



Oregon

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To: Energy Facility Siting Council

From: Sarah Esterson, Senior Policy Advisor

Date: July 9, 2021

Subject: Agenda Item I (Information Item): Sarah Esterson, Senior Policy Advisor. Overview of the Energy Facility Siting Process Organizational Expertise standard for the July 23, 2021 EFSC Meeting.

BACKGROUND

The Council was created to oversee a comprehensive system for the siting, monitoring and regulating of the location, construction and operation of all energy facilities in Oregon. ORS 460.300. To carry out this purpose, the legislature has entrusted the Council with the authority to decide whether to issue a site certificate for any energy facility proposed to be constructed or operated in Oregon. ORS 469.470(1). The council's decision to issue a site certificate is binding upon state agencies and local governments and requires those agencies and governments to issue any permits specified in the site certificate without further proceedings. ORS 469.401(3).

In order to issue a site certificate, the Council must, in part, determine that the preponderance of the evidence on the record of proceedings on an application supports the conclusion that the facility, “complies with the applicable standards adopted by the council pursuant to ORS 469.501 or the overall public benefits of the facility outweigh any adverse effects on a resource or interest protected by the applicable standards the facility does not meet.” ORS 469.503(1). With some exceptions, the Council must make similar finding of compliance for other state laws and administrative rules, and with the statewide land use planning goals adopted by the Land Conservation and Development Commission. See ORS 469.503(3) and (4).

The legislature has provided the Council with broad authority to determine both the scope and format of its standards, but has provided a number of subjects which the standards may address, including the “organizational, managerial and technical expertise of the applicant to construct and operate the proposed facility.” ORS 469.501(1)(a). The Council has adopted a standard to address this subject under OAR 345-022-0010, the “Organizational Expertise Standard.” The standard requires the applicant to demonstrate, in the record, “the ability to design, construct and operate the proposed facility in compliance with site certificate conditions and in a manner that protects public health and safety” and “the ability to restore the site to a useful, non- hazardous condition.” OAR 345-022-0010(1).

INFORMATION REQUIREMENTS

As described above, the Council's determination of compliance with a standard is based on "the preponderance of the evidence" on the record of the proceedings on the Application for Site Certificate. The record includes, but is not limited to, the Notice of Intent and Application for Site Certificate prepared by the Applicant, any public comments or testimony provided during public comment periods or hearings, and the Draft Proposed Order and Proposed Order prepared by the Department.

In the Notice of Intent, the Applicant must provide sufficient information about the proposed site and the characteristics of the facility for the Department to prepare its project order, which establishes the statutes, administrative rules, council standards, local ordinances, application requirements and study requirements for the site certificate application. Relevant to the Organizational Expertise Standard, Exhibit A of the Notice of Intent must include basic information about the applicant and other participating persons, including:

- Contact information for the applicant and identification of any co-owners of the proposed facility. OAR 345-020-0011(1)(a)(A)
- Identification of and contact information for any other persons, including the applicant's parent company, that the applicant will rely upon for permitting or compliance with standards. OAR 345-020-0011(1)(a)(B)
- Information about the legal status and business structure of the applicant and proof of its registration to do business in Oregon. OAR 345-020-0011(1)(a)(C)-(H)

Exhibit A of the Application for Site Certificate must also contain this information. In Exhibit D of the application, the applicant must provide additional information about the organizational expertise of the applicant to construct and operate the proposed facility, including:

- The applicant's previous experience, if any, in constructing and operating similar facilities, or a demonstration that it can secure the necessary expertise. OAR 345-021-0010(1)(d)(A) and (E).
- The qualifications of personnel who will be responsible for constructing and operating the facility, if known. OAR 345-021-0010(1)(d)(B).
- The qualifications of any architect, engineer, major component vendor, or prime contractor the applicant will rely on for constructing and operating the facility, if known. OAR 345-021-0010(1)(d)(C).
- The applicant's regulatory and compliance history. OAR 345-021-0010(1)(d)(D).
- A description of any certified quality assurance or environmental management program that will apply to the proposed facility. OAR 345-021-0010(1)(d)(F).
- Evidence that the applicant can successfully complete any proposed mitigation activities needed to demonstrate compliance with standards. OAR 345-021-0010(1)(d)(G).

