

## DRAFT MEMORANDUM OF AGREEMENT

### **AMONG THE U.S NUCLEAR REGULATORY COMMISSION, NEW JERSEY HISTORIC PRESERVATION OFFICE, ADVISORY COUNCIL ON HISTORIC PRESERVATION, NATIONAL PARK SERVICE, AND PSEG POWER, LLC, PSEG NUCLEAR, LLC REGARDING THE PSEG EARLY SITE PERMIT APPLICATION FOR A SITE LOCATED IN LOWER ALLOWAYS CREEK TOWNSHIP, SALEM COUNTY, NEW JERSEY**

**WHEREAS**, the U.S. Nuclear Regulatory Commission (NRC) has determined that the issuance of an early site permit (ESP) to PSEG Power, LLC, PSEG Nuclear, LLC (hereafter referred to as PSEG) for the PSEG ESP site located on Artificial Island in Salem County, New Jersey, would be a Federal undertaking for purposes of NRC's compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (NHPA, *54 U.S.C. 300101 et. seq.*). Pursuant to Title 36 of the *Code of Federal Regulations* (CFR), Section 800.8, the NRC is using its National Environmental Policy Act (NEPA) process for developing the ESP environmental impact statement (EIS) to facilitate compliance with Section 106 of the NHPA; and

**WHEREAS**, an ESP is a licensing option provided under the NRC's regulations in 10 CFR Part 52 that allows an applicant to obtain approval for a reactor site. The approval of the ESP indicates that there are no environmental issues at the proposed site that would preclude the construction of a nuclear power plant with the characteristics identified in the Plant Parameter Envelope (PPE). Because an ESP is only a site approval and does not authorize the construction or operation of a nuclear power plant, an applicant may obtain an ESP without specifying the design of the reactor(s) that it may separately apply to build and operate at the site. The ESP application and review process makes it possible to evaluate and resolve safety and environmental issues related to siting before the applicant makes a large commitment of resources. Granting an ESP would result in no effects to historic properties; the ESP EIS review NEPA includes analysis of any potential adverse effect from construction and operation of a postulated plant to support a site suitability determination. An ESP holder would be required to apply for and obtain a combined license (COL) or a construction permit and operating license (CP and OL), which would be another Federal undertaking, before it could construct and operate a nuclear power plant. An NHPA Section 106 consultation would be performed if and when a COL or CP/OL application is submitted; and

**WHEREAS**, the proposed site analyzed in the ESP EIS is an 819 acre area on Artificial Island where the postulated plant could be built. The tallest structure that PSEG included in its PPE, allowing for a bounding visual impacts analysis for the ESP EIS, is two 590 foot tall natural draft cooling towers. In addition to analyzing impacts from the construction and operation of a nuclear power plant at the ESP site, the ESP EIS also analyzes site preparation activities regulated by the U.S. Army Corps of Engineers (USACE), including potential dredging and/or filling activities and building a new access road and causeway to the site (See ESP EIS Section 1.2); and

**WHEREAS**, pursuant to NEPA, the USACE is a cooperating agency with the NRC on the development of the ESP EIS, but is not a signatory to this agreement. The purpose of the USACE action, which is analyzed in the ESP EIS, is to provide a decision on a Department of the Army permit application submitted by PSEG to perform work, build structures, and discharge dredged and/or fill material in jurisdictional waters of the United States, including wetlands.

MOA among the NRC, NJ HPO, ACHP, NPS, and PSEG regarding the PSEG ESP Application for a site Located in Lower Alloways Creek Township, Salem County, New Jersey

Activities requiring a Department of the Army permit, including building a causeway from Money Island Road to the PSEG Site and potential dredge areas, would support the development of a new nuclear plant at the PSEG site; and

**WHEREAS**, the NRC and the USACE each have their own areas of regulatory responsibility and are consulting on the areas of the project that are within their regulatory authority. Because of the limited regulatory authority of each agency, neither agency can consult on the entire project. The NRC is consulting on the impact (including visual impacts) of construction and operation of a new nuclear power plant with design parameters falling within the PPE on Artificial Island. The USACE is consulting separately on the activities described above that would be performed under a Department of the Army permit that would impact jurisdictional waters, including wetlands, per 33 CFR 325; and

**WHEREAS**, PSEG included the option of two natural draft cooling towers (590 feet tall) in the PPE for the ESP EIS (NUREG-2168) analysis. These were the tallest proposed structures analyzed for the bounding visual impact analysis for the ESP EIS. The ESP would not mandate the use of natural draft cooling towers in a subsequent application to construct and operate a plant. Natural draft cooling is one of two cooling system options analyzed in the ESP EIS; and

