Oregon
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To: Oregon Energy Facility Siting Council (EFSC or "the Council")

From: Jason Sierman, Policy Analyst
Todd Cornett, ODOE Assistant Director / Council Secretary

Subject: Agenda Item I (Action Item) - Rulemaking: 2018 Rulemaking Schedule for the December 14-15, 2017 Council Meeting

Background

At its January 19, 2017 meeting, the Council approved its 2017 rulemaking schedule from a list of potential rulemaking projects presented by staff. Since then, several of those projects have been completed (*see* ***Attachment A*** for a list of completed projects). As part of its annual review of ongoing and potential rulemaking projects, staff recommends a rulemaking schedule as described in this staff report for 2018. Staff intends to review potential rulemaking projects annually to provide the Council with an updated annual schedule by January of each year.

Evaluation Process

Staff has developed a recommended list of rulemaking projects and identified them by their subject matter. For each rulemaking project, staff has also made a recommendation on whether that rulemaking would benefit from early public participation, or not. The list of rulemaking projects and early public participation recommendations originate from staff's experience with the Council's rules; staff's analysis of stakeholder input; Council input and direction to staff; and, when applicable, any statutory requirements from the legislature. Staff tracks all concepts for rulemaking projects on an ongoing basis. Staff then evaluates each rulemaking concept with regard to urgency, interest level, and complexity. The product of staff's evaluation is the recommended 2017 rulemaking schedule shown below.

Recommended 2018 Rulemaking Schedule

The following is a recommended schedule of rulemaking projects to be worked on in 2018, this list is also included as ***Attachment B***:

Subject Matter	Type	Early Public Participation	Target Timeframe
Administrative Updates *see ORS 183.335(7)*	Administrative	n/a	Ongoing
Periodic Housekeeping	Housekeeping	None	Ongoing
Public, Health, & Safety for Wind Facilities	Standards	RAC	Ongoing
Phase 2 – Updates to Carbon Dioxide Stds.	Standards	RAC	Q1 – Q2

General Compliance	Compliance, Standards, Process	RAC	Q1 – Q2
Solar PV – Single Energy Facility	Standards/Definitions	Public Workshop RAC	Q2 – Q3
Scenic Resources, Protected Areas, & Property Owner Notification	Standards	None	Q3 – Q4
Exemptions from Site Certificate	Process	RAC	Q4

Rulemaking Process Overview

The process for each of the rulemaking projects will vary depending on the level of complexity and the level of interest involved. For example, *early public participation* can be very valuable when a rulemaking involves a high level of interest from outside stakeholders or when the concept and proposed language of a rulemaking are unclear. Early public participation can come in many forms, and typically involves either a public workshop(s) or the appointment of a rulemaking advisory committee (RAC). While early public participation in the rulemaking process extends the amount of time required to complete a rulemaking, early public participation may also improve the quality of the proposed language and may reduce the quantity and magnitude of issues raised during the official public comment period. When staff estimates a rulemaking project has a high level of interest from outside stakeholders, or when staff is unclear on the concept and proposed language of a rulemaking project, staff often recommends early public participation to the Council.

On the other hand, staff will likely recommend not having a public workshop(s) or appointing a RAC for rulemaking projects that are low in complexity, have a low level of interest from outside stakeholders, and have clear concepts that require relatively straightforward language.

Rulemaking projects that are low in complexity and that do not include early public participation can generally be completed in 3 to 6 months, or less. Rulemaking projects that are higher in complexity and that include early public participation can generally be completed in 4 to 12 months, or more. These timeframes are only estimates, as the overall time required for any rulemaking project will vary depending on many variables; for example, the frequency of regularly scheduled Council meetings and the volume of site certificate applications and requests for amendments the staff is processing and bringing before the Council at any one point in time.

