 Participation by county, city, and port district representatives. In any 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.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-30-120 Format, filing, and service of documents. (1)
Format.

(a) All pleadings, motions, and other documents (including pre-filed testimony) filed with the council shall be legibly written or printed. The use of letter size paper (8 1/2 by 11 inches) is mandatory. The writing or printing shall appear on two sides of the page.

(b) The requirements of (a) of this subsection are not mandatory for exhibits but the use of exhibits that comply with (a) of this subsection is encouraged if it does not impair legibility.

(2) Filing.

(a) In each case, the council will specify the number of copies required for motions, related pleadings, and exhibits which must be filed with the council.

(b) Document shall be deemed filed only upon actual receipt by the council (~~(manager)~~) director or designee during office hours.

(c) Faxes.

(i) As used in this rule, "fax" means electronic telefacsimile transmission.

(ii) Except as specified in (c)(iii) of this subsection, receipt of a document in the council's fax machine does not constitute filing.

(iii) For good cause shown, a party may request and the council (~~(manager)~~) director or designee may in his or her sole discretion grant authority to file a document by fax.

(iv) Filing by fax is perfected when a complete legible copy of the document is reproduced on the council (~~(manager's)~~) director's fax machine during the council's normal office hours, so long as the council receives the required number of nonfaxed originals on the next successive business day. If a transmission of a document by fax commences after the council's normal office hours, the document shall be filed on the next successive business day.

(v) Any document filed by fax must be accompanied by a cover page or other form identifying the party making the transmission, listing the address, telephone, and fax number of the party, identifying the adjudicative proceeding to which the document relates, and indicating the date faxed and total number of pages included in the transmission.

(vi) The party attempting to file a document by fax bears the risk that the document will not be timely received or legibly printed, regardless of the cause. If a fax is not received in legible form, it will be considered as if it had never been sent.

(d) Email. The filing of documents with the council by electronic mail is not authorized without the express approval of the council ((~~manager~~)) director or designee and under such circumstances as the council ((~~manager~~)) director or designee allows.

(e) 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.

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

(3) Service.

(a) A copy of each pleading, motion, and document filed with the council shall be simultaneously served upon each party.

(b) Service by parties.

(i) Service of pleadings, motions, and other documents by parties shall be made by delivering one copy to each party (A) in person, (B) by mail, (C) by commercial parcel delivery company, or (D) for documents not exceeding ((~~twenty-five~~)) 25 pages, if authorized by the council ((~~manager~~)) director or designee, by fax, where originals are mailed simultaneously.

(ii) 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.

(iii) Service of documents shall be deemed complete upon (A) personal delivery, (B) deposit in the United States mail properly addressed with appropriate first-class postage prepaid, (C) acceptance for delivery by a commercial parcel delivery company, properly tendered with fees prepaid, or (D) production by the fax machine of a confirmation of transmission by fax, with simultaneous deposit of the originals in the United States mail, properly addressed with appropriate first-class postage prepaid.

(c) Service by the council. All notices, orders and other documents required to be served by the council may be served by delivery of one copy to each party (i) in person, (ii) by mail, (iii) by electronic mail, (iv) by commercial parcel delivery company, or ((~~(iv)~~)) (v) by fax, when originals are mailed simultaneously. Service of documents by the council shall be deemed complete upon (A) personal delivery, (B) deposit in the United States mail properly addressed with appropriate first-class postage prepaid, (C) acceptance for delivery by a commercial parcel delivery company, properly tendered with fees prepaid, or (D) production by the council's fax machine of a confirmation of the transmission by fax, with simultaneous deposit of the originals in the United States mail, properly addressed with appropriate first-class postage prepaid.

(d) Certificate of service. There shall appear on or in a separate document accompanying 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 foregoing document upon all parties of record in this proceeding, by authorized method of service pursuant to WAC 463-30-120(3).

Dated at this day of
(signature)

(4) Courtesy copies. Parties are encouraged to send courtesy copies of documents to the council and all other parties via electronic mail.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-30-200 Subpoenas—Practice. (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~~) their control at the time and place set for the hearing.

