

## NORTHWEST POWER PLANNING COUNCIL

**POLICY (subject):**

RESTRICTION ON POLITICAL  
ACTIVITIES

**Number: #**

**OBJECTIVE:**

To comply with guidelines  
of the Ethics in Government Act

**Page: 1-2**

**APPROVED:**



(Signature)

Executive Director

Title

March 1998

Date

### PURPOSE OF THIS POLICY

The Northwest Power Act provides that the federal laws regarding conflicts of interest applicable to the Bonneville Power Administration shall apply to the Council "to the extent appropriate." This policy spells out the extent to which application of the federal restrictions on political activity to the Council is appropriate. Such restrictions are intended to further the purposes set out in the Council's Conflicts of Interest policy, as well. The Council finds that this modified statement of the Hatch Act is appropriate for the special characteristics of the Council. Each employee shall respect and adhere to the principles of ethical conduct set forth in this policy as well as any other related Council policies.

### SCOPE OF THIS POLICY

This policy covers restrictions on political activities of Council members and Council employees, whether employed in the central office or a state office.

### SANCTIONS

If a Council member violates this policy, the Council will forward the reported violation to the relevant Governor. If a Council employee violates this policy, the Council will investigate the allegation and determine whether disciplinary action, including removal from employment, is justified. The Council will forward to the Office of Government Ethics the results of any investigation it undertakes of allegations of violations of this policy. Please consult the Legal Division if you have questions about the meaning or application of this policy.

## Council Policy Limiting Political Activities.

A. Prohibition. A Council member or employee may not:

- (1) use his official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office;
- (2) directly or indirectly coerce, attempt to coerce, command, or advise a Council member or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for political purposes; or
- (3) be a candidate for elective office.

B. Permitted Activities. A Council member or employee:

- (1) retains the right to vote as he chooses and to express his opinions on political subjects and candidates; and
- (2) may be a candidate in a nonpartisan election.

## Northwest Power Planning Council

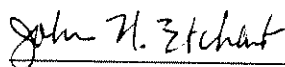
**POLICY (subject):** Freedom of Information Act Policy

Number:

**OBJECTIVE:** To set forth Council policy on  
Implementing the Freedom of Information Act

Page: 1-5

### APPROVED:



Signature

Chairman

Title

09/23/98

Date

- Section 1 Purpose and scope.
- Section 2 Definitions.
- Section 3 Public reading facilities and policy on contractor records.
- Section 4 Elements of a request.
- Section 5 Processing requests for records.
- Section 6 Responses by FOIA Officer: Form and content.
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- Section 8 Fees for providing records.
- Section 9 Exemptions.
- Section 10 Handling exempt information submitted to the Council.
- Section 11 Computation of time.

Authority: 5 U.S.C. § 552.

### Section 1 Purpose and scope.

This policy sets out the regulations of the Northwest Power Planning Council (Council) that implement 5 U.S.C. § 552, the Freedom of Information Act (FOIA). Persons seeking information from the Council may consult with the Council's Freedom of Information Officer (FOIA Officer) before invoking the formal procedures set out below. To the extent permitted by other laws, the Council will make records available that it is authorized to withhold under 5 U.S.C. § 552 whenever it determines that such disclosure is in the public interest.

### Section 2 Definitions.

As used in this policy:

- (a) Appeal Authority means the Council's General Counsel.
- (b) Freedom of Information Officer means the person designated by the Executive Director to manage FOIA requests.

### Section 3 Public reading facilities.

- (a) The Council will maintain a place where the materials required by 5 U.S.C. § 552(a)(2) will be made available for public inspection and copying in its central offices in Portland, Oregon.
- (b) The Council will also maintain a web page on the world wide web on which will be posted all the materials required by 5 U.S.C. § 552(a)(2). This web page will be indexed and cross-referenced with links to facilitate public access to Council information.
- (c) FOIA requests received by the state offices will be referred to the Council's FOIA Officer.

### Section 4 Elements of a request.

- (a) A request for a Council record that is not made available under section 3(a), above, shall be addressed to the Freedom of Information Officer, Northwest Power Planning Council, 851 S.W. 6th Avenue, Suite 1100, Portland, Oregon 97204. Both the envelope and the letter shall be marked: "Freedom of Information Request." A request will be considered received, for purposes of 5 U.S.C. § 552(a)(6), upon actual receipt by the FOIA Officer.

- (b) A request for access to records must be submitted in writing and must reasonably describe the records requested, to enable Council personnel to locate them with a reasonable amount of effort. When possible, specific information regarding dates, titles, file designations and other information that may help identify the records should be supplied, including the names and titles of any Council employees who have been contacted regarding the request prior to the submission of a written request. If the request relates to a matter in pending litigation, the court and its location should be identified to aid in locating the documents.
- (c) A request may request all records falling within a reasonably specific and well-defined category if Council personnel can reasonably determine which particular records are sought in the request. The request must enable the Council to identify and locate the records sought by a process that is not unduly burdensome or disruptive of Council operations.
- (d) If a request does not reasonably describe the records sought, the Council will invite the requester to confer with Council personnel to restate the request or reduce the request to manageable proportions. If additional information is needed to render records reasonably described, a reformulated and resubmitted request will be treated as an initial request for purposes of calculating the time for Council response.
- (e) FOIA does not require the Council to honor a request for a record not yet in existence, even when such a document may be expected to come into existence at a later time. If a requested record is known to have been destroyed or otherwise disposed of, or if no such record is known to exist, the requester will be so notified.
- (f) Some of the records in the files of the Council have been obtained from other federal agencies or contain information obtained from other federal agencies.