(Continued on next page)

EARLY PUBLIC PARTICIPATION	NO EARLY PUBLIC PARTICIPATION
***** = EFSC Meeting **bold** = optional	***** = EFSC Meeting **bold** = optional
Start Council Approves Pub. Part. Process***** **Public Workshop(s)** **Rulemaking Advisory Committee** Staff Drafts Proposed Language Council Authorizes Staff to Issue Notice***** Staff Issues Notice Public Comment Period Rulemaking Hearing***** **Hearing Officer Report** Council Adopts Final Rule Language***** Finish Staff Files Final Rule Language	Start Staff Drafts Proposed Language Council Authorizes Staff to Issue Notice***** Staff Issues Notice Public Comment Period Rulemaking Hearing***** **Hearing Officer Report** Council Adopts Final Rule Language***** Finish Staff Files Final Rule Language
Estimated time 4-12 months, or more	**Estimated time 3-6 months, or less**

For rulemaking projects where the Council has included a public workshop(s) as early public participation in the rulemaking process, staff will return before the Council with recommendations on the number of public workshop(s) and workshop logistics before drafting proposed language. Staff will ask the Council for its input on the number of any public workshop(s) and workshop logistics before any workshop is convened.

For rulemaking projects where Council has included the appointment of a RAC as early public participation in the rulemaking process, before staff drafts proposed language, staff will return to the Council with recommendations on: the purpose and scope of a RAC, the number of RAC meetings and meeting logistics, and a list of entities interested in participating on a RAC for that rulemaking. Council may then appoint RAC members from that recommended list of interested entities. Appointments may include all those on the recommended list or a subset of the list, and could also include entities not listed. Staff will also ask the Council for its input on the number of any RAC meetings and meeting logistics before any RAC meeting is convened.

For rulemaking projects where the Council has not included early public participation in the rulemaking process, staff may draft proposed language before returning to the Council for authorization to issue official public notice.

Attachment C provides summaries of each of the proposed rulemaking projects.

Opportunity for Public Comment

There is a specific public comment timeframe included as part of this agenda item. Staff feels there is value in allowing the public the opportunity to respond to staff recommendations or provide additional ideas for rulemaking projects to the Council.

Recommendation

Staff recommends that the Council approve the schedule of rulemaking projects to be worked on in 2018 as indicated above.

Staff also recommends that the Council grant its staff the flexibility to work on the identified and approved 2018 rulemaking projects in a sequence other than what is indicated, if a different sequence more effectively utilizes the time and resources of the Council's staff and the staff of other state agencies.

Finally, staff recommends that the Council's approval of any annual rulemaking schedule also authorizes its staff to do whatever preliminary work staff deems necessary to prepare any portion of a rulemaking project for presentation to the Council (i.e. preliminary work researching background information, preliminary work to prepare staff reports and presentations to the Council, preliminary work to identify potential RAC participants, etc.).

ATTACHMENT A
Oregon EFSC Meeting
December 14-15, 2017

2017 Rulemaking Schedule

(Approved by Council on 1/19/17, Updated 11/28/17))

Subject Matter	Type	Early Public Participation	Target Timeframe
Administrative Updates *see ORS 183.335(7)*	Administrative	n/a	Ongoing
Periodic Housekeeping	Housekeeping	None	Ongoing
Amendment Processes	Process	Public Workshop(s) RAC	Completed 10/24/17
Fish & Wildlife Habitat, Threatened & Endangered Species (aka Sage-grouse)	Standards	None	Completed 3/8/17
Structural & Geologic	Standards	None	Completed 10/18/17
Phase 1 – Updates to Carbon Dioxide Stds.	Standards	None	Completed 10/23/17
Public, Health, & Safety for Wind Facilities	Standards	RAC	~~Q2 2017~~ Ongoing
Phase 2 – Updates to Carbon Dioxide Stds.	Standards	RAC	~~Q3 2017~~ Q1-Q2 2018
General Compliance	Compliance, Standards, Process	RAC	~~Q4 2017~~ Q1-Q2 2018