The applicant must identify and describe any permits and also provide information about any federal, state and local government permits related to the siting of the proposed facility, and evidence that the applicant is likely to either be able to obtain the permit itself or to secure a contract with a third-party that has, or will obtain, the permit.

SUBSTANTITIVE REQUIREMENTS

The Organizational Expertise Standard requires the Council to find “that the applicant has the organizational expertise to construct, operate and retire the proposed facility in compliance with Council standards and conditions of the site certificate.” The standard further elaborates:

“To conclude that the applicant has this expertise, the Council must find that the applicant has demonstrated the ability to design, construct and operate the proposed facility in compliance with site certificate conditions and in a manner that protects public health and safety and has demonstrated the ability to restore the site to a useful, non-hazardous condition. The Council may consider the applicant’s experience, the applicant’s access to technical expertise and the applicant’s past performance in constructing, operating and retiring other facilities, including, but not limited to, the number and severity of regulatory citations issued to the applicant.” OAR 345-022-0010(1).

The standard also provides some additional guidance on how the Council should treat some specific circumstances.

Section (2) of the standard provides a rebuttable presumption that an applicant that proposes to design, construct and operate a facility according to an ISO 9000 or ISO 14000 certified program has sufficient organizational, managerial and technical expertise to meet the standard. The framework for these quality management (ISO 9000) and environmental management (ISO 14000) were developed by the International Standards Organization, and programs must be certified by an accredited third-party certification body to be considered under the rule.

Sections (3) and (4) of the rule provide guidance on what information is needed to demonstrate compliance with the standard when the applicant relies on a permit or approval issued to a third party:

(3) If the applicant does not itself obtain a state or local government permit or approval for which the Council would ordinarily determine compliance but instead relies on a permit or approval issued to a third party, the Council, to issue a site certificate, must find that the third party has, or has a reasonable likelihood of obtaining, the necessary permit or approval, and that the applicant has, or has a reasonable likelihood of entering into, a contractual or other arrangement with the third party for access to the resource or service secured by that permit or approval.

(4) If the applicant relies on a permit or approval issued to a third party and the third party does not have the necessary permit or approval at the time the Council issues the site certificate, the Council may issue the site certificate subject to the condition that the certificate holder shall not commence construction or operation as appropriate until the third party has obtained the necessary permit or approval and the applicant has a contract or other arrangement for access to the resource or service secured by that permit or approval.

APPLICATION OF THE STANDARD

The standard does not establish specific criteria or minimum qualifications necessary for compliance, instead it generally requires the Council to consider the overall experience, qualifications, and history of applicant and any other person it will rely upon to design, construct, and operate the facility, obtain all necessary permits and approvals, and maintain compliance with the conditions of the site certificate. While this does provide some flexibility in the application of the standard, it is important to note that the Council may not apply the balancing determination to approve a facility that does not comply with the Organizational Expertise Standards.

The type and amount of experience that an applicant relies upon to demonstrate compliance with the standard may vary according to the type of business that is proposing to construct and operate a proposed facility. Two examples of findings and conclusions from recent Orders, one from an Investor Owned Utility and one from an Independent Power Producer are provided below:

Investor Owned Utility Example

- Carty Generating Station Amendment #1 to add a 50 MW solar PV component to an approved natural gas fired power plant
- Owner is Portland General Electric
- Approved by Council in December 2018 but not yet constructed
- Below are excerpts from the Organizational Standard findings in the Amendment #1

Compliance with Council Standards and Site Certificate Conditions

To evaluate whether construction and operation of the proposed Carty Solar Farm and its supporting facilities would impact the certificate holder's ability to comply with Council standards and site certificate conditions, the Council evaluates the certificate holder's relevant experience constructing and operating solar facilities and whether any regulatory citations have been received for its facilities.

PGE has demonstrated, through construction of previous energy facilities, that it is capable of designing and constructing a solar facility that complies with EFSC site certificate conditions and has previously demonstrated an ability to restore a facility to a useful, non-hazardous condition. Portland General Electric Company is a vertically integrated utility, which has operated for 129 years and serves 863,000 customers in 51 cities. PGE currently operates six natural gas facilities, one coal facility, seven hydro-electric facilities, two wind facilities, and five solar facilities. The nameplate capacity of its combined solar facilities is approximately 9 MW and these facilities are composed of both crystalline and thin film technologies.