**WHEREAS**, the NRC has established that the direct area of potential effect (APE) for the ESP EIS is the area at the PSEG ESP Site and its immediate environs that may be impacted by the land-disturbing activities associated with the construction and operation of a new nuclear unit or units, and the NRC has established the indirect (visual) APE analyzed for the ESP EIS, to be a zone within 4.9 miles of the tallest structures (two natural draft cooling towers) associated with the PPE representing a postulated nuclear power plant located on Artificial Island; and

**WHEREAS**, the NRC has identified historic properties within the indirect APE. Section 2.7 of the ESP EIS includes a description of the affected environment, identification efforts, and associated consultation efforts; and

**WHEREAS**, the NRC has consulted with the Delaware State Historic Preservation Office (DE SHPO) and determined that there would be no adverse effects to historic properties in Delaware, and the DE SHPO has concurred with the NRC's determination (see Section 2.7.3 of the ESP EIS); and

**WHEREAS**, the NRC has determined and the New Jersey Historic Preservation Office (NJ HPO) has concurred that there is no potential for adverse effects to historic properties within the direct APE; and

**WHEREAS**, the natural draft cooling tower option is the only proposed cooling system analyzed for the ESP EIS that has the potential to visually affect historic properties; and

**WHEREAS**, the mechanical draft cooling tower option analyzed in the ESP EIS (see ESP EIS Section 5.7.2) at the height of no more than 46 feet tall would not visually affect historic properties; and

**WHEREAS**, the NRC has identified numerous historic properties within the indirect APE. Section 2.7 of the ESP EIS includes a description of the affected environment, identification efforts, and associated consultation; and

**WHEREAS**, the Abel and Mary Nicholson House National Historic Landmark (NHL), and the properties at 349 Fort Elfsborg-Hancock Bridge Road and 116 Mason Point Road are historic properties within the visual APE for the ESP EIS and are within the NJ HPO proposed Alloway Creek Rural Historic District; and

**WHEREAS**, the NRC, the NJ HPO, and PSEG agree that the properties at 349 Fort Elfsborg-Hancock Bridge Road and 116 Mason Point Road, both in Elsinboro Township, are historic properties eligible for the *National Register of Historic Places* (NRHP) under 36 CFR 60.4, Criteria A, B, and C, that will be indirectly affected (visual intrusion of two new natural draft cooling towers) in the event that the natural draft cooling tower option is selected in the COL or CP/OL application; and

**WHEREAS**, in accordance with Section 110(f) of the NHPA (*54 U.S.C. 306107*), the NRC in consultation with the parties has considered ways to avoid and minimize harm to the NHL; and

**WHEREAS**, as required under the NHPA, the NRC has consulted with the NJ HPO, Advisory Council on Historic Preservation (ACHP), National Park Service (NPS), and PSEG, and the parties agree that the Abel and Mary Nicholson House (127 Fort Elfsborg–Hancock Bridge Road) is a NHL on which there would be an indirect adverse effect (visual intrusion of two new natural draft cooling towers) in the event that the natural draft cooling tower option is selected in a COL or CP/OL application; and

**WHEREAS**, this Memorandum of Agreement (MOA) addresses the potential indirect adverse visual effect from construction and operation of natural draft cooling towers as analyzed in the ESP EIS and would conclude consultation for this undertaking; and

**WHEREAS**, in accordance with 36 CFR 800.6(a)(1), the NRC, by letter dated June 24, 2015, has notified the ACHP of its determination of effects with specified documentation, and has invited the ACHP to participate in Section 106 consultation and development of this MOA and the ACHP, by letter dated July 21, 2015, has chosen to participate pursuant to 36 CFR 800.6(a)(1)(iii); and will be a Signatory to this MOA; and

**WHEREAS**, in accordance with 36 CFR 800.10(c), the NRC, by letter dated June 24, 2015, has notified the Secretary of the Interior of its determination of effects with specified documentation and has invited the NPS to participate in the Section 106 consultation and development of this MOA because of the potential adverse effects to a NHL (Abel and Mary Nicholson House); and

**WHEREAS**, the NRC has consulted with the NJ HPO, PSEG, NPS, and the ACHP, in accordance with Section 106 of the NHPA, and its implementing regulations (36 CFR 800.6(b)(2)) to resolve the indirect adverse visual effect from two natural draft cooling towers on historic properties analyzed for the ESP EIS; and

**WHEREAS**, PSEG has participated in the development of this MOA, and, pursuant to 36 CFR 800.6(c)(2), the NRC has invited PSEG to sign this MOA. PSEG shall implement the requirements of this MOA; and