ATTACHMENT B
Oregon EFSC Meeting
December 14-15, 2017

2018 Rulemaking Schedule

(as recommended by staff)

Subject Matter	Type	Early Public Participation	Target Timeframe
Administrative Updates *see ORS 183.335(7)*	Administrative	n/a	Ongoing
Periodic Housekeeping	Housekeeping	None	Ongoing
Public, Health, & Safety for Wind Facilities	Standards	RAC	Ongoing
Phase 2 – Updates to Carbon Dioxide Stds.	Standards	RAC	Q1 – Q2
General Compliance	Compliance, Standards, Process	RAC	Q1 – Q2
Solar PV - Single Energy Facility	Standards/Definitions	Public Workshop RAC	Q2 – Q3
Scenic Resources, Protected Areas, & Property Owner Notification	Standards	None	Q3 – Q4
Exemptions from Requiring Site Certificate	Standards	RAC	Q4

ATTACHMENT C-1
Oregon EFSC Meeting
December 14-15, 2017

ODOE Siting Division
2018 Rulemaking Schedule

Administrative Updates

Brief Description: Changes to rules will be made to make minor corrections without the need for prior notice or hearing as permitted under ORS 183.335(7). This type of rulemaking activity does not require Council authorization.

Target Timeframe: Ongoing

Type: Administrative Updates

Estimated Amount of Time Required: 1-4 weeks including staff review and development

Recommended Process: n/a

Summary: This rulemaking would be limited to the administrative updates that are permissible without prior notice or hearing under ORS 183.335(7), including:

1. Change "Office" to "Department" throughout OAR Chapter 345.
2. Change "Office of Energy" to "Department of Energy" throughout OAR Chapter 345.
3. Change "officer" and "project officer" to "siting analyst" throughout OAR Chapter 345.
4. Correct incorrect references:
   - Delete reference to OAR 345-015-0190(10) in OAR 345-015-0130(2).
   - Change the two instances of "ORS 469.300(**10**)(a)(C) to (E)" to "ORS 469.300(**11**)(a)(C) to (E)" in OAR 345-022-0030(6).
5. Additional administrative updates as identified.

ODOE Siting Division
2018 Rulemaking Schedule

Periodic Housekeeping

Brief Description: Staff has identified a list of issues that could be addressed through periodic "housekeeping" rulemakings. Staff estimates the issues on the housekeeping list to be relatively clear and straightforward changes to EFSC rules that are necessary to keep them current, clear and accurate. The concepts for these rulemakings are clear, the language changes that need to occur are clear, and stakeholder interest level is anticipated to be minimal. The list is maintained by staff and is continually updated with new issues that are similar in nature.

Because housekeeping rulemakings are clear and straightforward and because stakeholder interest in these rulemakings is estimated to be minimal, staff recommends that early public participation in these rulemakings is not necessary. Staff estimates it either already has, or could easily obtain, all the information necessary to draft proposed language for housekeeping rulemakings. As such, staff recommends that the Council authorize staff to draft proposed language for housekeeping rulemakings in advance of the Council meeting where staff asks the Council to approve the rulemaking process and authorize staff to file official notice of the rulemaking.

Because staff estimates early public participation is not necessary for housekeeping rulemakings, housekeeping rulemakings will require less of staff's time and energy relative to those rulemakings staff recommends the Council not include early public participation for these types of rulemaking projects. Because housekeeping rulemakings will require less of staff's time and energy, housekeeping rulemakings can be blended into the Council's rulemaking prioritization schedule based on staff resources at any given point in time. Staff recommends the Council authorize staff to use its discretion in deciding when to work on drafting proposed language for housekeeping rulemakings and when to ask the Council to approve the rulemaking process and authorize staff to file official notice of the rulemaking.

Target Timeframe: Ongoing

Type: Housekeeping

Estimated Amount of Time Required: 3-6 months including staff review and development

Recommended Process: No early public participation

Summary: Staff will propose different housekeeping rulemakings every year. Proposed rulemakings are identified through the staff's ongoing review of Chapter 345 rules.

