

BEFORE THE ENERGY FACILITY SITING COUNCIL

In the Matter of Updates to Rules for the Trojan Independent Spent Fuel Storage Installation

Summary of Public Comments and Recommended Responses

This document summarizes the significant data, views, and arguments received by the Energy Facility Siting Council on the Trojan ISFSI Rulemaking. The purpose of this summary is to create a record of the Department's recommendations to address the significant issues raised.

The Notice of Proposed Rulemaking for this project was sent to the persons required by ORS 183.335(1) on October 25, 2021 and appeared in the Oregon Secretary of State's Bulletin on November 1, 2021.

A rulemaking hearing was held on November 18, 2021 at 5:30 pm. After a brief introduction, Christopher Clark, the Council's Rules Coordinator, opened the hearing to public comments at 5:57 pm. Mr. Rich George, legal counsel for Portland General Electric Company (PGE), appeared at the hearing and explained that to the extent PGE had comments it would provide them in writing by the comment deadline. Mr. Clark confirmed that that there were no additional comments and closed the Trojan ISFSI Rulemaking Hearing at 6:01.

In addition to the opportunity to provide oral comments at the hearing, the Notice specified that the Council would accept written comments on the proposed rules until 5:00 pm on December 10, 2021. As of that deadline, the Council had received two written comments on the proposed rules:

Exhibit	Commenter	Date
1	Portland General Electric Company	12/9/2021
2	Oregon Conservancy Foundation	12/10/2021

The remainder of this document provides a summary of significant issues raised in the comments received and staff's recommended responses. Exact copies of all written comments received are attached. Where rule language is provided:

- Current rule language is shown as plain text
- Additions or deletions included in the Notice of Proposed Rulemaking are shown as underline and ~~strikethrough~~
- Recommended revisions to the proposed rules are shown as red underline or ~~red strikethrough~~

Rules: OAR 345-026-0300, 345-070-0015, various rule summaries.

Ex. 1

Comment: Commenter provided markup of the Notice of Proposed Rulemaking which changes the term “Trojan Independent Spent Fuel Installation” to “Trojan Independent Spent Fuel Storage Installation.”

Response: Staff believes that omission of the word “Storage” was a scrivener’s error and recommends that the word be added to any instances of the term in the permanent rule filing.

Rules: OAR 345-026-0300(2)

Ex. 2

Comment: In response to the proposed addition of the purpose statement proposed as OAR 345-026-0300(2), the commenter asks: “How does EFSC propose to “ensure” that Trojan’s nuclear waste “will not be an undue financial burden to utilities or people of Oregon” when it already is? The ratepayers of Portland General Electric, who pay for this installation, along with the taxpayers of Oregon, are already unduly bearing the financial burden of this nuclear waste.”

Response: Staff notes that the purpose statement, which is currently located in OAR 345-026-0390(1)(b), is an extension of the legislative findings in ORS 469.593. That statute provides, in part:

“The people of this state find that if no permanent repository for high-level radioactive waste is provided by the federal government, the residents of the state may face the undue financial burden of paying for construction of a repository for such wastes.”

While the Council’s statement does not create a binding requirement on the Council, Department, or Certificate holder, it does support the Council’s decision making and informs rulemaking decisions. Staff notes that the Council has no authority to require the federal government to take possession of the spent nuclear fuel and other materials stored at the ISFSI, and can only ensure that the waste will not be an undue financial burden by using its oversight and monitoring authority to ensure that the facility is operated in a manner that ensures public health and safety, avoids permanent radiological impacts, and encourages the safe and efficient decommissioning of the facility when a federal waste repository is available.

Rules: OAR 345-026-0340(3)

Ex. 2

Comment: Commenter objects to the deletion of language in OAR 345-026-0340(3) describing the changes to a physical security plan that are considered to reduce its effectiveness. The commenter states that the language “emphasizes the purpose and necessity of a security plan and should remain in subpart (3). Keeping this language does not take away from

the rest of the proposed Staff changes to this subpart.”

Response: The Proposed Rule includes the following changes to the section describing when a change to the ISFSI security plan requires the Council’s prior review and approval:

OAR 345-026-0340(3) The certificate holder ~~shall~~ may not make ~~modification changes~~ to the security plan that involve a reduction in the ~~ability to detect or prevent unauthorized entry, or a reduction in the ability to detect or prevent the introduction of unauthorized material into a Protected Area or otherwise lessen the effectiveness of the physical security plan~~ without prior written Department approval prior to implementation from the Council and Director, as required by ORS 469.530.

The proposed deletion of the language describing the changes to a physical security plan that are considered to reduce its effectiveness was intended to be editorial in nature, and the proposed rule continues to require prior written approval for *any* changes to the plan that would involve a reduction in its effectiveness. For this reason, staff believes the proposed change would have no substantive effect. Staff does acknowledge; however, that the added detail provided by the language that was proposed to be deleted may add additional context, and based on the comment received, recommends that Council include the language in the permanent rule with the following editorial changes:

OAR 345-026-0340(3) The certificate holder ~~shall~~ may not make ~~modification changes~~ to the security plan that ~~involve a reduction in~~ would reduce the ability to detect or prevent unauthorized entry, ~~or a reduction in~~ reduce the ability to detect or prevent the introduction of unauthorized material into a Protected Area, ~~or otherwise lessen the effectiveness of the physical security plan~~ without prior written Department approval prior to implementation from the Council and Director, as required by ORS 469.530.