- (1) If a record originated in another federal agency, the FOIA Officer will refer the request to that agency and inform the requester, unless the other agency agrees to direct release by the Council.
- (2) Requests for Council records containing information received from another agency, or records prepared jointly by the Council and other agencies, will be treated as requests

for Council records except that the FOIA Officer will coordinate with the appropriate official of the other agency.

## **Section 5 Processing requests.**

- (a) If the FOIA Officer determines a request complies with Section 4, he will promptly identify and review the records encompassed by the request. The FOIA Officer will prepare a written response: (1) granting the request, (2) denying the request, (3) granting/denying it in part, (4) stating that the request has been referred to another agency under Section 4(f), or (5) informing the requester that responsive records cannot be located or do not exist.
- (b) Action pursuant to paragraph (a) of this section will be taken within 20 working days of receipt of a request for Council records, except that, if unusual circumstances require an extension of time before a decision on a request can be reached and the requester is promptly informed in writing by the FOIA Officer of the reasons for such extension and the date on which a determination is expected to be dispatched, then the FOIA Officer may take an extension not to exceed 10 working days. For purposes of this policy, the term "unusual circumstances" includes but is not limited to:
  - (1) The need to search for and collect the requested records from the Council's state offices;
  - (2) The need to search for, collect and examine a voluminous amount of separate and distinct records that are responsive to a single request; or
  - (3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request.
- (c) If no determination has been made at the end of the 20-day period, or the last extension thereof, the requester may deem his administrative remedies to have been exhausted, giving rise to a right of review in a district court of the United States as specified in 5 U.S.C. § 552(a)(4). In that event, the FOIA Officer will continue to process the request and will inform the requester of the reason for the delay, of the date on which a determination may be expected, and of the requester's right to seek a judicial remedy, but will ask the requester to forego such action until a determination is made.
- (d) Nothing in this policy precludes the FOIA Officer and a requester from agreeing to an extension of time for the initial determination on a request. Any such agreement will be confirmed in writing and will specify the total time agreed upon.

## **Section 6 Responses.**

- (a) Records requested pursuant to Section 4 will be made available promptly, when they are identified and determined to be non-exempt under this policy, the Freedom of Information Act, and where the applicable fees are \$250 or less or when it has been determined that the payment of applicable fees should be waived.
- (b) Denial of a request for a record will be in writing, signed by the FOIA Officer and will include:
  - (1) The reason for denial, with a reference to the specific exemption under the Freedom of Information Act authorizing the withholding of the record, a brief explanation of how the exemption applies to the record withheld, and a statement of why discretionary release is not appropriate.

- (2) The name of the FOIA Officer, and the title or position of each Council staff member with whom the FOIA Officer conferred in reaching the determination of denial.
- (3) A statement or notation addressing the issue of whether there is any segregable non-exempt material in the documents or portions thereof identified as being denied.
- (4) A statement that the determination to deny documents may be appealed within 30 calendar days to Council's General Counsel.
- (5) Although a determination that no such record is known to exist is not a denial, the requester will be informed that the adequacy of a search may be challenged by appealing within 30 calendar days to the Council's General Counsel.

## Section 7 Appeal of initial denials.

- (a) When the FOIA Officer has denied a request for records in whole or in part or has responded that there are no documents responsive to the request, the requester may, within 30 calendar days of its receipt, appeal the determination to the Council's General Counsel or his designee.
- (b) An appeal must be in writing, addressed to the General Counsel, Northwest Power Planning Council, 851 S.W. 6th Avenue, Suite 1100, Portland, Oregon 97204 and both the envelope and letter must be marked "Freedom of Information Appeal." The appeal must contain a concise statement of ground or grounds upon which it is brought and a description of the relief sought. A copy of the letter containing the determination being appealed must be submitted with the appeal.
- (c) An appeal will be considered received for purposes of 5 U.S.C. § 552(a)(6) when received by the appeal authority.
- (d) The appeal authority will act upon the appeal within 20 working days of its receipt, except that if unusual circumstances (as defined above) require, the appeal authority may extend the time for an additional 10 working days and shall notify the requester in writing. When no determination can be issued within the applicable time limit, the appeal will nevertheless continue to be processed.
- (e) If the appeal has not been decided within 20-days or any extension, the requester may consider his administrative remedies to be exhausted and seek review in a district court of the United States as specified in 5 U.S.C. § 552(a)(4). The requester may be asked to forego judicial review until determination of the appeal.
- (f) Nothing in this policy will preclude the appeal authority and a requester from agreeing to an extension of time for the decision on an appeal. Such an agreement will be confirmed in writing by the appeal authority and will specify the total time agreed upon.
- (g) The appeal authority's determination will be in writing and will set forth the reason for the decision, as well as a statement that it constitutes final agency action and that judicial review is available in a district court of the United States as specified in 5 U.S.C. § 552(a)(4). Documents determined by the appeal authority to be documents subject to release will be made promptly available to the requester upon payment of any applicable fees.

## Section 8 Fees.

The Council does not ordinarily charge to satisfy a FOIA request, but reserves the right to collect all such costs. If the Council determines that the actual costs to fulfill a FOIA request, including the search for documents, review and duplication of records, are likely to exceed \$250, it will notify the

requester. If the requester, working with Council staff, cannot modify the request to reduce the anticipated cost, the Council will use, as appropriate, the regulations of the Department of Energy for "Fees for providing records," found at 10 CFR Part 1004.9.