In RFA Exhibit D, the certificate holder lists violations and citations for various PGE facilities that have occurred between 2010 through 2015 and were related to water pollution and air contaminants. None of the listed violations or citations were issued by the Council or issued to the Carty Generating Station. PGE indicated that all citations and violations had been corrected. PGE described that most of the citations or violations were identified by the facility, and were immediately resolved. For these reasons, the Council considers PGE's ability to identify and

respond to compliance issues to be representative of their reasonable ability to construct and operate the proposed Carty Solar Farm in compliance with existing and recommended new or amended site certificate conditions.

Ability to Restore the Site to a Useful, Non-Hazardous Condition

The certificate holder's ability to restore the facility site to a useful, non-hazardous condition is evaluated in Section III.G, Retirement and Financial Assurance of this order, in which the Council finds that the certificate holder would continue to be able to comply with the Retirement and Financial Assurance standard. In addition, the certificate holder's ability to construct and operate the proposed Carty Solar Farm in a manner that protects public health and safety is addressed in Section III.C., Structural Standard; Section III.M, Public Services; and Section III.P.1, Siting Standards for Transmission Lines, of this order.

ISO 900 or ISO 14000 Certified Program

OAR 345-022-0010(2) is not applicable because the certificate holder has not proposed to design, construct or operate the facility, with proposed changes, according to an ISO 9000 or ISO 14000 20 certified program.

Third-Party Permits

OAR 345-022-0010(3) addresses the requirements for potential third party permits, and for third party permits Council would ordinarily determine compliance, Council must find that the certificate holder has a reasonable likelihood of entering into a contract or other agreement with the third-party for access to the resource secured by that permit, and that the third party has a reasonable likelihood of obtaining the necessary permit.

In the amendment request, the certificate holder describes that water needed during construction of the proposed Carty Solar Farm and its supporting facilities would be obtained from Carty Reservoir, of which PGE maintains a water right, through a third-party limited water use license from Oregon Department of Water Quality, a permit for which the Council would ordinarily determine compliance. Because the certificate holder has not selected its third-party contractor, the necessary permit or approval has not yet been obtained. Therefore, Council adopts the following condition, which prohibits the certificate holder from commencing construction until the third party permit is issued:

Condition 2.14: The certificate holder must:

- a. Prior to construction of the Carty Solar Farm, provide evidence to the Department that a limited water use license from Oregon Department of Water Quality has been obtained by its third-party contractor.
- b. During construction of the Carty Solar Farm, provide to the Department in semi-annual reports, pursuant to OAR 345-026-0080, documentation of the record of all water use, as required by the third-party's limited water use license, demonstrating that the allowable total and per minute water use (total gallons and gallons per minute) have not been exceeded. [AMD1]

Conclusions of Law

Based on the evidence presented in the RFA, the Council finds that with existing and new site certificate conditions, the certificate holder has the ability to design, construct, and operate the facility, with proposed changes, in compliance with all Council standards and conditions, as required by the Organizational Expertise standard.

Consumer Owned Utility Example

- Madras Solar Energy Facility, a 63 MW solar PV and 63 MW battery storage project
- Owner is Madras PV1, LLC, a wholly owned subsidiary of Ecoplexus Inc.
- Approved by Council in June 2021 but not yet constructed
- Below are excerpts from the Organizational Standard findings in the Final Order

Construction, Operation and Retirement of the Facility

Madras PV1, LLC is a project-specific limited liability company (LLC) and therefore relies upon the organizational expertise and experience of its parent company, Ecoplexus, to demonstrate compliance with the Council's Organizational Expertise standard. ASC Exhibit D states that Ecoplexus's central development focus is on utility-scale solar PV facilities in the 20- to 100-megawatt (MW) range, along with large-scale government and commercial solar installations. As provided in ASC Exhibit D Table D-1, the applicant identifies over 30 operational solar projects ranging in size up to 26 MW, completed by Ecoplexus. Furthermore, the applicant indicates that by the end of 2019, Ecoplexus would have developed and constructed over 300 MWs of direct current (DC), renewable generation facilities in the United States (U.S.) alone and is currently developing over 3.5 gigawatts of utility-scale assets across the U.S., Mexico, and Asia. The applicant explains that it has experience in battery storage system operations, but does not have direct experience in battery storage construction.