Rules: OAR 345-026-0340(4)

Ex. 2

Comment: Commenter objects to existing provisions of rule requiring the certificate holder to provide notice of changes to the ISFSI security plan that do not reduce the effectiveness of the plan “within 60 days after the implementation date of the changes.” The commenter states:

“All of this builds in unnecessary and risky delay, especially if changes to the plan are found by the Department, or EFSC, to reduce its effectiveness. There is no reason why the certificate holder should not immediately notify the Department upon implementation of these kind of Security plan changes.”

Response: Staff notes that the proposed rule contains some language changes, but the requirement for the certificate holder to provide notice of changes to the ISFSI security plan

that do not require prior written approval within 60 days of their implementation was established in the existing rule when it was first adopted in 1994 and is consistent with federal regulations. While staff acknowledges the hypothetical potential for delay in addressing a change in a security plan that should have required prior written approval, we are unaware of such an issue arising since the ISFSI has been in operation, and do not recommend additional changes to the rule based on the comment received.

Rules: OAR 345-026-0350(3)

Ex. 2

Comment: Commenter objects to existing provisions of rule requiring the certificate holder to provide notice of changes to the ISFSI emergency plan that do not reduce the effectiveness of the plan “within 30 days after the implementation date of the changes.” The commenter states:

“As in the proposed changes to the Security Plan, this builds in unnecessary delay, especially if there are changes that the Department or EFSC later determine do reduce the effectiveness of the Emergency Plan, though, unlike the Security Plan, for some reason the delay is shortened from 60 days to 30 days, implying that emergency planning is somehow more important than security planning. There is no reason why the certificate holder should not immediately notify the Department upon implementation of these kind of Emergency Plan changes.”

Response: Staff notes that while the proposed rule contains some language changes, the requirement for the certificate holder to provide notice of changes to the ISFSI emergency plan that do not require prior written approval within 30 days of the implementation date of those changes is established in the existing rule and has been in place since the rule was first adopted in 1994. While staff acknowledges the hypothetical potential for delay in addressing a change in the emergency plan that should have required prior written approval, we are unaware of such an issue occurring since the ISFSI has been in operation, and do not recommend additional changes to the rule based on the comment received.

Rules: OAR 345-026-0370(4)(e) and (f)

Ex. 2

Comment: Commenter recommends that the term “significant,” as used in OAR 345-026-0370(4)(e) and (f) should be defined so that there is “no room for question or dispute.” Those subsections provide as follows:

“(4) The certificate holder ~~shall~~must not implement significant revisions to the decommissioning plan unless the Council has reviewed and approved the revisions. A revision is significant if it involves one of the following items:

* * * * *

(e) A significant change in the types or significant increase in the amounts of any effluents that may be released offsite; or

(f) A significant increase in radiological or hazardous material exposure to site workers or to members of the public, including exposure due to transport of radioactive or hazardous material.”

The commenter asserts that the criteria in subsections (e) and (f) are intended to be used to determine whether or not a decommissioning plan revision is “significant”, but the criteria themselves defer to the certificate holder to determine when a change or increase in effluents that may be released or an increase in potential exposure to radiological or hazardous materials is significant.

Response: Staff notes that the proposed rule only includes non-substantive changes (e.g. changing “shall” to “must”) and that the language in question has been in place since the rule was first adopted in 1994. Staff further notes that the Council has adopted a definition of the term “significant” under OAR 345-001-0010 that is applicable to this rule, but that definition also does not provide the specificity that would resolve the commenters issue. Staff was unable to locate corresponding requirements or definitions in 10 CFR 72 applicable to decommissioning plans that would resolve this issue.

As described in the Staff Evaluation provided to the Council in support of this rulemaking at its October 2021 meeting, the certificate holder provided its preliminary decommissioning plan to the NRC and ODOE in 2012 but will not provide a final decommissioning plan until approximately three to four years prior to the last shipment of spent fuel being transferred from the site. Staff agrees with the commenter that the rule, as currently written, is potentially ambiguous, and could result in disputes over when a change to the final plan is “significant.” Rather than adopting a new definition of “significant” that is specifically applicable OAR 345-026-0370(4)(e) and (f) as recommended by the commenter, staff recommends the Council address this potential ambiguity by removing all instances of the word “significant” from those subsections:

“(4) The certificate holder ~~shall~~must not implement significant revisions to the decommissioning plan unless the Council has reviewed and approved the revisions. A revision is significant if it involves one of the following items:

* * * * *

(e) A ~~significant~~ change in the types or ~~significant~~ increase in the amounts of any effluents that may be released offsite; or

(f) An ~~significant~~ increase in radiological or hazardous material exposure to site workers or to members of the public, including exposure due to transport of radioactive or hazardous material.”

This revision would result in the Council’s review and approval being required for any change to the final decommissioning plan that could result in an increase in potential effluent release or exposure to radiological or hazardous material. Staff notes that these types of changes to the final decommissioning plan may be unlikely, as the ISFSI is designed to preclude any release of any radiological effluents, and all ISFSI programs are required by federal regulations to maintain radiological exposures that are As Low As Reasonably Achievable.