### **Section 9 Exemptions.**

- (a) 5 U.S.C. § 552 exempts from all of its publication and disclosure requirements nine categories of records, described in paragraph (b) of that section. These categories include such matters as national defense and foreign policy information; investigatory records; internal procedures and communications; materials exempted from disclosure by other statutes; confidential, commercial, and financial information; and matters involving personal privacy.
- (b) The exemptions in 5 U.S.C. § 552(b) will be applied consistent with Section 1 of this policy.
- (c) Any reasonably segregable non-exempt portion of a record will be provided to a requester. The Council will delete portions that are withholdable under the exemptions referred to above.

### **Section 10 Handling exempt information submitted to the Council.**

- (a) The Council does not ordinarily accept submitted information that contains material that may be exempt from public disclosure. In the rare instances in which it is important for the Council to have such exempt information to fulfill its statutory mandates, it will evaluate the status of such information before allowing it to be submitted. The Council will consider the submitter's views in making its determination and notify the submitter of its determination before accepting the information.
- (b) The Council is authorized to request all information necessary for the performance of its functions, subject to such requirements of law concerning trade secrets and proprietary data as are applicable, from the Administrator of the Bonneville Power Administration and other federal agencies, who are directed to furnish the Council such information, to the extent authorized by other provisions of law. When such information is deemed exempt from disclosure by the FOIA Officer of the agency furnishing it to the Council, the Council shall also treat such information as exempt.

### **Section 11 Computation of time.**

In computing any period of time prescribed or allowed by this policy, the day of the event from which the designated period of time begins to run is not to be included; the last day of the period so computed is to be included. Saturdays, Sundays, and legal holidays are excepted.

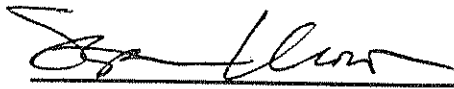


## NORTHWEST POWER PLANNING COUNCIL

**POLICY (subject):** Conflict of Interest and Standards of Conduct      **Number:**

**OBJECTIVE:** To comply with guidelines of the Ethics in Government Act      **Page:** 1-12

**APPROVED:**



(Signature)

Executive Director

Title

09/23/98

Date

### PURPOSE OF THIS POLICY

The Northwest Power Act provides that the federal laws regarding financial disclosure and conflicts of interest applicable to the Bonneville Power Administration shall apply to the Council "to the extent appropriate." This policy spells out the extent to which application of these laws to the Council is appropriate, in light of several factors. One of the central reasons the Council was created was to provide for the participation and consultation of a number of Northwest entities and the public at large in the development of a regional power plan and a program to protect, mitigate and enhance fish and wildlife resources. To carry out this role, it is important that all Council employees conduct themselves in a way that assures interested parties and the general public that the Council's decisions and deliberations are made fairly and without personal bias or preferential treatment. At the same time, the Council is a much smaller organization than those for which the federal rules were written, and some of the federal rules are inapposite or unduly formalistic. The rules set out below are intended to apply the federal rules without all their formalism. Each employee shall respect and adhere to the principles of ethical conduct set forth in this policy as well as any other related Council policies.

### SCOPE OF THIS POLICY

This policy covers: (I) financial disclosure; (II) conflicting financial interests, including (A) disqualifying financial interests and (B) prohibited financial interests; (III) impartiality and the appearance of impartiality; (IV) misuse of position; (V) outside employment and other activities, (VI) representation of the Council and others, (VII) acceptance of gifts; and (VIII) post-employment rules. In general, *financial disclosure requirements* apply only to Council members and professional staff (those with salaries that exceed the equivalent of a GS-12). Certain *post-employment rules* apply only to Council members and the Executive Director and are so identified. *All other guidelines* apply to all Council Members and employees.

For other areas, such as rules that apply while seeking other employment, the Council will continue its practice of applying, as appropriate, the relevant federal standards as questions arise and of developing related policies as it deems appropriate.

## SANCTIONS

Please consult the Legal Division if you have any questions about the meaning of this policy or how it may apply to you. If a Council employee knowingly violates these guidelines, the Council may take disciplinary action, including removal from employment. In addition, violation of these guidelines may be considered a violation of federal law, and could result in criminal penalties, including substantial fines and imprisonment. The Council will forward to the Office of Government Ethics the results of any investigation it undertakes of allegations of infractions of these guidelines.

## I. FINANCIAL DISCLOSURE

**Covered employees.** Council members and professional staff (employees earning more than the equivalent of a GS-12) must file financial disclosure reports. Council members and the Executive Director file form SF 278. Other professional staff file form DOE F 3735.1.

**Deadlines.** Forms must be filed: within 30 days of joining the Council, annually by May 15, and within 30 days of leaving Council employment. The Legal Division will remind each person who is required to file of the applicable deadline and will furnish them with the appropriate form.

**Review.** The General Counsel, the Council's designated ethics official, will designate a Senior Counsel to serve as the reviewing official. By May 15<sup>th</sup> each year, all completed forms will be submitted to the reviewing official, who will, within 30 days of receipt: review the form in light of the Council's conflict of interest guidelines, sign the form, noting whether potential problems exist, and, if so, whether any corrective action should be taken, and forward the signed form to the General Counsel. The General Counsel will serve as financial disclosure counselor.