To demonstrate an ability to design, construct and operate the facility in compliance with site certificate conditions and applicable requirements, the applicant refers to the compliance history of both the applicant and Ecoplexus. The applicant asserts that it has received only one Notice of Violation in 2014, issued by the North Carolina Department of Environmental Quality (NCDEQ). The notice of violation was for a facility in Cumberland County for failure of certain erosion control measures in large part due to severe rains that plagued the area during November and December 2014. In response to the failed erosion control measures and subsequent notice of violation, Ecoplexus claims to have expeditiously pursued the completion of measures to restore the sites' compliance. The applicant claims that no additional enforcement actions were taken by NCDEQ once the site was restored back into compliance.

The Department recommends Council find that the applicant's above-summarized project and compliance history demonstrate an ability to design, construct and operate the facility in compliance with site certificate conditions and applicable requirements. However, because the organizational expertise of Ecoplexus is relied upon to satisfy the requirements of the standard, the Department recommends Council impose the following condition to ensure that the applicant notifies the Department of any material change in the control, financial condition, governance, or management of the applicant's parent company (Ecoplexus):

Organizational Expertise Condition 1:

The certificate holder shall report to the Department, within 7 days, any material change in the control, financial condition, governance, or management of the certificate holder's parent company, including any change that may affect the certificate holder's access to resources, expertise, or personnel relied upon for the construction, operation and retirement of the facility. The certificate holder shall provide sufficient information for the Department to evaluate whether the material changes could result in a significant adverse impact that the Council has not addressed in an earlier order and the impact affects a resource or interest protected by an applicable law or Council standard (specifically Organizational Expertise and Retirement and Financial Assurance Standards).

[GEN-OE-01]

The applicant has not selected an architect, engineer, prime contractor, or a major component vendor for the facility, but states in ASC Exhibit D that it would rely upon its parent company's previous industry experience and extensive relationships with a variety of top-tier civil and electrical engineers, solar module and racking manufacturers, and engineering/procurement/construction firms to select qualified partners with experience in the solar industry. Because the ultimate responsibility for compliance with the site certificate would lie with the applicant, but it is recognized that the applicant would hire various contractors to design and build components of the facility, the Department recommends that Council adopt the following conditions that clarify and confirm that the responsibility of compliance with the site certificate would be with the applicant.

Organizational Expertise Condition 2:

Before beginning construction of the facility or a facility component, as applicable, the certificate holder shall provide to the Department the identity and qualifications of the major design, engineering and construction contractor(s). The certificate holder shall select contractors that have substantial experience in the design, engineering and construction of similar facilities and a demonstrated low rate of job incidence and injury rates. The certificate holder shall report to the Department any changes of major contractors.

[PRE-OE-01]

Organizational Expertise Condition 3:

Before beginning construction of the facility or a facility component, as applicable, the certificate holder shall provide to the Department documentation that work contracts include provisions requiring that all construction contractors and subcontractors comply with all applicable laws and regulations and with the terms and conditions of the site certificate. Such contractual provisions shall not operate to relieve the certificate holder of responsibility under the site certificate.

[GEN-OE-02]

Organizational Expertise Condition 4:

The certificate holder shall notify the Department within 72 hours of any occurrence involving the facility if:

- a. There is an attempt by anyone to interfere with its safe operation.

- b. There is a significant natural event such as a fire, earthquake, flood, tsunami or tornado, or human-caused event such as a fire or explosion.
- c. There is any fatal injury at the facility.