**WHEREAS**, pursuant to 36 CFR 800.6(c)(3), the NRC has consulted with two interested parties regarding the effect on historic properties analyzed for the ESP EIS and has invited them to sign as Concurring Parties in this MOA. The NRC has provided the interested parties and the public with 30 days to review this agreement per 36 CFR 800.2(d); and

**WHEREAS**, PSEG and the NPS have been invited to sign the MOA as Invited Signatories; and

**WHEREAS**, the NRC, State of New Jersey, and NJ HPO do not waive their sovereign immunity by entering into this MOA, and each fully retains all immunities and defenses provided by law with respect to any action based on, or occurring as a result of, this MOA; and

**WHEREAS**, signing of this MOA does not constitute a record of decision or approval of the ESP, by any Federal agency; and

**WHEREAS**, this MOA, consisting of 14 pages, represents the entire and integrated agreement between the Signatories and supersedes all prior negotiations, representations and agreements; and

**NOW, THEREFORE**, the Signatories agree that upon the NRC's decision to issue the ESP, the NRC shall confirm that the following stipulations are implemented subject to the scope of the NRC's regulatory authority, in order to take into account the visual effect of the two potential natural draft cooling towers on historic properties. These stipulations shall govern the ESP until this MOA expires or is terminated.

### **Stipulations**

A. The NRC, consistent with its regulatory authority, shall ensure that the following stipulations would be implemented in the event that a COL or CP/OL application is submitted:

1. Upon receipt of a COL or CP/OL application, the NRC shall notify all Signatories and Concurring Parties in writing that the application was received and initiate Section 106 consultation for the COL or CP/OL. The Section 106 review for the COL or CP/OL would be conducted in accordance with 36 CFR 800 and may include provisions for expediting consultation, as appropriate. In its letter, the NRC will identify the cooling system selected by PSEG in its application and include any new and significant information about the COL or CP/OL application. The NRC will invite the public, including any newly identified consulting parties to participate in the Section 106 review process as required under 36 CFR 800.2(d).
  - a. If natural draft cooling towers are selected, the NRC will reconfirm the indirect visual adverse effect to the Abel and Mary Nicholson House (127 Fort

Elfsborg-Hancock Bridge Road) NHL and to the NRHP eligible properties at 349 Fort Elfsborg-Hancock Bridge Road and 116 Mason Point Road.

- b. If mechanical draft cooling towers no more than 46 feet in height are selected, as analyzed in the ESP EIS, then the NRC will reiterate that there is no adverse effect to historic properties from this technology because the towers would not be visible from any of the known historic properties.
  - c. In an effort to identify new and significant information, PSEG will have a qualified contractor, as defined in the Secretary of the Interior's Professional Qualifications and Standards (48 *FR* 22716), review the New Jersey State Register and the NRHP for any new historic properties found within the agreed upon APE of 4.9 miles. The contractor will also conduct a review of the NJ HPO site files for any new historic properties that were identified since issuance of the ESP within the 4.9 mile APE.
  - d. The NRC shall determine if there would be any new indirect visual adverse effects to historic properties from the construction and operation of natural draft cooling towers (not to exceed 590 feet in height). The visual effect from the plumes will not be considered in this analysis because they were determined to be ephemeral and consistent with existing environmental conditions at the ESP stage by the NRC and NJ HPO.
2. The NRC will arrange a meeting to include all Signatories, Concurring Parties, and interested members of the public to evaluate alternatives or modifications to the undertaking that could avoid or minimize adverse effects on historic properties. If, through consultation, the adverse effect cannot be avoided or minimized, then the NRC shall consult with the Signatories, Concurring Parties, and interested members of the public to develop mitigation for the indirect adverse effect to historic properties resulting from the construction of natural draft cooling towers. The mitigation will address the visual effect to the Abel and Mary Nicholson House (127 Fort Elfsborg-Hancock Bridge Road) NHL, to the NRHP eligible properties at 349 Fort Elfsborg-Hancock Bridge Road and 116 Mason Point Road and any historic properties that were identified during the new and significant review.

3. Following the meeting, the NRC will adhere to the provisions in 36 CFR Part 800 in the development of a Section 106 agreement document that is tied to the ESP MOA, as appropriate. The Section 106 agreement will include stipulations for PSEG's unanticipated discoveries of historic properties that may be located on Artificial Island.
4. The public, interested parties, and the Signatories will have 30 days to review and provide comments on the draft Section 106 agreement document. If agreement cannot be reached, then the process identified in Stipulation D will be followed.
5. The Section 106 agreement document must be executed prior to the issuance of a COL or CP/OL and the stipulations completed prior to commencing operation of the plant as described in the COL or CP/OL application. The Signatories and Concurring Parties to this agreement will be notified in writing by PSEG when the mitigation is completed.

