

SUBAGREEMENT 2
BETWEEN THE WASHINGTON STATE ENERGY FACILITY SITE
EVALUATION COUNCIL AND THE UNITED STATES
NUCLEAR REGULATORY COMMISSION FOR A
PROTOCOL FOR THE CONDUCT OF JOINT HEARINGS
ON THE SKAGIT NUCLEAR POWER PROJECT,
UNITS 1 AND 2

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SKAGIT NUCLEAR POWER PROJECT, UNITS 1 AND 2

This Protocol is promulgated under the provisions of the Memorandum of Agreement between the State of Washington and the United States Nuclear Regulatory Commission, dated September 6, 1978.

I. STATEMENT OF PURPOSES

Puget Sound Power & Light Company, Pacific Power & Light Company, The Washington Water Power Company and Portland General Electric Company have applied to the United States Nuclear Regulatory Commission (NRC) for permits to construct the Skagit Nuclear Power Project, Units 1 and 2, proposed to be located on the Hanford Reservation in Washington, and intend to apply to the Washington State Energy Facility Site Evaluation Council (EFSEC) for a Site Certification Agreement. A joint hearing before the NRC and EFSEC on matters within their common jurisdiction, particularly the National Environmental Policy Act of 1969 (NEPA) and the State Environmental Policy Act of 1971 (SEPA) would avoid unnecessary duplication, thereby expediting the decision-making process and reducing the time, effort, and costs which would otherwise be incurred by the parties were separate hearings held. In addition, to the extent that the NRC and EFSEC rules and practices are essentially similar, the holding of joint hearings will materially assist both agencies in compiling a full and complete evidentiary record on matters within their common jurisdiction. Such consolidation of matters of concurrent jurisdiction is permitted under the NRC Rules of Practice set forth in 10 C.F.R. § 2.716 and the authority of EFSEC contained in Revised Code of Washington (RCW) 80.50.040(12)(13).

II. COMPOSITION OF THE JOINT HEARING BODIES

The joint hearings shall, for the NRC, be held before an Atomic Safety and Licensing Board (ASLB). EFSEC shall appoint an Administrative Law Judge to conduct the joint hearings on behalf of EFSEC. Such Administrative Law Judge shall make necessary rulings on behalf of EFSEC on motions, procedural questions, evidentiary offerings, and other matters that may arise during the course of the joint hearings. The membership of EFSEC as defined in RCW 80.50.030 shall reserve the right to sit with the joint hearing bodies for the purposes of hearing evidence and cross-examining witnesses.

III. LOCATION OF JOINT HEARINGS

The principal location for the joint hearings shall be in the region of the proposed site or at the EFSEC hearing facility at Olympia, Washington. Hearings may be held in other locations as appear suitable under the circumstances, as determined by joint hearing bodies.

IV. PROCEDURES FOR IDENTIFYING PARTIES AND ISSUES

As soon as practicable after the amendment to the application for a construction permit and the application for certification have been filed with the NRC and EFSEC, respectively, the agencies will issue appropriate notices of hearing in accordance with their own procedures. In particular, the NRC will issue a notice of hearing in the FEDERAL REGISTER pursuant to the provisions of 10 C.F.R. § 2.104 and EFSEC will issue a notice of hearing pursuant to the provisions contained in Chapter 463-30 WAC.

After the notice of hearing has been issued by the NRC and petitions for leave to intervene have been filed pursuant to the notice, the procedure for determining the requisite interest to become parties to the NRC proceeding and the identification of contentions shall be governed by the NRC Rules of Practice set forth in 10 C.F.R. § 2.714. A special prehearing conference shall be held pursuant to the provisions of 10 C.F.R. § 2.751a within ninety (90) days after the notice of hearing is published, or at such other time as the Commission or the ASLB may deem appropriate to:

- (1) Permit identification of the key issues in the proceeding;
- (2) Take any steps necessary for further identification of the issues;
- (3) Consider all intervention petitions to allow the ASLB to make such preliminary or final determination as to the parties to the proceeding as may be appropriate; and
- (4) Establish a schedule for further actions in the proceeding.

In the EFSEC certification proceeding, the determination of party status and the definition of issues shall be governed by the procedures set forth in Chapter 463-30 WAC.