[GEN-OE-03; OAR 345-026-0170]

Organizational Expertise Condition 5:

The certificate holder shall, as soon as reasonably possible:

- a. Report incidents or circumstances that may violate the terms or conditions of the site certificate, terms or conditions of any order of the Council, or the terms or conditions of any order issued under OAR 345-027-0230, to the Department . In the report to the Department, the certificate holder shall provide all pertinent facts including an estimate of how long the conditions or circumstances existed, how long they are expected to continue before they can be corrected, and whether the conditions or circumstances were discovered as a result of a regularly scheduled compliance audit;
- b. Initiate and complete appropriate action to correct the conditions or circumstances and to minimize the possibility of recurrence;
- c. Submit a written report within 30 days of discovery to the Department. The report must contain:
 - i. A discussion of the cause of the reported conditions or circumstances;
 - ii. The date of discovery of the conditions or circumstances by the responsible party;
 - iii. A description of immediate actions taken to correct the reported conditions or circumstances;
 - iv. A description of actions taken or planned to minimize the possibility of recurrence; and
 - v. For conditions or circumstances that may violate the terms or conditions of a site certificate, an assessment of the impact on the resources considered under the standards of OAR Chapter 345 Divisions 22 and 24 as a result of the reported conditions or circumstances.

[GEN-OE-04; OAR 345-029-0010]

Organizational Expertise Condition 6:

The certificate holder shall:

- a. Before beginning construction of the facility or a facility component, notify the Department of the identity, telephone number, e-mail address and qualifications of the full-time, on-site construction manager. Qualifications shall demonstrate that the construction manager has experience in managing permit and regulatory compliance requirements and is qualified to manage a utility-scale solar facility construction project.
- b. Before beginning operation, notify the Department of the identity, telephone number, e-mail address and qualifications of the facility/asset manager. Qualifications shall demonstrate that the operations manager has experience in managing permit and regulatory compliance requirements and is qualified to manage operation of a utility-scale solar facility.
- c. Before beginning facility retirement, notify the Department of the identity, telephone number, e-mail address and qualifications of the personnel or entity responsible for facility decommissioning and restoration activities. Qualifications shall demonstrate that the identified personnel have experience in managing permit and regulatory compliance

requirements and are qualified to decommission a utility-scale solar facility.

- d. The certificate holder shall notify the Department within 72-hours upon any change in personnel or contact information provided to satisfy Condition 6(a) through (c).

[GEN-OE-05]

Relevant Experience in Habitat Mitigation

Under the standard, the Council evaluates the applicant's experience with mitigation projects and the qualifications and experience of personnel upon whom the applicant would rely on for implementation, to the extent that the identities of such persons are known at the time, to determine whether the applicant can successfully complete mitigation necessary to satisfy site certificate requirements. As explained in ASC Exhibit D, the applicant and its parent company have limited, if any, experience in implementing large-scale, long-term mitigation for any of its previous or existing projects, given the facility location. The applicant describes that in-house staff and consultants have relevant previous experience in large-scale, long-term mitigation such as habitat mitigation for a 102-MW solar project in central California; revegetation for more than 1 gigawatts of solar throughout the U.S; and weed control on various projects throughout southern California. The applicant asserts that it would utilize best-in-class consultants to ensure mitigation, including habitat mitigation, revegetation and weed control are implemented in accordance with applicable requirements.

As presented in Section IV.H Fish and Wildlife Habitat of this order, the Department recommends Council require that the applicant select qualified specialists with substantial experience in creating, enhancing, maintaining and protecting habitat mitigation areas in Oregon, to satisfy the requirements of the standard (see recommended Fish and Wildlife Habitat Condition 3). Based on compliance with this condition, the Department recommends Council find that while the specific experience of the applicant and Ecoplexus in large-scale, long-term mitigation is limited, that its use of a consultant to prepare the ASC and its representations to utilize best-in-class consultants to support mitigation implementation and compliance reasonably represent an ability to comply with long-term mitigation-related site certificate conditions.

Public Health and Safety

Facility components including solar array, substation transformers, transmission line, and battery storage system could result in health and safety impacts from unanticipated fire- and electrical hazards.