The General Counsel will then: review the findings; sign and file the form, taking any corrective action that may be necessary; and, by July 15<sup>th</sup>, notify the public of the availability of those parts of the financial disclosure forms that are available to the public.

**Special Disclosure by Council Members.** At the first regularly scheduled Council meeting after May 15<sup>th</sup> each year, all Council members' earned outside income during the preceding year will be disclosed.

## II. CONFLICTING FINANCIAL INTERESTS

This subpart contains two provisions relating to financial interests. One is a disqualification requirement and the other is a prohibition on acquiring or continuing to hold specific financial interests.

### A. Disqualifying Financial Interests.

- (1) *Statutory prohibition.* An employee is prohibited by criminal statute, 18 U.S.C. § 208(a), from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, he or any person whose interests are imputed to him under subsection (d) below has a financial interest, if the particular matter will have a direct and predictable effect on that interest. Each of these elements is defined below and all must be present for there to be a violation.

(a) *Personal and substantial.* To participate personally means to participate directly, including the direct and active supervision of the participation of a subordinate. To participate substantially means that the employee's involvement is of significance to the matter, whether or not it determines the outcome. Personal and substantial participation may occur when, for example, an employee participates through decision, approval, disapproval, recommendation, investigation or the rendering of advice.

(b) *Particular matter involving specific parties* includes any proceeding, contract, claim, controversy or other particular matter involving a specific party or parties. The term typically involves a specific proceeding affecting the legal rights of the parties or a transaction between identified parties. For example, a Council determination of consistency with the Power Plan under Section 6(c) or a Council recommendation regarding the acquisition of a given wildlife habitat would be particular matters involving specific parties.

(c) *Particular matter of general applicability* means a particular matter that is focused on the interests of a discrete and identifiable class of persons, but does not involve specific parties. An example of a particular matter of general applicability would be a protected areas determination.

Council matters that would fall outside either class of particular matters include adoption of the plan or program or an amendment to either.

(d) *Imputed interests.* The financial interests of the following will disqualify an employee to the same extent as if they were the employee's own interests: (i) The employee's spouse; (ii) The employee's minor child; (iii) The employee's general partner; (iv) An organization or entity which the employee serves as officer, director, trustee, general partner or employee; and (v) A person with whom the employee is negotiating for or has an arrangement concerning prospective employment.

(e) *Direct and predictable effect.* A particular matter will have a direct effect on a financial interest if there is a close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest. A particular matter will have a *predictable effect* if there is a real, as opposed to a speculative possibility that the matter will affect the financial interest. It is not necessary, however, that the magnitude of the effect be known, and the dollar amount of the effect is immaterial.

(2) *Disqualification.* Unless the employee is authorized to participate in the particular matter by virtue of a waiver described in paragraph (3) of this section or because the interest has been divested in accordance with paragraph (4) of this section, an employee shall disqualify himself from participating in a particular matter in which, to his knowledge, he or a person whose interests are imputed to him has a financial interest, if the particular matter will have a direct and predictable effect on that interest. Disqualification is accomplished by not participating in the particular matter.

(3) *Waiver of disqualification.* An employee who would otherwise be disqualified may be permitted to participate in a particular matter if:

(a) the otherwise disqualifying financial interest is:

(i) a diversified mutual fund;

(ii) a unit investment trust; or

(iii) a qualifying employee benefit plan, such as a state or municipal government plan;

(b) the holding is a *de minimis* holding:

(i) For particular matters involving specific parties, the holding is *de minimis* if its aggregate market value does not exceed \$5,000.

(ii) For particular matters of general applicability, the holding is *de minimis* if:

(a) in the case of a publicly traded or municipal security, the market value of the interest of the employee, his spouse and his minor children does not exceed \$25,000 in any one entity or \$50,000 in all affected entities, or

(b) in the case of a long-term federal government security, the market value does not exceed \$50,000. Please consult the Legal Division for clarification and confirmation that a holding is *de minimis*;

(c) the employee, in advance of the employee's participation:

(i) advises the Legal Division, or in the case of Council members the appointing governor, about the nature and circumstances of the particular matter or matters; and makes full disclosure of the nature and extent of the disqualifying financial interest; and

(ii) the Legal Division, or in the case of Council members the appointing governor, determines in writing that the employee's financial interest in the particular matter or matters is not so substantial as to be likely to affect the integrity of the services that the government may expect from such employee. This waiver is to be requested for each particular matter that comes before the Council in which a conflict presents itself. It is not a blanket waiver.

(4) *Divestiture of a disqualifying financial interest.* Upon sale or other divestiture of the asset or other interest that causes his disqualification from participation in a particular matter, the employee will no longer be prohibited from participating.

(a) *Voluntary divestiture.* An employee may voluntarily sell or otherwise divest himself of the interest that causes the disqualification.

(b) *Directed divestiture.* An employee may be required to sell or otherwise divest himself of the disqualifying financial interest if his continued holding of that interest is prohibited by statute or by paragraph B, Prohibited Financial Interests, below, or if the Legal Division determines that a substantial conflict exists between the financial interest and the employee's duties or accomplishment of the Council's mission.

(c) *Eligibility for special tax treatment.* An employee who is directed to divest an interest may be eligible to defer the tax consequences of divestiture. Please consult the Legal Division if you believe this section may apply to you to determine if the tax consequences may be deferred pursuant to 5 CFR § 2634 Subpart J.

