

**DRAFT NOTICE OF PROPOSED RULEMAKING
OAR CHAPTER 345 - ENERGY FACILITY SITING COUNCIL**

FILING CAPTION:

Adoption of New Energy Facility Siting Standard for Wildfire Prevention and Risk Mitigation

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY:

07/21/2022, 5:00 PM

HEARING(S):

DATE: 06/23/2022

TIME: 5:00 PM

OFFICER: Christopher Clark

ADDRESS:

Oregon Department of Energy

550 Capitol St. NE

Meitner Conference Room

Salem, OR 97301

SPECIAL INSTRUCTIONS:

Additional options for in-person and remote participation will be provided. For additional information see:

<https://www.oregon.gov/energy/Get-Involved/Pages/Energy-Facility-Siting-Council-Rulemaking.aspx>

NEED FOR THE RULE(S):

The legislature established the Energy Facility Siting Council to oversee a comprehensive program for the siting, monitoring and regulation of energy facilities in Oregon. To this end, the Council must establish rules and standards to ensure that the siting, construction and operation of energy facilities is accomplished in a manner consistent with the protection of public health and safety and in compliance with Oregon's energy, land use, and environmental protection policies.

Wildfire is one of the most pressing public health and safety issues in Oregon. The 2020 Labor Day weekend fires burned over a million acres in Oregon, resulted in the deaths of at least 11 people, destroyed thousands of homes and structures, and significantly impaired air quality throughout the state. As discussed in the Department's 2020 Biennial Energy Report, the frequency and severity of wildfires in Oregon are expected to increase as a result of climate change in the years ahead.

These rules are needed to address energy facility related wildfire risks to public health and safety, and the environment, by adopting new siting standards for wildfire prevention and risk mitigation. The rules also ensure that the siting, construction and operation of energy facilities is accomplished in a manner consistent with other State laws and rules related to wildfire risk, including Wildfire Mitigation Rules adopted by the Oregon Public Utility Commission under OAR chapter 860, division 024.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Staff Report and Supporting Materials for Agenda Item G of the May 26-27 Energy Facility Siting Council Meeting, available from: <https://www.oregon.gov/energy/facilities-safety/facilities/Pages/Council-Meetings.aspx>

Administrative Order PUC 10-2021 and PUC 2-2022 and Notice of Proposed Rulemaking for Wildfire Mitigation Rules Phase II Division 300 issued by Oregon Public Utility Commission on February 25, 2022. Available from the Oregon Administrative Rules Database: <https://secure.sos.state.or.us/oard/>

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE:

These rules establish new standards for wildfire prevention and risk mitigation at energy facility sites. Wildfire is an issue that affects the health and safety of all Oregonians, and as such it is not clear that this rulemaking would have a direct impact on racial equity in this state. With some exceptions, energy facilities subject to the Council's jurisdiction are typically located in rural areas east of the Cascade Mountain Range. While these areas generally have similar demographics as the statewide population, some Counties that have seen significant levels of energy development, such as Wasco, Jefferson, Umatilla and Klamath Counties also contain tribal lands and, according to 2021 data from the US Census Bureau Population Estimates Program, have higher percentages of people who identify as American Indian than the statewide population. Some counties which contain numerous energy facilities, including Morrow and Umatilla Counties, also have a higher percentage of people that identify as Hispanic or Latino than the statewide population. These rules could indirectly benefit those communities by reducing localized wildfire risk and associated health burdens from smoke exposure. The rules also seek to minimize adverse impacts to cultural and natural resources of importance to Indian tribes that may occur in the event of a wildfire at an energy facility site.

FISCAL AND ECONOMIC IMPACT:

Imposing new standards and requirements for wildfire prevention and risk mitigation could result in some increased costs of compliance for energy facility site certificate applicants and certificate holders; however, staff believes that overall, these additional costs would likely be at least partially offset by the benefits to the public of minimizing energy facility related wildfire risk. The extent of potential costs and benefits will vary based on the size and location of proposed facilities.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

These rules will apply to persons applying for an energy facility site certificate, which typically includes utilities, independent power producers, and energy developers. These persons could be subject to some increased costs, including administrative costs and the costs of professional services associated with conducting wildfire risk analyses and preparing and submitting compliance information and wildfire mitigation plans. No state agencies or units of local government are expected to be economically affected by the rules. In the event that a state agency or local government were required to assist in the review of a proposed project to determine compliance

with the new standards, that agency or government's costs would be recoverable from the applicant under ORS 469.421.