Rules: OAR 345-026-0370(5)

Ex. 2

Comment: Commenter objects to provisions of rule requiring the certificate holder to provide notice of changes to the ISFSI decommissioning plan that do not reduce the effectiveness of the plan “within 30 days after implementation date of the revision.” The commenter states that: “There is no reason why the certificate holder should not immediately notify the Department upon implementation of these kind of Decommissioning Plan changes.”

Response: Staff notes that the proposed rule only includes non-substantive changes (e.g., changing “shall” to “must”), and the requirement for the certificate holder to provide notice of changes to the ISFSI Decommissioning plan that do not require prior written approval within 30 days of the implementation date of those changes is established in the existing rule and has been in place since the rule was first adopted in 1994. While staff acknowledges the hypothetical potential for delay in addressing a change in the decommissioning plan that should have required prior written approval, we do not recommend additional changes to the rule based on the comment received.

Rules: OAR 345-026-0390(4)(a)(E)

Ex. 2

Comment: Commenter recommends that more specificity is needed to establish what constitutes a “reasonable time period” for responding to credible accident scenarios under the program for maintaining and providing equipment that must be included in the Safety Analysis Report.

Response: Staff notes that the paragraph in question was renumbered in the proposed rules, but the “contingency planning” requirement was not proposed to be substantively amended. As described in the Staff Evaluation provided to the Council in support of this rulemaking at its October 2021 meeting, the certificate holder has satisfied the rule’s requirements through its emergency plans, which describes the certificate holder’s programs to mitigate and respond to the consequences of hypothesized accident scenarios. Because the Council and the Nuclear

Regulatory Commission have both previously reviewed and approved the emergency plan and found it to be satisfactory, and because the certificate holder's compliance with this rule was not affected by the relicensing, staff does not recommend additional changes to the rule in response to the comment received.

Rules: OAR 345-070-0015(2)

Ex. 1

Comment: Commenter objects to the inclusion of the "Trojan ISFSI" in the definition of "Nuclear Power Plant." The commenter states that it believes the ISFSI falls under the definition for "Nuclear Installation."

Response: The proposed definition of "Nuclear Power Plant", which specifies, that as used in OAR chapter 345, division 070, "includes the Trojan Independent Spent Fuel [Storage] Installation," is intended to clarify that the ISFSI is regulated as part of the Trojan Nuclear Plant, and not as a nuclear installation.

While staff agrees that the ISFSI itself is more similar to the types of facilities described under the definition of "nuclear installation" provided under ORS 469.300 than it is to a "nuclear power plant," the Trojan ISFSI is not considered to be a nuclear installation under Oregon Law because it was established as a related or supporting facility to the Trojan Nuclear Power Plant and continues to be regulated under the site certificate for that facility. As described in ORS 469.300(19), the term "nuclear installation" specifically excludes any facilities that "are part of a thermal power plant." Under ORS 469.300(27), the term "thermal power plant" includes "a nuclear-fueled thermal power plant that has ceased to operate."

As further evidence, we note that if the ISFSI were a nuclear installation, it would likely be a "waste disposal facility," which is defined under ORS 469.300(31) as "a geographical site in or upon which radioactive waste is held or placed * * *." That definition also specifically excludes "a site of a thermal power plant used for the temporary storage of radioactive waste from that plant for which a site certificate has been issued pursuant to [ORS chapter 469] * * *," and specifies that "temporary storage" includes "storage of radioactive waste on the site of a nuclear-fueled thermal power plant for which a site certificate has been issued until a permanent storage site is available by the federal government." Together, these definitions appear to be intended to ensure that the Trojan ISFSI could not be considered to be a "nuclear installation" under Oregon law or required to obtain a separate site certificate from the Trojan Nuclear Power Plant.

Staff notes that the terms "nuclear power plant" and "nuclear-fueled thermal power plant" appear to be used interchangeably in rule and statute, but the latter is used in ORS 469.530, the statute implemented by OAR chapter 345, division 070. In addition, the only instance of the term "nuclear power plant" in the current division 070 rules is also found in OAR 345-070-0015. To improve consistency between ORS 469.530, the rules, and the statutory definitions located in ORS 469.300, staff recommends the proposed rule be amended as follows:

OAR 345-070-0015 – Definitions

“(1) "Nuclear installation" ~~is~~as defined in ORS 469.300.

(2) "Nuclear-fueled thermal power plant" includes the Trojan Independent Spent Fuel Storage Installation at the site of the former Trojan Nuclear Plant.

(3) "Security program" means any plan or procedure the primary function of which is to protect nuclear-fueled thermal power plants, nuclear installations, transportation and storage of new or irradiated nuclear fuel elements or transportation and storage of fissile material against any deliberate act that could directly endanger the public health and safety including exposure to radiation, including, but not limited to, plans or procedures for * * * *”

Rules: OAR 345-070-0015(5)

Ex. 1

Comment: Commenter recommends the reference to 10 CFR 72.2 in the proposed OAR 345-070-0015(5) is a typo and that the rule should read “...as defined in 10 CFR ~~72~~23.2”

Response: Staff agrees that the incorrect reference to 10 CFR 72.2 was a scrivener’s error and recommends that the reference be corrected as proposed in the permanent rule filing.