(5) *Official duties that give rise to potential conflicts.* When an employee's official duties create a substantial likelihood that the employee may be assigned to a particular matter from which he is disqualified, the employee should advise his supervisor or other person responsible for his assignments of that potential so that conflicting assignments can be avoided, consistent with the Council's needs.

## **B. Prohibited financial interests.**

An employee shall not acquire or hold any financial interest that he is prohibited from acquiring or holding by statute or by reason of a determination of substantial conflict under paragraph (2) of this section.

(1) *Definitions.* For purposes of this section:

(a) The term *financial interest* is limited to financial interests that are owned by the employee or by the employee's spouse or minor children. The term includes any current or contingent ownership, equity, or security interest in real or personal property or a business and may include an indebtedness or compensated employment relationship. It thus includes, for example, interests in the nature of stocks, bonds, partnership interests, fee and leasehold interests, mineral and other property rights, deeds of trust, and liens, and extends to any right to purchase or acquire any such interest, such as a stock option or commodity future. It does not include a future interest created by someone other than the employee, his spouse, or dependent child or any right as a beneficiary of an estate that has not been settled. The term *financial interest* includes service, with or without compensation, as an officer, director, trustee, general partner or employee of any person, including a nonprofit entity, the financial interests of which are imputed to the employee.

(b) The term *parent company* means a company that possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of an entity identified in paragraphs (1)(a) through (1)(g) of this section.

(2) *Council determination of substantial conflict.* The Council's Executive Committee may prohibit or restrict an individual employee from acquiring or holding a financial interest or a class of financial interests based upon the Legal Division's determination that the holding will:

(a) Require the employee's disqualification from matters so central or critical to the performance of his official duties that the employee's ability to perform the duties of his position would be materially impaired; or

(b) Adversely affect the efficient accomplishment of the Council's mission because another employee cannot be readily assigned to perform work from which the employee would be disqualified by reason of the financial interest.

(3) *Reasonable period to divest or terminate.* Whenever the Council directs divestiture of a financial interest under this section, the employee shall have a reasonable period of time, considering the nature of his particular duties and the nature and marketability of the interest, within which to comply with the Council's direction. Except in cases of unusual hardship, as determined by the Council, a reasonable period shall not exceed 90 days from the date divestiture is first directed. However, as long as the employee continues to hold the financial interest, he remains subject to any restrictions imposed by this subpart.

### III. Impartiality in Performing Official Duties

This subpart is intended to ensure that employees take appropriate steps to avoid an appearance of partiality in the performance of official duties. It applies to situations beyond those described in Sections I and II, above, and covers any situation in which the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter. It applies when an employee knows that a particular matter involving specific parties is likely to have a direct and predictable effect on the financial interest of a member of his household, or when he knows that a person with whom he has a covered relationship, as that term is defined in (2)(a) below, is or represents a party to the matter.

(A) *Consideration of appearances by the employee.* When an employee determines that circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in a particular matter, the employee shall not participate in the matter unless he has informed the Legal Division of the appearance problem and received authorization from the Legal Division in accordance with paragraph (D) of this section.

(B) *Definitions.* For purposes of this section:

(1) An employee has a *covered relationship* with:

- (a) A person with whom the employee has or seeks a business, contractual or other financial relationship that involves other than a routine consumer transaction;
- (b) A person who is a member of the employee's household, or who is a relative with whom the employee has a close personal relationship;
- (c) A person for whom the employee's spouse, parent or dependent child is, to the employee's knowledge, serving or seeking to serve as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee;
- (d) Any person for whom the employee has, within the last year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee; or
- (e) An organization, other than a political party described in 26 U.S.C. § 527(e), in which the employee is an active participant. Participation is active if, for example, it involves service as an official of the organization or in a capacity similar to that of a committee or subcommittee chairperson or spokesperson, participation in directing the activities of the organization. In other cases, significant time devoted to promoting specific programs of the organization, including coordination of fundraising efforts, is an indication of active participation. Payment of dues or the donation or solicitation of financial support does not, in itself, constitute active participation.

(6) Adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

(5) The difficulty of reassigning the matter to another employee; and

(4) The sensitivity of the matter;

(3) The nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;

(2) The effect that resolution of the matter would have upon the financial interests of the person involved in the relationship;

(1) The nature of the relationship involved;

(D) *Authorization by Legal Division.* When an employee's participation in a particular matter would not violate 18 U.S.C. § 208(a), but would raise a question in the mind of a reasonable person about his impartiality, the Legal Division may authorize the employee to participate in the matter based on a determination, made in light of all relevant circumstances, that the interest of the Council in the employee's participation outweighs the concern that a reasonable person may question the integrity of the Council's programs and operations. Factors that may be taken into consideration include:

would be proper.

(2) If the Legal Division determines that the employee's impartiality is not likely to be questioned, it may advise the employee, including an employee who has reached a contrary conclusion under paragraph (A) of this section, that the employee's participation in the matter would be proper.

(1) If the Legal Division determines that the employee's impartiality is likely to be questioned, it shall then determine, in accordance with paragraph (D) of this section, whether the employee should be authorized to participate in the matter. If the Legal Division determines that the employee's participation should not be authorized, the employee will be disqualified from participation in the matter in accordance with paragraph (E) of this section.

(C) *Determination by Legal Division.* When it has information concerning a potential appearance problem, typically information supplied by the employee, the Legal Division shall determine whether a reasonable person with knowledge of the relevant facts would be likely to question the employee's impartiality in the matter. However, even after the employee has disqualified himself from participation in a matter pursuant to paragraph (E) of this section, the Legal Division may make this determination on its own initiative or when requested by the employee's supervisor or any other person responsible for the employee's assignment.