To minimize fire-risk and access to electrical components, facility components would be designed to meet the National Electrical Code and Institute of Electrical and Electronics Engineers standards. The proposed battery storage system would be designed in accordance with the requirements of NFPA 855: Standard for the Installation of Stationary Energy Storage Systems, which is addressed in Section IV.A, General Standard of Review, under recommended General Standard Condition 8. As discussed in Section IV.M Public Services, under Fire Protection, the applicant proposes measures that would minimize potential fire risk during facility construction and operation, and potential impacts to the Jefferson County Fire District #1 (JCFD1). Recommended Public Services Condition 3 would require that, prior to construction, the applicant submit an application for annexation of the proposed site boundary

to JCFD1; recommended Public Services Condition 4 would require that, prior to construction, the applicant develop with JCFD1, and submit for Department review and approval, an Emergency Contingency Plan. The Emergency Contingency Plan would include emergency response procedures, personnel and contractor training requirements, fire protection equipment information and would apply during construction and operation of the facility.

In ASC Exhibit G, the applicant states that the proposed battery storage system would be constructed and operated to comply with the requirements of the Department of Transportation Pipeline and Hazardous Material Administration's 49 Code of Federal Regulations (CFR) 173.185. These regulations provide requirements for the prevention of dangerous evolution of heat; prevention of short circuits; prevention of damage to terminals; and, prevention of contact with other batteries or conductive materials. To minimize potential health and safety impacts during onsite handling and transport of battery and battery waste during proposed battery storage system construction and operation, the Department recommends Council impose the following condition:

Organizational Expertise Condition 7:

The certificate holder shall contractually require its third-party contractor used to transport and dispose battery and battery waste to comply with all applicable federal regulations and manufacturer recommendations related to the transport and handling of battery related waste.

[GEN-OE-06]

In addition, as presented in Section IV.C Structural Standard of this order, the Department recommends Council find that the applicant has adequately characterized the seismic and non-seismic hazards within the facility site and demonstrates an ability to design, construct and operate the facility in a manner that would avoid dangers to human safety and the environment.

Based upon the evidence provided in the ASC and reasoning and analysis provided above and in this order, and compliance with recommended conditions, the Department recommends Council find that the applicant provides reasonable assurance that it can design, construct, operate, and retire the facility in a manner that would protect public health and safety in accordance with the Organizational Expertise standard.

Ability to Restore the Site to a Useful, Non-Hazardous Condition

The applicant's ability to restore the facility site to a useful, non-hazardous condition is evaluated in Section III.G Retirement and Financial Assurance of this order, in which the Department recommends that Council find that the applicant has demonstrated an ability to comply with the Retirement and Financial Assurance standard.

ISO 900 or ISO 14000 Certified Program

OAR 345-022-0010(2) is not applicable because the applicant has not proposed to design, construct or operate the facility according to an International Organization for Standardization (ISO) 9000 or ISO 14000 certified program.

Third-Party Permits

OAR 345-022-0010(3) addresses requirements for potential third-party permits. The standard requires that prior to issuing a site certificate, the Council must find that the applicant has, or has a reasonable likelihood of entering into, a contractual or other arrangement with any third parties it is relying on for access to resources or services secured by a permit or approval.

The applicant states in ASC Exhibit E that it may rely on its construction contractors to obtain the following third-party permits: Oversize Load Movement Permit/Load Registration, General Water Pollution Control Facilities (WPCF) Permit, WPCF-1000/Gravel Mining and Batch Plant, Jefferson County Right-of-Way Permit and Building and Utility Permits. In accordance with the standard, to ensure that the applicant secures third-party permits prior to construction, the Department recommends Council impose the following condition:

Organizational Expertise Condition 8:

- a. The certificate holder shall provide to the Department a list of federal, state and local permits, including any third-party permits related to facility siting; and a schedule for obtaining identified permits.
- b. Once obtained, certificate holder shall provide copies of all permits, including third-party permits, required for facility siting to the Department.

[GEN-OE-07]

Conclusions of Law

Based on the evidence in the record, and subject to compliance with the recommended conditions of approval, the Department recommends that the Council find that the applicant would satisfy the Council's Organizational Expertise standard.

QUESTIONS FOR COUNCIL TO CONSIDER

- Are you satisfied with the Organizational Standard as currently adopted in rule?
- Are you satisfied with the findings and conditions being used for both investor owned utilities and independent power producers?