For example:

1. Update effective dates of publications, rules, codes, standards and laws referenced in EFSC rules.
2. Add Department of Aviation to list of reviewing agencies in OAR 345-001-0010(52). DoA is a reviewing agency under statute, but currently not identified as such under rule.
3. Delete clause "if the application is available online" from OAR 345-015-0220(3)(d).
4. Update notice requirements to reflect current technologies in OAR 345-001-0000; -0015.
5. Other non-substantive but necessary changes that may be identified by staff.

ATTACHMENT C-3
Oregon EFSC Meeting
December 14-15, 2017

ODOE Siting Division
2018 Rulemaking Schedule

Wind Specific
Public Health & Safety

Brief Description: This rulemaking would address OAR 345-024-0010 Public Health and Safety Standards for Wind Energy Facilities. This rule requires the Council to find an applicant for a site certificate "can design, construct and operate the facility to exclude members of the public from close proximity to the turbine blades and electrical equipment."

At its September 21-22, 2017 Council meeting, the Council set the scope for a rulemaking project to address OAR 345-024-0010. The Council appointed a Rulemaking Advisory Committee (RAC) for this rulemaking project and directed EFSC staff to convene at least one RAC meeting to discuss and gather input on how the rule is written, how the rule is interpreted and applied by the Council, and how the rule should be changed, if at all. The RAC met on November 2, 2017 in Boardman, OR. In summary, the majority of RAC participants said the rule did not need to be changed at all, and that if any changes were made, the changes should only be fairly minor so as to provide more clarity and better notice as to how the Council interprets and applies the rule.

Target Timeframe: Ongoing

Types: Standards, Process, Compliance

Estimated Amount of Time Required: 4-6 months including staff review and development

Recommended Process: Early Public Participation, RAC

Summary: Staff recommends the Council consider amending OAR 345-024-0010 Public Health and Safety Standards for Wind Energy Facilities. During its consideration, the Council could ask itself if and how it might apply this rule to the question of whether civilian aircraft traffic in close proximity to turbine blades and electrical equipment pose a risk to public health and safety.

ODOE Siting Division
2018 Rulemaking Schedule

Phase 2: Carbon Dioxide Standards

Brief Description: Under OAR 345-024-0570, the Department will evaluate the carbon dioxide emissions standard for non-generating, base-load, and non-base load gas plants to determine if it represents a 17 percent reduction below the most efficient combined cycle, combustion turbine, gas-fired energy facility operating in the United States.

Target Timeframe: Q1 2018

Type: Standards

Estimated Time Required: 4-6 months including staff review and stakeholder outreach

Recommended Process: Early Public Participation, RAC

Summary: Recommended changes to the following rules may be a part of this rulemaking:

1. 345-024-0550 Standard for Base Load Gas Plants
2. 345-024-0590 Standard for Non-Base Load Power Plants
3. 345-024-0620 Standard for Nongenerating Energy Facilities

ODOE Siting Division
2018 Rulemaking Schedule

General Compliance

Brief Description: This rulemaking will establish improved compliance tools to better support ongoing compliance activities.

Target Timeframe: Q1-Q2 2018

Type: Compliance, Standards & Process

Estimated Amount of Time Required: 4-6 months including staff review and development

Recommended Process: Early Public Participation, RAC

Summary: Compliance rulemaking would establish compliance tools to better support compliance activities. Evaluation and amendments to the following rules may occur:

1. 345-025-0006 Mandatory Conditions in Site Certificates
   - Update rules to require GIS shape files or maps of the final facility design.

2. 345-026-0080 Reporting Requirements for Energy Facilities
   - Update rules to require contact information to address compliance information.

3. 345-026-0015 Scope and Construction
   - Evaluate this rule for clarity. Does the title clearly describe the content? Under (2), is it clearer to say "…the latter condition if controlling." Is (3) too vague and far reaching without naming specific federal laws?