No small businesses are expected to be subject to these rules.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Because small business are not expected to be subject to the proposed rules, small business were not specifically consulted during the development of these rules.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? IF NOT, WHY NOT?

No. In lieu of consulting an Administrative Rule Advisory Committee, the Council conducted a public workshop on the proposed rules to solicit public views and input. The Council also separately invited the nine federally recognized tribes in Oregon to provide input and recommendations on policy issues under consideration as part of this rulemaking.

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RULES PROPOSED:

345-001-0010, 345-020-0011, 345-021-0010, 345-022-0115

AMEND: 345-001-0010

RULE TITLE: Definitions

RULE SUMMARY: Establishes a one-half mile study area for wildfire risks.

RULE TEXT:

In this chapter, the following definitions apply unless the context requires otherwise or a term is specifically defined within a division or a rule:

* * * * *

(59) "Study area" means an area defined in this rule. Except as specified in subsections (f) and (g), the study area is an area that includes all the area within the site boundary and the area within the following distances from the site boundary:

- (a) For impacts to threatened and endangered plant and animal species, 5 miles.
- (b) For impacts to scenic resources and to public services, 10 miles.
- (c) For land use impacts, wildfire risk, and impacts to fish and wildlife habitat, one-half mile.
- (d) For impacts to recreational opportunities, 5 miles.
- (e) For impacts to protected areas described in OAR 345-022-0040, 20 miles.
- (f) The distance stated in subsection (a) above does not apply to surface facilities related to an underground gas storage reservoir.
- (g) The distances stated in subsections (a) and (d) above do not apply to pipelines or transmission lines.

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STATUTORY/OTHER AUTHORITY: ORS 469.470, 469.503

STATUTES/OTHER IMPLEMENTED: ORS 469.300-469.570, 469.590-469.619, 469.992

AMEND: 345-020-0011

RULE TITLE: Contents of a Notice of Intent

RULE SUMMARY: Requires applicant to identify significant potential environmental impacts of construction and operation of proposed facility affecting wildfire risk in its Notice of Intent.

RULE TEXT:

(1) The applicant must, to the extent reasonably practicable, include in the notice of intent (NOI) the information described in the following subsections. If the applicant proposes alternative sites, the applicant must describe each alternative separately. The applicant must designate the information with the appropriate exhibit label identified in the following subsections:

* * * * *

(j) Exhibit J. Identification of significant potential environmental impacts of construction and operation of the proposed facility on the study areas, including those impacts affecting air quality, surface and ground water quality and availability, wildlife and wildlife habitat, threatened and endangered plant and animal species, historic, cultural and archaeological resources, scenic and aesthetic areas, recreation, ~~and land use,~~ and wildfire risk.

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STATUTORY/OTHER AUTHORITY: ORS 469.470

STATUTES/OTHER IMPLEMENTED: ORS 469.330

AMEND: 345-021-0010

RULE TITLE: Contents of an Application

RULE SUMMARY: Requires applicant to provide information supporting findings of compliance with new Wildfire Prevention and Risk Mitigation standard in its Application for Site Certificate.

RULE TEXT:

(1) The project order described in OAR 345-015-0160(1) identifies the provisions of this rule applicable to the application for the proposed facility, including any appropriate modifications to applicable provisions of this rule. The applicant must include in its application for a site certificate information that addresses each provision of this rule identified in the project order. The applicant must designate the information with the appropriate exhibit label identified in the following subsections. If the same information is required in each of several exhibits the applicant may provide the required information in one exhibit and include appropriate references in the others. For the purpose of submitting an application for a site certificate in an expedited review granted under OAR 345-015-0300 or 345-015-0310, the applicant must include information that addresses all provisions of this rule. In such expedited reviews, analysis areas addressed in this rule are the study areas defined in OAR 345-001-0010, subject to later modification in the project order.

