



Preserving America's Heritage

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Ms. Jennifer Dixon-Herrity, Chief  
Environment Projects Branch  
Division of New Reactor Licensing  
U.S. Nuclear Regulatory Commission  
11545 Rockville Pike  
Mail Stop T-6 C32  
Rockville, MD 20852

Ref: *Proposed PSEG Early Site Permit Application Review*  
*Salem County, New Jersey*

Dear Ms. Dixon-Herrity:

The Advisory Council on Historic Preservation (ACHP) has completed its review of the *Draft Memorandum of Agreement among the United States Nuclear Regulatory Commission, the New Jersey State Historic Preservation Office, PSEG Power, LLC, PSEG Nuclear, LLL (PSEG), the Advisory Council on Historic Preservation (TBD), and the National Park Service (TBD)*, regarding the PSEG Early Site Permit Application for a site located in Lower Alloways Creek Township, Salem County, New Jersey submitted to ACHP via email on July 15, 2015. We have developed a summary of comments highlighting the major issues that the U.S. Nuclear Regulatory Commission (NRC) will need to consider as it drafts the next version of the Section 106 agreement document. Our comments should be considered along with those submitted by other consulting parties who are participating in the Section 106 consultation process.

The ACHP recommended that NRC develop a Programmatic Agreement (PA) due to the complexity of the project and the fact that the resolution of adverse effects remains undetermined. At the time of development of this agreement, it remained uncertain if mechanical or natural draft cooling towers would be selected due to the nature of the Early Site Permit (ESP) permitting process. Since NRC remains uncertain which type of cooling towers will be selected, a subsequent 106 consultation may be required before the issuance of the Combined License (COL) if the natural draft cooling tower is selected. Therefore, the ACHP recommends developing a project specific PA in accordance with Section 800.14(b) of our regulations, "Protection of Historic Properties." We have previously shared this recommendation with NRC and believe this is the appropriate manner to conclude this Section 106 review. While the federal agency makes the decision about the type of agreement document that it decides to develop, it must be consistent with our practices and policies in order for us to be a signatory. The current draft agreement commits to preparing two MOAs: one for the ESP and a second for the COL. A PA would cover both these related federal actions under the jurisdiction of NRC. This type of agreement document would also allow NRC to develop the COL agreement as an amendment to the PA, if and when this federal action is implemented.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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## Specific Comments

### Whereas Section

#### *Scope of the undertaking*

NRC should consider including language explaining the entire scope of the undertaking, including the construction of the causeway. This additional language should include the total acreage of the project. The Draft Environmental Impact Statement (DEIS) can be cross-referenced in order to provide this additional information. In particular, NRC could tie the description of the undertaking in this agreement to the Proposed Federal Action (Section 1.2) and Purpose and Need for the Proposed Actions (Section 1.3) sections in the DEIS. Please refer to 36 C.F.R. § 800.3 (a) and 36 C.F.R. § 800.16(y) for the definition of an undertaking.

#### *U.S. Army Corps of Engineers*

NRC should consider including language in the Whereas Clause that clarifies that the U.S. Army Corps of Engineers (USACE) has a regulatory action to complete for this undertaking. Further, per our discussion with the Philadelphia District, USACE acknowledges its responsibility to comply with Section 106, and complete the Section 106 consultation prior to the issuance of the Department of the Army permit. The USACE explained to us that it still has additional reviews to complete. Therefore, USACE is not prepared to be a signatory to NRC's agreement.

#### *Area of Potential Effects*

NRC should consider including a description of the area of potential effects (APE) that clarifies that it covers direct and indirect effects. The DEIS can be cross-referenced for this additional information, including the Historic and Cultural Resources Section under the Affected Environment Chapter (Section 2.7 and Section 2.7.2). Please refer to 36 C.F.R. § 800.4(a)(1) and 36 C.F.R. § 800.16(d) for the definition of APE.

#### *Identification of historic properties*

NRC should consider including more information detailing the historic properties identified in the APE. A list of properties can be provided in an appendix or by cross-referencing the DEIS table listing the historic properties identified in the APE (Table 2-37, page 2-167). Please refer to 36 C.F.R. § 800.5.

#### *National Historic Landmark*

NRC should include language referencing 36 C.F.R. § 800.10 in its entirety. In addition, reference should be made to Section 110(f), which is a statutory requirement for effects to National Historic Landmarks (NHLs).

#### *Delaware State Historic Preservation Office*

NRC should include a Whereas Clause stating that the Section 106 consultation was conducted with the Delaware State Historic Preservation Office (SHPO) and that the Delaware SHPO concurred with the No Adverse Effect (NAE) finding. The DEIS can be cross-referenced summarizing the NRC Section 106 consultation with the Delaware SHPO (Section 2.7.3).

#### *Adverse effects*

NRC should consider including a more detailed description of indirect and cumulative adverse effects. Please refer to 36 C.F.R. § 800.5.



*Public involvement*

NRC should clarify how it plans to involve the public in the drafting of the MOA. It should be clear how long the public will have for review, i.e. 30 calendar days. Please refer to 36 C.F.R. § 800.6(a)(4).

*General Comments*

Overall, there are an excessive number of Whereas clauses that are not critical to understanding how NRC has completed the 4-step Section 106 process. Since these clauses are not critical to understanding the who, what, and why as outlined in the ACHP's Guidance on Agreement Documents, perhaps they can be deleted.

*Now, Therefore Clause*

Please refer to the template MOA agreement provided or insert text provided below.

NOW, THEREFORE, [Agency abbreviation] and the [SIGNATORIES] agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

**Stipulations Section***Unanticipated Discovery of Historic Properties or Inadvertent Adverse Effects*

Include a new stipulation with procedures for responding to unanticipated discovery of historic properties or inadvertent adverse effects to identified historic properties during implementation of the agreement. Please refer to the template MOA, 36 C.F.R. § 800.6(c)(6), and/or 36 C.F.R. § 800.13.

*Emergency Situations*

Please include a new stipulation with procedures for responding to emergency situations during implementation of the agreement. Please refer to sample stipulations found on the ACHP's website page, specifically Guidance on Agreement Documents (<http://www.achp.gov/sampletips.html>) and 36 C.F.R. § 800.12.

*Completion of the MOA*

Include text in a stipulation explaining how NRC will notify all the consulting parties when the terms of the MOA are completed.

*Anti-Deficiency Act*

Update the text in the Anti-Deficiency Act Stipulation from the MOA template or insert text provided below.

The [Agency abbreviation] obligations under this MOA are subject to the availability of appropriated funds, and the stipulations of this MOA are subject to the provisions of the Anti-Deficiency Act. The [Agency abbreviation] will make reasonable and good faith efforts to secure the necessary funds to implement this MOA in its entirety. If compliance with the Anti-Deficiency Act alters or impairs the [Agency abbreviation] ability to implement the

stipulations of this agreement, the [Agency abbreviation] will consult in accordance with the amendment and terminations procedures found at Stipulations IX and X of this agreement.

We understand NRC's desire to move forward with this agreement. This Section 106 agreement document, therefore, should adhere to our regulations and be comprehensive so as to avoid the potential for subsequent procedural challenges. Accordingly, we urge NRC to consider revising the agreement document to address all comments provided by consulting parties. If you have any questions, please contact Sarah Stokely who can be reached at (202) 517-0224 or via e-mail at [sstokely@achp.gov](mailto:sstokely@achp.gov).

Sincerely,



Charlene Dwin Vaughn, AICP  
Assistant Director  
Federal Permitting, Licensing, and Assistance Section  
Office of Federal Agency Programs

Enclosure