4. 345-030-0010 Reports Required (Div. 30 – Research Reactors)
   - Update rules to provide better direction regarding the notification process (notification to whom and how) when there is an incident or condition relating to the operation of a reactor that would prevent the system from performing its safety functions.

5. Other rules related to compliance
   - Address other relevant compliance issues that are identified during the staff review process.

ATTACHMENT C-6
Oregon EFSC Meeting
December 14-15, 2017

ODOE Siting Division
2018 Rulemaking Schedule

Single Energy Facility – Solar PV Facilities

Brief Description: This rulemaking would address the issue of how EFSC determines what constitutes a single solar PV energy facility. Currently, there is no guidance or rule related to how or when EFSC could have jurisdiction over multiple local jurisdictional solar PV energy facilities that function as one facility based on factors such as proximity, ownership and shared related and supporting facilities.

The Land Conservation and Development Commission (LCDC) will initiate a rulemaking advisory committee (RAC) in the 2nd quarter of 2018 with the purpose of evaluating their solar rules in OAR 660-033-0130(38). EFSC's rulemaking will be informed by the discussions that occur during LCDC's rulemaking project.

Target Timeframe: Q2-Q3 2018

Types: Standards, Process, Compliance

Estimated Amount of Time Required: 4-6 months including staff review and development

Recommended Process: Early Public Participation, Public Workshop(s) and RAC

Summary: Staff recommends that the Council consider adopting a new rule or amending an existing rule in order to address the issue of how the Council determines what constitutes a single solar PV energy facility.

ODOE Siting Division
2018 Rulemaking Schedule

Scenic Resources, Protected Areas, & Property Owner Notification

Brief Description: This rulemaking would address issues related to the Council's Scenic Resources standard, Protected Areas standard, and property owner notification requirements.

Target Timeframe: Q3-Q4 2018

Types: Standards, Process, Compliance

Estimated Amount of Time Required: 4-6 months including staff review and development

Recommended Process: None

Summary: Staff recommends that the Council consider amending its existing rules as described below:

1. 345-022-0080: The Scenic Resources standard includes "local land use plans, tribal land management plans and federal land management plans." Add "state land use or management plans" to the standard.
2. 345-022-0040: Eliminate the date reference that is a part of this standard and review and consider whether all applicable protected areas are specifically listed or whether they need to be specifically listed, particularly any areas designated by the federal government.
3. 345-020-0011(1)(f) and 345-021-0010(1)(f): Amend these two rules to conform with ORS 197.763(2). Replace "the site boundary" with "property upon which the energy facility site and related or supporting facilities site is proposed"

ODOE Siting Division
2018 Rulemaking Schedule

Exemptions from Site Certificate

Brief Description: This rulemaking will evaluate potential updates to how the exemption from site certificate process functions. The level of discretion Council has in setting conditions in exemptions is unclear. Additionally, facilities awarded an exemption can remain under Council jurisdiction indefinitely, with no funding to ensure continued compliance with exemption criteria. Also, there is no provision for the termination of an exemption under 345-015-0350.

Target Timeframe: Q4 2018

Type: Process

Estimated Amount of Time Required: 4-6 months including staff review and development

Recommended Process: Early Public Participation, RAC

Summary: Staff recommends that Council consider a rulemaking process to evaluate the following:

1. Can the Council add conditions to an exemption?
2. What is the lifespan of an exemption? Should exemptions expire? Should ongoing funding be required to keep exemptions from expiring? Can an exemption be conditioned with construction deadlines that allow for the exemption to expire if deadlines are missed?
3. Under what criteria can exemptions be terminated? Would termination require Council action?
4. Are the listed exemptions still appropriate? Should any be eliminated, should any be added?
5. Should the Combined Heat and Power program under ODOE's Energy Planning and Innovation Division be connected to the Council's exemption program?
6. Should the Title of this section, "Exemptions from Council Jurisdiction" be renamed?