**Portland General Electric Company**

Trojan ISFSI
71760 Columbia River Hwy
Rainier, Oregon 97048

December 9, 2021
TMR-094-2021L

Christopher Clark, EFSC Rules Coordinator
Oregon Department of Energy
550 Capitol Street NE, 1st Floor
Salem, OR 97301

Dear Mr. Clark:

Portland General Electric's Comments on Updates to Rules for the
Trojan Independent Spent Fuel (Storage) Installation

Please find our enclosed comments on the Notice of Proposed Rulemaking - Updates to rules for the Trojan Independent Spent Fuel (Storage) Installation. We appreciate the opportunity to provide our comments prior to decision making by the Energy Facility Siting Council on this topic. Our comments have been included in the tracked changes on the attached Notice of Proposed Rulemaking filed by your department on 10/22/2021 at 3:20 PM and are mostly limited to editorial and typographical correction.

If you have any questions regarding this correspondence, please contact me at 503-556-7001.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Romay", with a long horizontal flourish extending to the right.

Thomas M. Romay
Manager, Trojan ISFSI

Attachment

OFFICE OF THE SECRETARY OF STATE
SHEMIA FAGAN
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION
STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

NOTICE OF PROPOSED RULEMAKING INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 345
DEPARTMENT OF ENERGY
ENERGY FACILITY SITING COUNCIL

FILED

10/22/2021 3:20 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Updates to rules for the Trojan Independent Spent Fuel **Storage** Installation

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 12/10/2021 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

CONTACT: Christopher Clark 550 Capitol St. NE
503-373-1033 Salem, OR 97301
EFSC.Rulemaking@energy.oregon.gov

Filed By:
Christopher Clark
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 11/18/2021

TIME: 5:30 PM - 6:00 PM

OFFICER: Christopher M. Clark

ADDRESS: Remote Hearing

See Special Instructions

Salem, OR 97301

SPECIAL INSTRUCTIONS:

Join the hearing onlinet:

<https://oregonenergy.webex.com/oregonenergy/j.php?MTID=mb22b0514d35b5494306d3daa4340c04e>

Event number: 2590 284 4026

Event password: U9ptfBpEF23

Or Join by phone: 1-844-621-3956;

Access code: 259 028 44026

NEED FOR THE RULE(S):

The site certificate for the Trojan Nuclear Plant was executed by Governor McCall on July 20, 1971. Unlike the current site certificate which contains specific conditions of approval, the Trojan site certificate only requires that the certificate holder pay the necessary fees required under ORS 469.421 and abide by the rules of the Council. Under ORS 469.410(5), a site certificate executed by the governor prior to July 2, 1975, binds the Council to its terms and requires the certificate holder to abide by the Council's rules, including rules for monitoring the environmental and ecological effects of the operation and the decommissioning of the facility established under ORS 469.410(4) and 469.470(2).

The Council has adopted rules establishing monitoring and reporting requirements that apply specifically to the operation and decommissioning of the Trojan ISFSI under OAR 345-026-0300 to 345-026-0390. An additional rule specifying the requirements for reporting safety or security incidents at the Trojan ISFSI is provided under OAR 345-026-0170(2). These rules amended or replaced rules that governed the Council's monitoring and oversight of Nuclear Power Plants that were formerly also located in OAR chapter 345, division 026.

The rules were last amended in 2005, however most of the substantive requirements date back to 1999, before the ISFSI was constructed. The rules refer to a number of regulatory requirements and procedures, documents, and assumptions which have since been superseded or amended. In 2019, the US Nuclear Regulatory Commission issued a renewed license authorizing the continued operation of the ISFSI until 2059. While the terms and conditions of the renewed ISFSI license and its associated SAR do not appear to violate any provisions of the current rules, the rules may not be directly applicable to the new aging management programs and activities that are required to be implemented in the coming years.

This rulemaking is needed to ensure that the monitoring and reporting requirements found in the Council's rules adequately address the new aging management activities established in the revised SAR and are consistent with current federal safety requirements and guidelines for nuclear installations.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Oregon Department of Energy. Staff Evaluation of the Trojan ISFSI License Renewal. October 2021.

U.S. Nuclear Regulatory Commission. Safety Evaluation Report for the Trojan Independent Spent Fuel Storage Installation. August 2019.

U.S. Nuclear Regulatory Commission. Notice of License Renewal Issuance. 84 FR 42023. August 2019.

10 CFR Part 72.

Documents are available from the Oregon Department of Energy upon request.

FISCAL AND ECONOMIC IMPACT:

The rules under consideration apply specifically to the Trojan ISFSI and its certificate holder, Portland General Electric. The Department does not expect to establish any new monitoring or reporting requirements as part of this rulemaking other than those required by the NRC under the terms and conditions of the revised Safety Analysis Report. Because no new requirements are expected this rulemaking is not expected to result in any significant fiscal or economic impacts to the certificate holder. We note that the expenses incurred by the council during this rulemaking will be recovered from the certificate holder as provided under ORS 469.421(1)(f). Some of these costs may be offset by reducing the need for future review of archival information to interpret, apply, and enforce the rules.

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).