AUTHORITIES

Statutory Authority

469.501 Energy facility siting, construction, operation and retirement standards; exemptions; rules.

(1) *The Energy Facility Siting Council shall adopt standards for the siting, construction, operation and retirement of facilities. The standards may address but need not be limited to the following subjects.*

(a) *The organizational, managerial and technical expertise of the applicant to construct and operate the proposed facility.*

(d) *The financial ability and qualifications of the applicant.*

Administrative Rules

345-020-0011 - Contents of a Notice of Intent

(1) *The applicant must, to the extent reasonably practicable, include in the notice of intent (NOI) the information described in the following subsections. ***:*

(a) **Exhibit A.** *Information about the applicant and participating persons, including:*

(A) *The name and address of the applicant including all co-owners of the proposed facility, the name, mailing address, email address and telephone number of the contact person for the NOI, and if there is a contact person other than the applicant, the name, title, mailing address, email address and telephone number of that person;*

(B) *The contact name, mailing address, email address and telephone number of all participating persons, other than individuals, including but not limited to any parent corporation of the applicant, persons upon whom the applicant will rely for third-party permits or approvals related to the facility, and persons upon whom the applicant will rely in meeting any facility standard adopted by the Council;*

(C) *If the applicant is a corporation:*

(i) *The full name, official designation, mailing address, email address and telephone number of the officer responsible for submitting the NOI;*

(ii) *The date and place of its incorporation;*

(iii) *A copy of its articles of incorporation and its authorization for submitting the NOI; and*

(iv) *In the case of a corporation not incorporated in Oregon, the name and address of the resident attorney-in-fact in this state and proof of registration to do business in Oregon;*

(D) *If the applicant is a wholly owned subsidiary of a company, corporation or other business entity, in addition to the information required by paragraph (C), the full name and business address of each of the applicant's full or partial owners;*

(E) If the person submitting the NOI is an association of citizens, a joint venture or a partnership:

- (i) The full name, official designation, mailing address, email address and telephone number of the person responsible for submitting the NOI;*
- (ii) The name, business address and telephone number of each person participating in the association, joint venture or partnership and the percentage interest held by each;*
- (iii) Proof of registration to do business in Oregon;*
- (iv) A copy of its articles of association, joint venture agreement or partnership agreement and a list of its members and their cities of residence; and*
- (v) If there are no articles of association, joint venture agreement or partnership agreement, the applicant must state that fact over the signature of each member;*

(F) If the applicant is a public or governmental entity:

- (i) The full name, official designation, mailing address, email address and telephone number of the person responsible for submitting the NOI; and*
- (ii) Written authorization from the entity's governing body to submit an NOI;*

(G) If the applicant is an individual, the individual's mailing address, email address and telephone number; and

(H) If the applicant is a limited liability company:

- (i) The full name, official designation, mailing address, email address and telephone number of the officer responsible for submitting the NOI;*
- (ii) The date and place of its formation;*
- (iii) A copy of its articles of organization and its authorization for submitting the NOI; and*
- (iv) In the case of a limited liability company not registered in Oregon, the name and address of the resident attorney-in-fact in this state and proof of registration to do business in Oregon.*

345-021-0010 - Contents of an Application

*“(1) *** The applicant must include in its application for a site certificate information that addresses each provision of this rule identified in the project order. ****

*“(a) **Exhibit A.** Information about the applicant and participating persons * * * * **

(The information required in Exhibit A of the application materials is identical to the information required in the Notice of Intent .)

*(d) **Exhibit D.** Information about the organizational expertise of the applicant to construct and operate the proposed facility, providing evidence to support a finding by the Council as required by OAR 345-022-0010, including:*

(A) The applicant's previous experience, if any, in constructing and operating similar facilities;

(B) The qualifications of the applicant's personnel who will be responsible for constructing and operating the facility, to the extent that the identities of such personnel are known when the application is submitted;

(C) The qualifications of any architect, engineer, major component vendor, or prime contractor upon whom the applicant will rely in constructing and operating the facility, to the extent that the identities of such persons are known when the application is submitted;

(D) The past performance of the applicant, including but not limited to the number and severity of any regulatory citations in constructing or operating a facility, type of equipment, or process similar to the proposed facility;

(E) If the applicant has no previous experience in constructing or operating similar facilities and has not identified a prime contractor for construction or operation of the proposed facility, other evidence that the applicant can successfully construct and operate the proposed facility. The applicant may include, as evidence, a warranty that it will, through contracts, secure the necessary expertise;

(F) If the applicant has an ISO 9000 or ISO 14000 certified program and proposes to design, construct and operate the facility according to that program, a description of the program; and

(G) If the applicant relies on mitigation to demonstrate compliance with any standards of Division 22 or 24 of this chapter, evidence that the applicant can successfully complete such proposed mitigation, including past experience with other projects and the qualifications and experience of personnel upon whom the applicant will rely, to the extent that the identities of such persons are known at the date of submittal.