V. JOINT PREHEARING CONFERENCES

As soon as practicable after (1) the special prehearing conference has been held in the NRC proceeding pursuant to 10 C.F.R. § 2.751a and the parties to and issues to be contested in the NRC proceeding have been determined by the ASLB, and (2) the application for certification has been filed with EFSEC and the parties to (and issues to be contested in) the certification proceeding have been determined by EFSEC, the joint hearing bodies shall schedule and hold one or more joint prehearing conferences for the following purposes:

- (1) determining those issues which are properly the subject of the joint hearing;
- (2) establishing a schedule for discovery on those issues;
- (3) obtaining stipulations and admissions of fact with respect to evidence and of the contents and authenticity of documents;
- (4) considering, to the extent feasible, the identification of witnesses, and other measures to expedite the presentation of evidence;
- (5) setting of pretrial and hearing schedules, including the order in which subjects shall be heard;
- (6) determining the time and procedures for site visits by the joint hearing bodies; and
- (7) considering any other measure which may expedite the orderly conduct and conclusion of the joint hearing.

The ASLB and EFSEC shall notify the parties to the NRC proceeding and the certification proceeding, respectively, of each joint prehearing conference and of the matters to be taken up at each conference, and shall direct the parties or their counsel to appear.

Following such conferences, the joint hearing bodies shall issue such orders as may be necessary to summarize the action taken at the conferences, including identification of the issues to be heard in the joint hearing.

Prior to each prehearing conference, parties are encouraged to hold informal conferences to identify the key issues, to mutually consolidate parties where appropriate, and to take whatever actions that are necessary to expedite the joint hearing.

On motion or on their own initiative, the joint hearing bodies may order any parties who have substantially the same interest that may be affected by the proceeding and who raise substantially the same questions, to consolidate their presentation of evidence, cross-examination, briefs, proposed findings of fact, and conclusions of law and argument in accordance with the provisions of 10 C.F.R. § 2.715a and Chapter 463-30 WAC.

Notwithstanding the above procedures for identification of parties and issues to be heard in the joint hearing, EFSEC and the NRC have the right to conduct separate hearings in accordance with their own practices and procedures.

VI. PROCEDURES FOR THE CONDUCT OF DISCOVERY

Discovery on those issues to be heard in the joint hearing as determined by the procedures of Section IV, supra, shall be governed by the Commission's Rules of Practice set forth in 10 C.F.R. § 2.740-2.744 and EFSEC procedures contained in Chapter 463-30 WAC. All parties to the joint

proceeding will have the right to conduct discovery consistent with the applicable procedures. Any dispute regarding discovery pertaining to joint issues shall be considered and resolved jointly by the hearing bodies on those issues. If the hearing bodies are unable to agree, the dispute will be resolved in the manner specified in Section IX I of this Protocol.

VII. SUMMARY DISPOSITION ON PLEADINGS

Certain issues may be summarily disposed of pursuant to the provisions of 10 C.F.R. § 2.749 and EFSEC procedures contained in Chapter 463-30 WAC. Motions for summary disposition of issues subject to joint hearing shall be considered and resolved jointly by the hearing bodies. If the hearing bodies are unable to agree, the dispute will be resolved in the manner specified in Section IX I of this Protocol.

VIII. HEARINGS FOR LIMITED APPEARANCES AND PUBLIC STATEMENTS

The hearing bodies shall consider the feasibility of holding a joint hearing in the vicinity of the proposed site for the purposes of accepting limited appearances or other oral or written statements from members of the public pursuant to the provisions of 10 C.F.R. § 2.715 and RCW 80.50.090(1)(3)(4).

IX. PROCEDURES FOR THE JOINT HEARINGS

A. Presiding at Alternate Sessions. For the sole purpose of conducting the hearing and maintaining order, the ASLB and Administrative Law Judge appointed by EFSEC shall assume the responsibility of chairperson and preside over the joint hearing at alternate sessions, unless otherwise agreed upon by the ASLB and the Administrative Law Judge.

B. Status of Counsel for Agency Staffs. For the purposes of preparing for and holding the joint hearing, Counsel for EFSEC shall be accorded all the rights and remedies of an interested State under 10 C.F.R. § 2.715(c). Counsel for the NRC Staff shall be accorded all the rights and remedies of a party.