Because these rules apply specifically to the Trojan ISFSI and its certificate holder, Portland General Electric, no economic impacts to state agencies, local governments, or other members of the public are expected. The affected certificate holder is not a small business, and the rule is not expected to impact any small businesses, result in additional reporting, recordkeeping and administrative activities or costs associated with professional services, equipment,

supplies, labor or increased administration.

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

Small businesses were not specifically consulted in the development of the proposed rule.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

The Department consulted with the certificate holder that is likely to be affected by the proposed rules. Because no other interests or communities are likely to be affected by the rule changes, consultation with a Rulemaking Advisory Committee was not considered to be appropriate.

RULES PROPOSED:

345-026-0170, 345-026-0300, 345-026-0330, 345-026-0340, 345-026-0350, 345-026-0370, 345-026-0390, 345-070-0005, 345-070-0015, 345-070-0020

AMEND: 345-026-0170

RULE SUMMARY: The revised rule removes the requirements for the Trojan ISFSI to notify the Department of accidents and incidents. These requirements have been added to the revised OAR 345-026-0390. Additional changes are made for clarity and consistency of rules.

CHANGES TO RULE:

345-026-0170

Notification of Incidents ¶¶

~~(1) The certificate holder shall~~must notify the Department of Energy within 72 hours of any occurrence involving the facility if:¶¶

~~(a)~~1 There is an attempt by anyone to interfere with its safe operation.¶¶

~~(b)~~2 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)~~3 There is any fatal injury at the facility.¶¶

~~(2) For the Trojan Independent Spent Fuel Storage Installation:¶¶~~

~~(a) In the event of incidents or accidents requiring notification of the Nuclear Regulatory Commission by telephone, the certificate holder also shall notify the Department on the same time schedule.¶¶~~

~~(b) The certificate holder shall notify the Department of all incidents in accordance with the Emergency Plan, Security Plan, and other agreements as established.~~

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.310, 469.410, 469.430, 469.507,~~469.530~~

AMEND: 345-026-0300

RULE SUMMARY: The revised rule clarifies the applicability of OAR 345-026-0300 to 345-026-0390 to the Trojan Independent Spent Fuel **Storage** Installation. The rule clarifies that these rules do not apply to "nuclear installations." Additional changes are made for clarity and consistency of rules.

CHANGES TO RULE:

345-026-0300

Regulations Applicable to ~~Nuclear~~ the Trojan Independent Spent Fuel **Storage** Installations ¶

(1) The requirements of OAR 345-026-0300 through 345-026-0390 apply exclusively to ~~nuclear installations in Oregon as defined in ORS 469.300.~~ ¶

(2) ~~OAR 345-026-0300 through 0390 do not apply to research reactors as described in OAR 345-030-0005~~ the Trojan Independent Spent Fuel **Storage** Installation (ISFSI). ¶

(2) The purpose of these rules is to cooperate with the federal government in accordance with Oregon's siting policy in ORS 469.310 to ensure the safety of interim on-site storage and to ensure spent nuclear fuel and related radioactive materials and waste will not be an undue financial burden to utilities or people of Oregon. ¶

(3) References to the Code of Federal Regulations in these rules refer to regulations in place as of August 9, 2019.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.410, 469.501

REPEAL: 345-026-0330

RULE SUMMARY: The rule is repealed. Rules for environmental monitoring are moved to the revised OAR 345-026-0390.

CHANGES TO RULE:

~~345-026-0330~~

~~Radiological Environmental Monitoring~~

~~(1) The certificate holder shall establish a radiological environmental monitoring program.¶~~

~~(2) The certificate holder shall maintain a written radiological environmental monitoring program that describes applicable quality assurance measures.¶~~

~~(3) The certificate holder shall not make any changes to the radiological environmental monitoring program that involve a reduction in the number of environmental monitoring locations or associated monitoring data collection periodicity as approved in the Department of Energy "Staff Evaluation of Holtec Design for Portland General Electric's Independent Spent Nuclear Fuel Installation (ISFSI)," September 2002, without Department approval prior to implementation.¶~~

~~(4) Except as required by section (3), the certificate holder may make modifications to the radiological environmental monitoring program without prior Department approval. The certificate holder shall notify the Department of these changes within 60 days after implementation of the change. The Department shall promptly notify the Council of any such changes at a scheduled meeting of the Council.~~

~~Statutory/Other Authority: ORS 469.470~~

~~Statutes/Other Implemented: ORS 469.501, 469.507~~

AMEND: 345-026-0340

RULE SUMMARY: The revised rule clarifies its applicability of the rule to the Trojan Independent Spent Fuel Storage Installation and provides revised criteria for when notification of changes must be provided to the Council and Director based on current federal regulations in 10 CFR Part 73. Additional changes are made for clarity and consistency of rules.