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(v) Exhibit V. Information about wildfire risk within the analysis area, providing evidence to support findings by the Council as required by OAR 345-022-0115. If the analysis area for wildfire risk includes areas subject to heightened risk of wildfire, or of high-fire consequence areas as described in OAR 345-022-0115(1)(a), the applicant must provide a draft Wildfire Mitigation Plan that satisfies the requirements of OAR 345-022-0115(1)(c).

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STATUTORY/OTHER AUTHORITY: ORS 469.373, 469.470

STATUTES/OTHER IMPLEMENTED: ORS 469.350, 469.370, 469.501, 469.503, 469.504

ADOPT: 345-022-0115

RULE TITLE: Wildfire Prevention and Risk Mitigation

RULE SUMMARY: The rule establishes new standards requiring the council to find that all applicants have adequately characterized wildfire risk associated with a proposed facility; that the facility can be designed, operated, and constructed, in a manner that, taking into account mitigation, is not likely to result in a significant increase in wildfire risk; and, if the facility is located in or near a high fire risk or consequence area, that the facility will be operated in compliance with a Council-approved wildfire mitigation plan. The rule also provides that the Council may approve a facility without making these findings if the facility is subject to a wildfire protection plan approved by the Public Utility Commission or the governing body of a consumer-owned utility.

RULE TEXT:

(1) To issue a site certificate, the Council must find that:

(a) The applicant has adequately characterized wildfire risk within the analysis area using current data from reputable sources, by identifying:

(A) Baseline wildfire risk, based on factors that are expected to remain fixed for multiple years, including but not limited to topography, vegetation, existing infrastructure, and climate;

(B) Seasonal wildfire risk, based on factors that are expected to remain fixed for multiple months but may be dynamic throughout the year, including but not limited to, cumulative precipitation and fuel moisture content;

(C) Areas subject to a heightened risk of wildfire, based on the information provided under paragraphs (A) and (B) of this subsection;

(D) High-fire consequence areas, including but not limited to areas containing residences, critical infrastructure, recreation opportunities, timber and agricultural resources, and fire-sensitive wildlife habitat; and

(E) All data sources and methods used to model and identify risks and areas under paragraphs (A) through (D) of this subsection.

(b) That the facility can be designed, constructed, and operated in a manner that, taking into account mitigation, is not likely to result in a significant increase in wildfire risk, taking into account both the probability and consequences of a wildfire at the site.

(c) If the analysis area includes areas subject to heightened risk of wildfire, or high-fire consequence areas, as described under subsection (a) of this section, that the proposed facility will operate in compliance with a Wildfire Mitigation Plan approved by the Council. The Wildfire Mitigation Plan must, at a minimum:

(A) Identify areas within the site boundary that are subject to a heightened risk of wildfire, using current data from reputable sources, and discuss data and methods used in the analysis;

(B) Describe the procedures, standards, and time frames that the applicant will use to inspect facility components and manage vegetation in the areas identified under subsection (a) of this section;

(C) Identify preventative actions and programs that the applicant will carry out to minimize the risk of facility components causing wildfire, including procedures that will be used to adjust operations during periods of heightened wildfire risk;

(D) Identify procedures to minimize risks to public health and safety, the health and safety of responders, and damages to resources protected by Council standards in the event that a wildfire occurs at the facility site, regardless of ignition source; and

(E) Identify a schedule on which the applicant will update the plan and describe the methods the applicant will use to ensure that updates incorporate best practices and emerging technologies to minimize and mitigate wildfire risk.

(2) The Council may issue a site certificate without making the findings under section (1) if it finds that the facility is subject to a Wildfire Protection Plan that has been approved in compliance with OAR chapter 860, division 300.

STATUTORY/OTHER AUTHORITY: ORS 469.470, 469.501

STATUTES/OTHER IMPLEMENTED: 469.501