(3) *Particular matter* has the meanings set forth in section II(A)(1)(b) and (c), above.

(2) *Direct and predictable effect* has the meaning set forth in section II(A)(1)(e), above.

(E) *Disqualification.* Unless the employee is authorized to participate in the matter under paragraph (4) of this section, an employee shall not participate in a particular matter when he or the Legal Division has concluded, in accordance with paragraph (A) or (C) of this section, that circumstances are likely to raise a question in the mind of a reasonable person about his impartiality. Disqualification is accomplished by not participating in the matter.

(1) *Notification.* Appropriate notice may be given to co-workers by the employee or a supervisor to ensure that the employee is not involved in a particular matter.

(2) *Documentation.* An employee need not file a written disqualification statement unless specifically asked by the Legal Division or the person responsible for his assignment. However, an employee may elect to create a record of his actions by providing written notice to a supervisor or other appropriate official.

#### **IV. Misuse of Position.**

(A) *Misuse of Public Office for Private Gain.* An employee shall not use his Council position for his own private gain, for the endorsement of any product, service or enterprise, or for the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity, including nonprofit organizations of which the employee is an officer or member, and persons with whom the employee has or seeks employment or business relations.

(B) *Use of Government Property.* An employee has a duty to protect and conserve Government property and shall not use such property, or allow its use, for other than authorized purposes.

(1) *Government property* includes any form of real or personal property in which the Government has an ownership, leasehold, or other property interest as well as any right or other intangible interest that is purchased with Government funds, including the services of contractor personnel. The term includes office supplies, telephone and other telecommunications equipment and services, the Government mails, automated data processing capabilities, printing and reproduction facilities, Government records, and Government vehicles.

(2) *Authorized purposes* are those purposes for which Government property is made available to members of the public or those purposes authorized in accordance with law or regulation.

(C) *Use of Official Time.* Unless authorized in accordance with law or regulations to use such time for other purposes, an employee shall use official time in an honest effort to perform official duties. An employee has an obligation to expend an honest effort and a reasonable proportion of his time in the performance of official duties. An employee shall not encourage, direct, coerce, or request a subordinate to use official time to perform activities other than those required in the performance of official duties or authorized in accordance with law or regulation.

## V. Outside Employment and Other Activities.

(A) *Prohibition.* An employee shall not engage in outside employment or any other outside activity that conflicts with his official duties. An activity conflicts with an employee's official duties:

(1) If it is prohibited by the foregoing provisions of this policy; or

(2) If it would require the employee's disqualification from matters so central or critical to the performance of his official duties that the employee's ability to perform the duties of his position would be materially impaired.

(B) *Prior Approval.* If there is any doubt whether an activity conflicts with an employee's official duties, the employee shall obtain written approval from the Legal Division before engaging in outside employment or activities.

## VI. Representation of the Council and Others.

(A) *Representation of the Council.* A Council employee may not represent or give the appearance of representing the Council or its policies unless the representation is part of Council duties, or unless the representation has prior authorization from the Executive Committee.

(B) *Representation of Others.* A Council employee may not represent anyone other than the Council before a court or government agency in a matter in which the Council is a party or has an interest. A Council Member may represent his Governor, provided he makes clear that he is not, in that case, representing the Council.

(C) *Waiver.* These restrictions may be waived if the Legal Division determines that such restrictions would be contrary to the best interests of the Council or result in an exceptional hardship for the employee involved.

## VII. Acceptance of Gifts.

(A) *Prohibition.* A Council member or employee shall not, except as provided below, knowingly solicit or accept any gift, entertainment or favor (including complimentary meals and beverages), either directly or indirectly from any interested party.

(B) *Definitions.*

(1) *Gifts, entertainment and favors* include, but are not limited to, any benefits, gratuities, loans, discounts, tickets, passes, transportation, accommodations, or hospitality given or extended to or on behalf of the recipient.

(2) *Interested parties* are persons or entities that seek business with the Council, are affected by Council decisions, or have interests that may be affected by the Council.

(C) *Exceptions.*

- (1) Food, refreshments, transportation, lodging, subsistence and "social amenities" may be accepted from representatives of foreign governments in the course of Council business.
- (2) With prior clearance from the Legal Division, food, travel, lodging or subsistence may be accepted from educational institutions or from consumer, environmental, professional or trade groups in connection with widely attended lunches, dinners, conferences and so forth.
- (3) Food or transportation may be accepted in circumstances in which it would be impractical to pay for meals or provide personal transportation. For example, a meal may be accepted when a sponsoring organization has negotiated a group rate for a catered dinner and paying the sponsor would create serious accounting problems for the sponsor. Or, transportation may be accepted when the Council is inspecting a remote geothermal site and the developer provides a van.
- (4) Promotional materials such as pens, calendars, notepads and so forth, so long as they are valued at less than \$20, may be accepted. The sum of the value of such materials from any one donor shall not exceed \$50 in any calendar year.