CHANGES TO RULE:

345-026-0340

Security Plans for Nuclear Installations ¶

~~(1) The operator of a nuclear installation shall establish and maintain a security plan with capabilities for protection of certificate holder must establish and maintain a security plan that complies with 10 CFR 72.44(e).¶~~

~~(2) The certificate holder must make the special nuclear material.¶~~

~~(2) Upon assurance satisfactory to the Council and the certificate holder that confidentiality can be maintained, the certificate holder shall make the security plan for nuclear installations available to authorized Council representatives in accordance with U.S. Nuclear Regulatory Commission regulation 10 CFR 73.21(c)(1)(iii)urity plan, and any revisions, available for inspection by authorized representatives of the Council and Director upon request. The certificate holder, Department, and Council must protect information in the plan that falls within the definitions of "security program" or "safeguards information" in OAR 345-070-0015 from unauthorized disclosure in accordance with 10 CFR 73.21, 73.22 and OAR chapter 345, division 070.¶~~

~~(3) The certificate holder shall may not make modification changes to the security plan that involve a reduction in the ability to detect or prevent unauthorized entry, or a reduction in the ability to detect or prevent the introduction of unauthorized material into a Protected Area or otherwise lessen the effectiveness of the physical security plan without wpritten Department or writtent approval prior to implementation.¶~~

~~(4) Except as required by section (3), the certificate holder may make modifications to the plan without prior Department approval from the Council and Director, as required by ORS 469.530.¶~~

~~(4) The certificate holder may make changes to the security plan that do not reduce the effectiveness of the plan without prior approval from the Council and Director. The certificate holder shall must notify the Department of thany changese modifficade under this sections within 60 days of their implementation and shall make the revised plan available to authorized Department representatives following implementation after the implementation date of the changes. The Department shall must promptly notify the Council of the plan modification changes at a scheduled Council meeting, subject to U.S. Nuclear Regulatory Commission regulation 10 CFR 73.21(c)(1)(iii).¶~~
~~[Publications: The publications referenced are available from the agency.]the provisions of OAR chapter 345, division 070.~~

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.410, 469.501, 469.530

AMEND: 345-026-0350

RULE SUMMARY: The revised rule clarifies its applicability of the rule to the Trojan Independent Spent Fuel Storage Installation, and provides revised criteria for when notification of changes must be provided to the Council and Director. Additional changes are made for clarity and consistency of rules.

CHANGES TO RULE:

345-026-0350

Emergency Planning for Nuclear Installations ~~¶~~

~~(1) The operator of a nuclear installation shall prepare, comply with,~~ certificate holder must follow and maintain in readiness an emergency plan. ~~The plan must ensure adequate measures will be taken in the event of a radiological emergency.~~ ~~¶~~

~~(2) Proposed modifications to the emergency plan that involve one of the following require Council approval prior to implementation:~~ ~~¶~~

~~(a) A change (other than editorial) in the Emergency Action Levels; or~~ ~~¶~~

~~(b) A that is approved by the Council.~~ ~~¶~~

~~(2) The certificate holder may not make changes to the emergency plan that would decrease in the planned staff augmentation capabilities effectiveness;~~ ~~s or~~ ~~¶~~

~~(c) A reduction in the plan or the plan's requirements for notification of off-site agencies.~~ ~~¶~~

~~(3) Except as required by section (2), t without the Council's prior approval.~~ ~~¶~~

~~(3) The certificate holder may make modification changes to the plan without prior Council that would not reduce its effectiveness without the Council's prior approval. The certificate holder shall submit copies of the revised plan to the Department must notify the Department of any changes made under this section within 30 days after the implementation date of the changes. The Department shall must promptly notify the Council of the modification changes at a scheduled Council meeting.~~

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS ~~469.410~~, 469.501, 469.530, 469.533

AMEND: 345-026-0370

RULE SUMMARY: The revised rule amends submission requirements for the Decommissioning Plan for the Trojan Independent Spent Fuel **Storage** Installation. Additional changes are made for clarity and consistency of rules.

CHANGES TO RULE:

345-026-0370

~~Standards for Council Approval of ISFSI Decommissioning Plan~~ ¶

(1) ~~The operator of the Trojan Independent Spent Fuel Storage Installation (ISFSI) shall submit 15 copies of a certificate holder must submit a final~~ plan for decommissioning the ISFSI to the Department for Council approval. ~~The plan shall~~must be submitted to the Council ~~on a form and~~ in a schedule consistent with that required by the U.S. Nuclear Regulatory Commission. When the Department receives a decommissioning plan, the Department ~~shall~~must:¶

(a) Issue notice to the Council's mailing list that the decommissioning plan has been submitted. The notice ~~shall~~must include:¶

(A) The time and place of at least one informational hearing;¶

(B) The locations where copies of the proposed plan may be reviewed by the public; and¶

(C) A contact name for further information.¶

(b) Perform a technical review, and produce a staff report containing the Department's technical conclusions and recommendations on specific issues raised in the proposed plan;¶

(c) To the extent practicable, coordinate its technical review with that of the U.S. Nuclear Regulatory Commission;¶

(d) Issue notice of availability of the Department report to the Council mailing list. The notice ~~shall~~must include:¶

(A) A summary of the Department's recommendations;¶

(B) Time and place of a hearing on the staff report;¶

(C) Places where the Department's staff report may be reviewed by the public; and¶

(D) A contact for additional information and copies of the staff report.¶

(2) The Council ~~shall~~must review the proposed decommissioning plan to verify that the proposed activities will not adversely affect the health and safety of the public or the environment. The Council will ensure the following when evaluating acceptability of a proposed decommissioning plan:¶

(a) The plan contains the radiological criteria for unrestricted release and use of the site as set forth in ~~Title 10 of the Code of Federal Regulations, Part 20, Section 1402 (10 CFR 20.1402) in effect August 20, 1997~~10 CFR 20.1402.¶