#### **B. Amendment and Duration**

Any Signatory to this MOA may propose to the other Signatories that this MOA be amended, whereupon the Signatories will consult in accordance with 36 CFR 800.6(c)(7) to consider such an amendment. Such amendment shall be effective upon the signature of all Signatories to this MOA, and the amendment shall be appended to the MOA as an Appendix.

This MOA will remain in effect for the period of the ESP (up to 20 years), pursuant to 10 CFR 52.26, until completion of consultation associated with a COL or CP/OL application, or a Section 106 agreement document is executed. If the terms of the MOA have not been completed within the period of the ESP, pursuant to 10 CFR 52.26, this MOA shall be considered null and void. In such an event, the NRC shall notify the parties and will follow Section 106 for any future undertakings.

#### **C. Anti-Deficiency Act**

The stipulations of this MOA are subject to the provisions of the Anti-Deficiency Act (*31 U.S.C. §1341*). If compliance with the Anti-Deficiency Act alters or impairs the NRC's ability to implement the stipulations of this MOA, the NRC will consult in accordance with the amendment and termination procedures found in this MOA.

#### **D. Dispute Resolution**

Should any Signatory to this MOA object to any activity pursuant to this MOA, it shall provide notice of its objection within 30 days of the date of the activity. Upon receiving notice of the objection, NRC shall consult with the objecting Signatory to resolve the objection.

If NRC determines the objection cannot be resolved, NRC shall forward all documentation relevant to the dispute to the ACHP. Any comments or recommendations received from the ACHP will be forwarded to the all Signatories for consideration.

Prior to reaching a final decision on the dispute, NRC will prepare a written resolution of the objection taking into account any timely advice or comments regarding the dispute from the ACHP and Signatories and distribute a copy of the written response to all Signatories. If a Signatory fails to respond within 30 days of receipt of the written resolution, concurrence with the resolution will be assumed by the other Signatories and the resolution will go into effect.

If resolution of the objection requires an amendment to the MOA, it will be done per Stipulation B of this MOA.

Nothing in this Section of the MOA shall be construed or interpreted as a waiver of any judicial remedy available to any party of this MOA.

Nothing in this Section shall be construed or interpreted to alter the NRC's enforcement authority related to compliance with the NRC's regulations or license conditions.

#### **E. Termination**

A Signatory proposing to terminate this MOA shall notify the other Signatories, explaining the reasons for termination and affording them at least 30 days to consult and seek alternatives to termination. Within 30 days following this notification of termination, any one of the above Signatories shall notify the other Signatories if it will: a) initiate consultation to execute a subsequent MOA that explicitly terminates or supersedes its terms; or b) requests the comments of the ACHP under 36 CFR 800.7(a) and proceed accordingly. Concurring Parties do not have the authority to terminate the agreement.

Execution of this MOA by the Signatories and implementation of its terms, is evidence that the NRC has afforded the ACHP an opportunity to comment on the indirect visual adverse effect on historic properties analyzed for the ESP EIS, and that the NRC has taken into account the effect on historic properties analyzed for the ESP EIS.

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**SIGNATORIES:**

U.S. NUCLEAR REGULATORY COMMISSION

By: \_\_\_\_\_ Date: \_\_\_\_\_

Mr. Frank Akstulewicz, Director  
Division of New Reactor Licensing  
Office of New Reactors



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**SIGNATORIES:**

NEW JERSEY HISTORIC PRESERVATION OFFICER

By: \_\_\_\_\_ Date: \_\_\_\_\_

Mr. Daniel D. Saunders  
Deputy Historic Preservation Officer

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**SIGNATORIES:**

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: \_\_\_\_\_ Date: \_\_\_\_\_

Mr. John M. Fowler  
Executive Director

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**INVITED SIGNATORIES:**

U.S. DEPARTMENT OF INTERIOR, NATIONAL PARK SERVICE

By: \_\_\_\_\_ Date: \_\_\_\_\_

Ms. Bonnie Halda  
Manager, Preservation Assistance Group

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**INVITED SIGNATORIES:**

PSEG POWER, LLC AND PSEG NUCLEAR, LLC

By: \_\_\_\_\_ Date: \_\_\_\_\_

Mr. Joseph M. Sindoni  
Senior Director Regulatory Affairs

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**CONCURRING PARTIES:**

THE SALEM OLD HOUSE FOUNDATION

By: \_\_\_\_\_ Date: \_\_\_\_\_

Mr. Ron Magill  
President

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**CONCURRING PARTIES:**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Ms. Janet Sheridan  
Local Architectural Historian and Preservation Consultant