## VIII. Post-employment Rules.

### (A) *Prohibition.* After leaving the Council:

- (1) a Council employee may not act as agent for or represent any other person in any formal or informal appearance before any court or government agency or, with the intent to influence, make any oral or written communication on that person's behalf in connection with any particular Council matter involving a specific party if the employee participated personally and substantially in the matter while with the Council;

- (2) for two years, a Council employee may not act as agent for or represent any other person in any formal or informal appearance before any court or government agency or, with the intent to influence, make any oral or written communication on that person's behalf in connection with any particular Council matter involving a specific party if such matter was actually pending under the employee's responsibility as a Council employee during the year prior to the termination of such responsibility (even though the employee did not participate personally and substantially in the matter);

- (3) for one year, a Council member or the Executive Director may not act as agent for or otherwise represent anyone in any formal or informal appearance before, or with the intent to influence make any written or oral communication on behalf of anyone to the Council or any of its employees in connection with any particular Council matter, whether or not involving a specific party, that is pending before the Council, or in which the Council has a direct and substantial interest.

### (B) *Waiver.* These restrictions may be waived if the Legal Division finds that:

- (1) a former staff member possesses outstanding scientific or technical qualifications, and
- (2) the national or regional interest would be served by waiving the restriction regarding a particular scientific or technical matter.

**NORTHWEST POWER PLANNING COUNCIL**

**POLICY (subject):** GOVERNMENT IN THE SUNSHINE ACT    **Number:** VIII-4

**OBJECTIVE:**            Procedures under the Sunshine Act            **Page:** 1-8

**APPROVED:**

Edward Steich  
(Signature)

Executive Director  
Title

August 21, 1984  
Date

**PROCEDURES UNDER THE GOVERNMENT IN THE SUNSHINE ACT**

**PROPOSED MOTION**

**September 1-2, 1982**

That the Council adopt the Procedures under the Government in the Sunshine Act in the form presented to this meeting.

SUBPART B — PROCEDURES UNDER THE GOVERNMENT IN THE

SUNSHINE ACT

200.101	PURPOSE
200.102	DEFINITIONS
200.103	OPEN MEETINGS
200.104	NOTICE OF MEETINGS
200.105	CLOSED MEETINGS
200.106	PROCEDURES TO CLOSE MEETINGS
200.107	REPORT TO CONGRESS

The purpose of these provisions is to set forth the Council procedures for conduct of its official business in accordance with the provisions of 5 U.S.C. 552b. The Council may waive the provisions set forth in this subpart to the extent authorized by law.

200.102 DEFINITIONS

(a) Definitions. For purposes of these procedures:

(1) "Meeting" means the deliberations of at least a quorum of the Council where such deliberations determine or result in the joint conduct of official Council business, except that such term does not include deliberations to determine whether to conduct a closed meeting.

(2) "Portion of a meeting" means the consideration during a meeting of a particular topic or item separately identified in the notice of Council meeting described in Section 200.104.

(3) "Open" when used in the context of a Council meeting or a portion thereof, means the public may attend and observe the deliberations of the Council during such meeting or portion of a meeting consistent with the provisions of Section 200.103.

(4) "Closed" when used in context of a Council meeting or a portion thereof, means that the public may not attend or

observe the deliberations of the Council during such meeting or portion of such meeting.

**200.103      OPEN MEETING**

(a) **General Rule.** Except as provided in Section 200.106, meetings of the Council will be open meetings.

(b) **Public Participation in Open Meetings.**

(1) Members of the public are invited to listen and observe at open meetings.

(2) (i) Subject to the provisions of this paragraph (b), members of the public may record discussions at Council meetings by means of electronic or other devices (including tape recorders, stenotype, stenomark, or shorthand). The photographing of Council meetings by still or movie camera, or by video taping is permitted so long as such activity does not interfere with Council proceedings.

(ii) Due to the limited space of some of the Council's meeting rooms and the necessity of maintaining order, use of recording or photographic equipment which would require the user to move about the room during the meeting must be limited. Recording and photographic equipment may be set up and used only in the public area of a Council meeting room as designated by the Council's Executive Director or his designee.

(iii) No microphones may be placed on the tables used by the Council members and Staff.

(c) **Physical Arrangements.** The Director of Public Involvement shall be responsible for seeing that adequate space, sufficient visibility, and satisfactory acoustics are provided for public observation of open meetings.

**200.104      NOTICE OF MEETINGS**

(a) **Public Announcements of Meetings.**

(1) **General Rule.** Except to the extent that information described in Section 200.105(a) (involving closed meetings) is exempt from disclosure, the Director of Public Involvement shall announce at least one week before each Council meeting, the time, place, and subject matter of the meeting, whether it

is an open meeting or closed meeting, and the name and telephone number of the official designated by the Council to respond to requests for information about the meeting.

(2) Abbreviated notice. If the Council determines by a majority of its members by a recorded vote that Council business requires that a Council meeting be called with less than one week's notice as prescribed in paragraph (a)(1) of this section, the Director of Public Involvement shall make public announcements of the time, place, and subject matter of such meeting and whether open or closed to the public, at the earliest practicable time.

(3) Change in the time or place. If there is a change in time or place of a meeting following the public announcement prescribed in paragraph (a)(1) or (2) of this section the Director of Public Involvement shall publicly announce such change at the earliest practicable time.

(4) Change in the subject matter or the determination to open or close a meeting. The subject matter of a meeting, or the determination of the Council to open or close a meeting or portion of a meeting, may be changed following the public announcement prescribed in paragraph (a)(1) or (2) of this section only if:

- (i) The Council determines by a recorded vote by a majority of the membership that Council business so requires and that no earlier announcement of the change is possible; and
- (ii) The Director of Public Involvement publicly announces such change and the vote of each member upon such change at the earliest practicable time.