(b) The plan contains provisions that require removal from the site of all radioactive waste as defined in ORS 469.300 on a schedule acceptable to the Council.¶

(c) The plan contains a program for radiological monitoring to ensure the environment is not being adversely affected. This program may be incorporated by reference if it has previously been approved by the Department.¶

(d) The plan contains provisions for removal or control of hazardous waste that are consistent with applicable federal and state regulations.¶

(3) The certificate holder ~~shall~~must include in the plan an estimate of funding necessary for implementation. The Council ~~shall~~must determine whether provisions for funding are adequate to implement the plan.¶

(4) The certificate holder ~~shall~~must not implement significant revisions to the decommissioning plan unless the Council has reviewed and approved the revisions. A revision is significant if it involves one of the following items:¶

(a) The potential to prevent the release of the site for unrestricted use;¶

(b) A change in the criteria for site release;¶

(c) A departure in the methodology for determining background radiation levels to a method not generally accepted by the industry;¶

(d) A change in the provisions made for hazardous or radioactive waste material removal;¶

(e) A significant change in the types or significant increase in the amounts of any effluents that may be released

offsite; or¶¶

(f) A significant increase in radiological or hazardous material exposure to site workers or to members of the public, including exposure due to transport of radioactive or hazardous material.¶¶

(5) The certificate holder ~~shall~~must evaluate revisions to the decommissioning plan by the criteria listed in section (4) of this rule. The certificate holder ~~shall~~must maintain records of all changes and associated evaluations for audit by the Department. The certificate holder ~~shall~~must notify the Department of revisions to the plan that are not significant within 30 days after implementation of the revision. The Department ~~shall~~must promptly notify the Council of such revisions at a regularly scheduled meeting.¶¶

(6) Changes to the decommissioning plan that are mandated by the federal government may be implemented without prior Council approval.¶¶

~~[Publications: Publications referenced are available from the agency.]~~

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.410, 469.501

AMEND: 345-026-0390

RULE SUMMARY: The revised rule provides updates standards and reporting requirements applicable to the Trojan Independent Spent Fuel **Storage** Installation. Additional requirements related to notification of incidents and environmental monitoring previously located in OAR 345-026-0170 and 345-026-0330 are incorporated into the rule. Additional changes are made for clarity and consistency of rules.

CHANGES TO RULE:

345-026-0390

Spent Nuclear Fuel Storage ¶

(1) ~~Purpose:~~¶

~~(a) Storage of spent nuclear fuel and related radioactive material and waste at a nuclear installation is an interim measure; otherwise utilities and residents of Oregon would face the financial burden of maintaining, operating, and safeguarding the on-site storage facilities indefinitely;~~¶

~~(b) The purpose of this rule is to cooperate with the federal government in accordance with Oregon's siting policy in ORS 469.310 to ensure the safety of interim on-site storage and to ensure spent nuclear fuel and related radioactive materials and waste will not be an undue financial burden to utilities or people of Oregon.~~¶

(2) ~~Capacity and Safety Standards:~~ The certificate holder may store a maximum of 791 complete and partial fuel assemblies and storage of containers with nuclear fuel materials. ~~Storage of spent nuclear fuel and related radioactive material and waste at the site of a nuclear installation by a certificate holder who has executed a contract with the United States of America pursuant to the Nuclear Waste Policy Act, shall be deemed a permitted use of the site pending transfer of spent nuclear fuel to the U.S. Department of Energy provided that:~~¶

~~(a) Storage facilities are at an Independent Spent Fuel Storage Installation (ISFSI) at the site of the former Trojan Nuclear Plant, subject to the requirements of OAR 345-026-0300 through 345-026-0390.~~¶

~~(a) The ISFSI must be designed to maintain discharges within the limits specified in applicable licenses authorized under the Atomic Energy Act of 1954, as amended, and any applicable permits issued under the National Pollutant Discharge Elimination System;~~¶

~~(b) Storage facilities are The ISFSI must be designed such that in case of accidents off-site radiation exposures will not exceed the Environmental Protection Agency Protective Action Guidelines (October, 1991) for off-site protective actions; and~~¶

~~(c) The facility is not used to store any spent nuclear fuel or radioactive materials and wastes other than that generated or used in the operation of the former Trojan Nuclear Plant.~~¶

~~(3) The certificate holder shall perform activities related to transfer, storage and handling of fuel and other radioactive waste in accordance with a radiation protection program that complies with 10 CFR 20, including a program to maintain personnel radiation exposure As Low As Reasonably Achievable (ALARA) as that term is defined in 10 CFR 20.~~¶

~~(4) The projected dose to an individual outside of the Controlled Area Boundary will not exceed 1 rem over four days.~~¶

~~(c) The ISFSI may not be used to store any spent nuclear fuel or radioactive materials and wastes other than that generated or used in the operation of the former Trojan Nuclear Plant.~~¶

~~(2) Except as required for accident mitigation as described in the Safety Analysis Report, the certificate holder shall not transfer spent fuel from an interim spent fuel storage installation to new casks or shipping containers without approval by may not remove or transfer a multipurpose canister from its storage cask without the Council's prior to the transfer approval.~~¶

