



Oregon

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To: Energy Facility Siting Council

From: Christopher M. Clark, Senior Siting Analyst and Rules Coordinator

Date: June 10, 2022

Subject: Agenda Item C (Hearing): Wildfire Prevention and Response Rulemaking
Hearing for the June 23-24, 2022, EFSC Meeting

Attachments: 1. Notice of Proposed Rulemaking

SUMMARY

At its meeting on May 27, 2022, the Council initiated formal proceedings for the adoption of a new energy facility siting standard for wildfire prevention and risk mitigation. Staff issued a Notice of Proposed Rulemaking containing the proposed rules under consideration by the Council on June 1, 2022. The notice is included as **Attachment 1** to this staff report.

The Notice of Proposed Rulemaking began a public comment period on the proposed rules. An opportunity for oral comments will be provided at a rulemaking hearing scheduled to be held on June 23, 2022, at 5:00 pm. All written comments must be received by 5:00 pm on July 21, 2022. The Council will not consider comments provided after the July 21 deadline unless the comment period is extended for everyone.

BACKGROUND

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.¹ As discussed in the Department's 2020 Biennial Energy Report, the

¹ Sickinger, Ted. "PacifiCorp could face substantial liability if downed power lines caused Oregon wildfires." The Oregonian. Published October 4, 2020 and updated October 7, 2020.

frequency and severity of wildfires in Oregon are expected to increase as a result of climate change in the years ahead.²

Following the Labor Day Fires, the Council directed staff to establish and prioritize a rulemaking project to evaluate whether the Council should adopt standards or requirements related to wildfire prevention, preparedness, or response as part of the siting review process. The objectives of the rulemaking are:

- To establish standards to minimize the risk of an energy facility caused wildfire
- To ensure that sufficient programs and procedures are in place to protect public health and safety in the event that a wildfire does occur at an energy facility site; and
- To maintain consistency with the Oregon Public Utility Commission's rules implementing SB 762 (2021) and to avoid the creation of conflicting or inconsistent requirements to the extent possible.

In October 2021, the Council initiated informal proceedings rulemaking project to develop new standards and implementing rules for the mitigation of wildfire risks associated with energy facilities. As part of the rulemaking, Council authorized staff to conduct a public workshop to assist in the development of proposed rules and associated fiscal and economic impact statements. The Department conducted the workshop on January 27, 2022. The Council also requested input from the nine federally recognized tribes in Oregon.

SUMMARY OF PROPOSED RULES

The proposed rules include the adoption of a new standard which would require the Council to find that all applicants have adequately characterized wildfire risk associated with a proposed facility and that the facility will be operated in compliance with a Council-approved wildfire mitigation plan. The rules also provide 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.

As proposed, the new standard would apply to the review of any application for site certificate or request for amendment of a site certificate that is filed on or after the effective date of permanent rules. The new standard would not apply to existing energy facilities unless the Council required its application upon a clear showing of a significant threat to the public health, safety or the environment.³

PUBLIC COMMENTS AND RULEMAKING HEARING

The Notice of Proposed Rulemaking establishes a public comment period on the proposed rules and schedules a rulemaking hearing to begin at 5:00 pm on June 23, 2022. The purpose of the hearing is to take public comment on the Council's proposed rule, including any questions, concerns, or support, the public may have about the proposed rule language. In particular, the Council invites public comment on whether other options should be considered for achieving

² See 2020 Biennial Energy Report Policy Brief on Wildfire Mitigation Planning, available from: <https://www.oregon.gov/energy/Data-and-Reports/Documents/2020-BER-Policy-Briefs.pdf#page=50>

³ See ORS 469.401(2).

the rule's substantive goals while reducing negative economic impact of the rule on business. The hearing will be conducted by the Council's Rules Coordinator. The Council will not respond to questions or comments during the hearing but may ask commenters clarifying questions.

In addition to the opportunity to provide oral comments at this hearing, the Council will accept written comments on the proposed rules until 5:00 pm on July 21, 2022. Information about how interested members of the public may submit written public comment is provided in the attached Notice of Proposed Rulemaking, and on the Council's rulemaking webpage: www.tinyurl.com/EFSCRulemaking.

Any comments received prior to this deadline, including any testimony provided by the Department, will be added to the "[Siting Docket](#)" and will be provided to the Council before it considers the adoption of permanent rules.