C. Status of Parties, Participation and Standards of Conduct. Parties to the joint proceeding shall be accorded all the rights and remedies of a full party to the proceeding whether granted party status by the NRC or EFSEC. A party to the joint hearing may appear in the adjudication on his own behalf or by an attorney conforming to the requirements and standards of conduct set forth in 10 C.F.R. § 2.713 or of the standards of conduct of the State of Washington. Failure of an individual to conform to these standards will constitute grounds for refusing to permit that individual's continued participation in the joint hearing.

D. Commonality of Evidentiary Record. One evidentiary record will be developed in the joint hearing. An official reporter will be designated by the NRC with the concurrence of EFSEC and the transcript prepared by the reporter shall be the sole official transcript of the hearing. A copy of the official transcript will be furnished to NRC and to EFSEC.

E. Cooperation Among Agency Staffs. The staffs of the NRC, EFSEC, and affected State Agencies, shall cooperate to avoid unnecessary duplication in discharging their respective responsibilities in the joint hearing. The staffs shall consult each other in conducting their analyses and in preparing for, and participating in, the joint hearing. To the maximum extent possible, the staffs should avoid presenting repetitive evidence and may, if they wish, present only one set of testimony or one set of witnesses on any given issue.

F. Written Testimony. Unless otherwise allowed by the concurrence of the hearing bodies upon a showing of good cause, direct and rebuttal testimony shall be submitted in written form and shall contain a statement of the witness' professional qualifications. Each party shall serve copies of its proposed written testimony on the hearing bodies and on the parties to the proceeding in accordance with the schedule established by the hearing bodies. Service and form of written testimony shall conform to the NRC Rules of Practice unless other procedures are agreed to.

G. Conduct of Evidentiary Hearing. The evidentiary hearing shall begin on a schedule jointly agreed upon by the hearing bodies. Except upon concurrence of the hearing bodies for good cause shown, no evidentiary hearing on a subject shall be held less than 15 days after testimony on that subject is served. The evidentiary hearing shall proceed on a contention/issue basis and parties shall present testimony and conduct cross-examination on issues in the following order: Applicants, Intervenor, State Agencies, and NRC Staff. If consistent with the orderly and expeditious conduct of the joint hearing, this order may be changed by concurrence of the hearing bodies to accommodate the convenience of the parties.

H. Motions. Presentation, disposition, form, content, and answers to a motion by a party to the joint hearing shall be governed by the NRC Rules of Practice set forth in 10 C.F.R. § 2.730. Written motions shall be resolved jointly by the hearing bodies in accordance with the procedures set forth in Section IX I, infra, and be disposed of by order and on notice to all parties.

I. Rulings. The hearing bodies shall jointly consider and make necessary rulings on motions, procedural questions, objections, and other matters before them. If dispute arises between the ASLB* and EFSEC in the consideration of the ruling, the dispute shall be resolved in favor of the ASLB opinion except in those situations where either the ASLB or the EFSEC opinion rules that an evidentiary offering is objectionable. In such situations, the objectionable offering shall be received into evidence in the joint hearing but the evidence so offered shall not be part of the evidentiary record of the agency body ruling that it is objectionable.

X. PROCEDURE AFTER CONCLUSION OF JOINT HEARING

After conclusion of the joint hearing, each hearing body shall set a schedule for the submission of briefs, findings, conclusions and recommendations as may be required under its own rules of practice. Each agency shall separately issue decisions, certificates, licenses, or permits as may be called for under its governing laws, rules and regulations.

XI. RULES GOVERNING PROTOCOL

Unless otherwise specified in this Protocol for the Conduct of Joint Hearings or agreed to by the hearing bodies, the NRC Rules of Practice shall govern the conduct of these joint proceedings. Any parties' procedural rights, however, shall not be deemed waived by the provisions of this protocol.

XII. REVISION, SUSPENSION AND TERMINATION

The ASLB and the Chairman of EFSEC are jointly responsible for the interpretation of any provision of this protocol. The ASLB and EFSEC may revise this protocol at any time. The Nuclear Regulatory Commission or EFSEC may suspend operation of or terminate this protocol at any time. In that event, the other agency and the parties shall be provided 10 days notice before such termination or suspension.

*The ASLB shall advance its majority opinion in the joint consideration of the ruling.

For the U.S. Nuclear Regulatory
Commission

Name

Title Chief Administrative Judge, ASLB

Date July 28, 1981

For the Washington Energy Facility
Site Evaluation Council

Name

Title Chairman

Date July 31, 1981