(3) A subpoena may be served by any suitable person over (~~eighteen~~) 18 years of age, by exhibiting and reading it to the witness, or by giving (~~him or her~~) them a copy thereof, or by leaving such copy at the place of (~~his or her~~) their 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. For these purposes, the council's independent consultant is deemed a member of the council staff.

(6) The council shall be responsible for paying only 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 WSR 90-05-018, filed 2/13/90, effective 3/16/90)

WAC 463-30-230 Official notice. (1) Upon written or oral motion, the council may officially notice:

(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 WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-30-251 Alternative dispute resolution. The council supports parties' informal efforts to resolve disputes when doing so is lawful and consistent with the public interest. Alternative dispute resolution (ADR) includes any mechanism to resolve disagreements, in whole or in part.

(1) Forms of ADR. Parties may agree to negotiate with other parties at any time without council oversight. The council may direct parties to meet or consult as provided in subsection (2) of this section, or may establish or approve a collaborative process as provided in subsection (3) of this section. The council may assign a mediator or facilitator to assist the parties. The council may also assign an arbitrator whose decision is subject to council review.

(2) Settlement conference. The council may invite or direct the parties to confer among themselves or with a designated person. Settlement conferences must be informal and without prejudice to the rights of the parties.

(3) Collaborative.

(a) ~~((Defined; membership.))~~ Definition. A collaborative is a form of ADR and is a council-sanctioned negotiation in which interested parties work with each other and representatives of council staff to achieve consensus on one or more issues assigned by the council or identified by the collaborative participants.

(b) Membership. Any interested party whose interests may be substantially affected by the result of the collaborative must be given an opportunity to participate. Collaborative participants must inform the council and seek approval if a collaborative changes its membership or redefines the issues it will address.

~~((b))~~ (c) Communication with council. Communication between the council and collaborative participants may be through council staff assigned to serve as a third-party neutral in the collaborative, or through the council ~~((manager))~~ director, subject to agreement among the participants to the form and substance of any such communication.

(4) ADR guidelines. In any ADR process, the following apply unless all participants agree otherwise:

(a) The parties, as their first joint act, will consider any guidelines or directions by the council ~~((r))~~ and determine the ground rules governing the negotiations;

(b) No statement, admission, or offer of settlement made during negotiations is admissible in evidence in any formal hearing before

the council without the consent of the participants or unless necessary to address the process of the negotiations;

(c) To the extent permitted by law, parties may agree that information exchanged exclusively within the context of settlement negotiations will be treated as confidential as provided in a council protective order; and

(d) Participants in a council-sanctioned ADR process must periodically advise any nonparticipating parties and the council of any substantial progress made toward settlement. Participants must immediately advise the council if a council-sanctioned ADR process is without substantial prospects of resolving the issue or issues under negotiation.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-30-270 Prehearing conference. (1) The council upon its 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 463-30-091 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 council.

(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, the agreements made by the parties concerning all of the matters considered, and other matters as appropriate. If no objection to the order is filed within (~~ten~~) 10 days after the date the order is mailed, it shall control the subsequent course of the proceeding unless modified for good cause by subsequent order.

(4) In any proceeding, the council may 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 council 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 WSR 98-01-083, filed 12/12/97, effective 1/12/98)

WAC 463-30-300 Hearing schedule guidelines. In any adjudicative site certification proceeding 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.))~~ project;

(2) Consistency of the proposal with zoning and land use regulations~~((.))~~ ;

(3) Physical site suitability and related safety considerations~~((.))~~ ;

(4) NPDES, PSD, or other 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.

At the commencement of the hearing, the council shall publicly announce the proposed schedule by which the hearing is to be conducted. The council may alter the schedule.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-30-335 Petition for reconsideration of recommendations to the governor. A petition for reconsideration of a recommendation to the governor shall be filed with the council ~~((manager))~~ director.

(1) The petition for reconsideration shall be filed with the council within ~~((twenty))~~ 20 days of the date of service of the recommendation to the governor, unless a different place and time limit for filing the petition are specified in the recommendation to the governor 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.

(2) The petition for reconsideration shall specify the challenged portions of the recommendation to the governor and shall refer to the evidence of record and legal authority which is relied upon to support the petition.

(3) Any party may file an answer to a petition for reconsideration. The answer shall be filed with the council manager within ~~((fourteen))~~ 14 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.