(b) Deleted Items. Notwithstanding the provisions of paragraph (a) of this section, individual items that have been announced for consideration at Council meetings may be deleted without vote or notice.

(c) Definitions. For the purpose of this section, "earliest practicable time," means as soon as practicable, which should in few, if any, instances be later than the commencement of the meeting or portion of the meeting in question.

(d) Informing public of meeting announcements.

- (1) The Director of Public Involvement shall use reasonable means to assure that the public is fully informed of the public

announcement required by this section. For example, such announcements may be posted on the Council's public notice boards, published in official Council publications, or sent to the persons on a mailing list maintained for those who want to receive such material.

- (2) Immediately following each public announcement required by this section, notice of the time, place, and subject matter of a meeting, whether the meeting is open or closed, any change in a preceding announcement, and the name and telephone number of the official designated by the Council to respond to requests for information about the meeting shall also be submitted by the Director of Public Involvement for publication in the Federal Register.

#### **200.105    CLOSED MEETINGS**

(a) Meetings will be closed to public observation where the Council properly determines, according to the procedures set forth in Section 200.106, that such meeting or portion of the meeting or disclosure of information to be considered at the meeting is likely to:

- (1) Relate solely to internal personnel rules and practices of the Council;
- (2) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552): Provided, that such statute:
  - (i) Requires that the matters withheld from the public in such a manner as to leave no discretion on the issue;
  - (ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (3) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (4) Involve formally censoring any person;
- (5) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy, including personnel and medical files and similar files;
- (6) Disclose information the premature disclosure of which would be likely to frustrate significantly implementation of a proposed Council action;

(7) Specifically concern the Council's issuance of a subpoena or participation in a civil action or proceeding or an arbitration.

(b) Council meetings shall not be closed pursuant to paragraph (a) of this section when the Council finds that the public interest requires that they be open.

## 200.106 PROCEDURES TO CLOSE MEETINGS

(a) **General Rule.** A meeting or a portion of a meeting may be closed only when the Council votes by a majority of the membership to close the meeting. A separate vote shall be taken with respect to each Council meeting or portion of a meeting which is proposed to be closed to the public or with respect to any information which is proposed to be withheld. A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matter and is scheduled to be held no more than thirty days after the initial meeting in such series. The vote of each Council member participating in such vote shall be recorded and no proxies shall be allowed.

(b) **Request for closed meeting.** Whenever any person whose interests may be directly affected by a meeting or a portion of a meeting requests that the Council close such portion to the public for any of the reasons referred to in paragraphs 5 or 6 of Section 200.105, the Council, upon request of any one of its members, shall vote by recorded vote whether to close such meeting.

(c) **Release of vote.** Within one day of any vote taken pursuant to paragraph (a) or (b) of this section, the Director of Public Involvement shall make publicly available a written copy of such vote reflecting the vote of each member. If a portion of a meeting is to be closed to the public, the Director of Public Involvement shall, within one day of the vote taken pursuant to paragraph (a) or (b) of this section, make publicly available a full written explanation of the Council's action closing the portion together with a list of all persons expected to attend the meeting and their affiliations. The information required by this paragraph shall be disclosed except to the extent that it is exempt from disclosure under the provisions of Section 200.105(a).

(d) **Certification.** Prior to a determination that a meeting should be closed pursuant to paragraph (a) or (b) of this section, the General Counsel of the Council shall publicly certify that, in his opinion, the meeting may be closed to the public and shall state each relevant exemptive provision. A copy of such certification, together with a statement from the Chairperson of the meeting setting forth the time and place of the meeting, and the persons present, shall be retained by the Director of Public Involvement of the Council as part of the transcript, recording, or minutes required by paragraph (e).

(e) **Transcripts, Recordings, Minutes.**

- (1) The Director of Public Involvement shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or portion of a meeting, closed to the public.
- (2) The Director of Public Involvement shall maintain a complete verbatim copy of the transcript, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at least two years after such meeting, or until one year after the conclusion of any Council proceedings with respect to which the meeting or portion was held, whichever ever occurs later.

(f) **Public availability of transcripts, or records.**

- (1) Within a reasonable time after the adjournment of a meeting closed to the public, the Council shall make available to the public the transcript, or electronic recording, of the discussion of any item on the agenda, except for such item or items of such discussion as the Director of Public Involvement determines may be withheld under Section 200.105(a). Copies of the recording or transcript shall be furnished to the public in accordance with the Council's policies for the disclosure of information.
- (2) The determination of the Director of Public Involvement to withhold information pursuant to paragraph (f)(1) of this section may be appealed to the Executive Director of the Council. If the decision of the Executive Director is not satisfactory, an appeal may be taken to the appropriate court.
- (3) If for any reason it is inappropriate or impractical for the Director of Public Involvement or the Executive Director to make a determination regarding disclosure of information under this subsection (f), the determination shall be made by the Council Chair.

**200.107      REPORT TO CONGRESS**

The Council shall include in its annual report to Congress under section (4)(h)(12)(A) of the Northwest Power Act the report to Congress required under the Government in the Sunshine Act, 5 U.S.C. 552b(j), regarding compliance with the requirements of that section.

**ADOPTED** by the Pacific Northwest Electric Power and Conservation Planning Council this \_\_\_\_ day of September, 1982 at Portland, Oregon.

Daniel J. Evans, Chairman

Adopted: 9/2/82

Latest Revision: 9/2/82