*(e) **Exhibit E.** Information about permits needed for construction and operation of the facility, including:*

(A) Identification of all federal, state and local government permits related to the siting of the proposed facility, a legal citation of the statute, rule or ordinance governing each permit, and the name, mailing address, email address and telephone number of the agency or office responsible for each permit;

(B) A description of each permit, the reasons the permit is needed for construction or operation of the facility and the applicant's analysis of whether the permit should or should not be included in and governed by the site certificate;

(C) For any state or local government agency permits, licenses or certificates that are proposed to be included in and governed by the site certificate, evidence to support

findings by the Council that construction and operation of the proposed facility will comply with the statutes, rules and standards applicable to the permit. The applicant may show this evidence:

(i) In Exhibit J for permits related to wetlands; or

(ii) In Exhibit O for permits related to water rights;

(D) For federally-delegated permit applications, evidence that the responsible agency has received a permit application and the estimated date when the responsible agency will complete its review and issue a permit decision;

(E) If the applicant relies on a state or local government permit or approval issued to a third party, identification of any such third-party permit and for each:

(i) Evidence that the applicant has, or has a reasonable likelihood of entering into, a contract or other agreement with the third party for access to the resource or service to be secured by that permit;

(ii) Evidence that the third party has, or has a reasonable likelihood of obtaining, the necessary permit;

(iii) An assessment of the impact of the proposed facility on any permits that a third party has obtained and on which the applicant relies to comply with any applicable Council standard;

(F) If the applicant relies on a federally-delegated permit issued to a third party, identification of any such third-party permit and for each:

(i) Evidence that the applicant has, or has a reasonable likelihood of entering into, a contract or other agreement with the third party for access to the resource or service to be secured by that permit;

(ii) Evidence that the responsible agency has received a permit application;

(iii) The estimated the date when the responsible agency will complete its review and issue a permit decision; and

(G) The applicant's proposed monitoring program, if any, for compliance with permit conditions.

ENERGY FACILITY SITING COUNCIL STANDARD

345-022-0010 - Organizational Expertise

(1) To issue a site certificate, the Council must find that the applicant has the organizational expertise to construct, operate and retire the proposed facility in compliance with Council

standards and conditions of the site certificate. To conclude that the applicant has this expertise, the Council must find that the applicant has demonstrated the ability to design, construct and operate the proposed facility in compliance with site certificate conditions and in a manner that protects public health and safety and has demonstrated the ability to restore the site to a useful, non- hazardous condition. The Council may consider the applicant's experience, the applicant's access to technical expertise and the applicant's past performance in constructing, operating and retiring other facilities, including, but not limited to, the number and severity of regulatory citations issued to the applicant.

(2) The Council may base its findings under section (1) on a rebuttable presumption that an applicant has organizational, managerial and technical expertise, if the applicant has an ISO 9000 or ISO 14000 certified program and proposes to design, construct and operate the facility according to that program.

(3) If the applicant does not itself obtain a state or local government permit or approval for which the Council would ordinarily determine compliance but instead relies on a permit or approval issued to a third party, the Council, to issue a site certificate, must find that the third party has, or has a reasonable likelihood of obtaining, the necessary permit or approval, and that the applicant has, or has a reasonable likelihood of entering into, a contractual or other arrangement with the third party for access to the resource or service secured by that permit or approval.

(4) If the applicant relies on a permit or approval issued to a third party and the third party does not have the necessary permit or approval at the time the Council issues the site certificate, the Council may issue the site certificate subject to the condition that the certificate holder shall not commence construction or operation as appropriate until the third party has obtained the necessary permit or approval and the applicant has a contract or other arrangement for access to the resource or service secured by that permit or approval.