(5) ~~Reporting Requirements:~~ The operator of an interim spent fuel storage facility shall submit every ten years and, in addition, no later than September 3, 2038, a report containing the actual or expected date when the Federal government will accept the High Level Waste and an analysis of the facility's continued acceptability for use if a Federally licensed High level Waste site remains unavailable. This report need not be submitted if the Council or its successor determines that a Federally licensed high level waste site is available and that spent

nuclear fuel from the facility will be accepted prior to September 3, 2043.¶

(6) The Council approves the plan, as may be amended under Part (c) below, for an Independent Spent Fuel Storage Installation (ISFSI) as described in the ISFSI Safety Analysis Report (SAR) (PGE-1069), Revision 2. In addition to the criteria in OAR 345-026-0390(2)(a), (b), and (c), and (3) and (4), the plan is subject to the following criteria:¶

(a) ~~Programs:~~ Portland General Electric (PGE) shall establish and maintain programs for Temperature Monitoring and Air Vent Inspection and Structural Inspection that are consistent with maintaining exposures to ionizing radiation. The certificate holder must notify the Department of incidents and accidents in accordance with the Emergency Plan required under OAR 345-026-0340, the Security Plan required under OAR 345-026-0350, and other agreements as established, and must:¶

(a) Notify the Oregon Emergency Response System immediately upon declaration of an emergency under the approved Emergency Plan for the facility.¶

(b) Notify the Department of non-emergency incidents or accidents as described in 10 CFR 72.75.¶

(4) The certificate holder must operate the ISFSI consistent with a Safety Analysis Report submitted in compliance with 10 CFR 72.70 and the following requirements:¶

(a) The Safety Analysis Report must provide for the following programs:¶

(A) A Temperature Monitoring and Air Vent Inspection Program. The program must include daily readings of Concrete Cask air outlet and ambient temperatures. The program must include provisions for more frequent measurements if temperatures approach Technical Specification limits. The program must also include a requirement to check air inlet and outlet vents for blockage weekly. The certificate holder may extend individual surveillance intervals by up to 25 percent to accommodate minor variations in work scheduling.¶

(B) A Radiation Protection Program that complies with 10 CFR 20.1101 and ensures exposures to ISFSI personnel and the public are As Low As Reasonably Achievable (ALARA) and with the assumptions and conclusions in the Department "Staff Evaluation of Holtec Design for Portland General Electric's Independent Spent Nuclear Fuel Installation (ISFSI)," September 2002.¶

(b) ~~Contingency Plans:~~ PGE shall establish and maintain a plan as that term is defined in 10 CFR 20.1003.¶

(C) A Radiological Environmental Monitoring Program that ensures the ISFSI complies with the Radiation Protection Program required under paragraph (4)(a)(B) of this rule.¶

(D) An Aging Management Program for management of issues associated with aging that could adversely affect ISFSI components that are important to safety.¶

(E) A program for maintaining equipment onsite and having equipment available within a reasonable time period to respond to credible accident scenarios and a plan for construction of new concrete casks.¶

(c) ~~Changes to Commitments:~~ PGE The certificate holder may not make changes to the ISFSI as described in the, or Safety Analysis Report without prior Council approval if such changes do not reduce commitments or change the assumptions and conclusions in the Department "Staff Evaluation of Holtec Design for Portland General Electric's Independent Spent Nuclear Fuel Installation (ISFSI)," September 2002. If proposed changes would reduce commitments or change the assumptions or conclusions of the Department "Staff Evaluation of Holtec Design for Portland General Electric's Independent Spent Nuclear Fuel Installation (ISFSI)," September 2002, PGE shall obtain prior approval from the Department. Prior Department approval is not required when the proposed change would not have the above effects, that would require prior approval from the U.S. Nuclear Regulatory Commission (NRC) under 10 CFR 72.48 without requesting the Council's prior approval, unless the proposed change is required for compliance with the regulations or orders of the U.S. Nuclear Regulatory Commission NRC or is necessary to protect the health and safety of the public when there is insufficient time to obtain prior Department approval.¶

(d) ~~Reporting requirements:~~ In lieu of the requirements described in of OAR 345-026-0080, within one year of the first cask loading and biennially thereafter, PGE shall the certificate holder must provide a written report to the Council on the status of the ISFSI biennially. The report shall must include, at a minimum, t:¶

(a) A summary of changes to the ISFSI or Safety Analysis Report since the last report that did not require prior approval from the Council or NRC under section (4)(b) of this rule:¶

~~(b) The results of radiation monitoring programs, a;~~

~~(c) A summary of personnel exposure related to ISFSI storage operations, a;~~

~~(d) A statement of expenses related to ISFSI storage operations, a;~~

~~(e) A statement of the estimated costs of continuing ISFSI storage operations through decommissioning and the estimated costs of decommissioning, including a discussion of the methods and assumptions used to estimate operations and decommissioning costs, a;~~

~~(e) An estimate of funds available for continuing ISFSI storage operations through decommissioning and funds available for ISFSI decommissioning; and a~~

~~(f) A statement of any significant developments regarding the opening of a Federally licensed High Level Waste facility.~~

~~(e) Frequency of Temperature Monitoring and Air Vent Inspection: The Temperature Monitoring and Air Vent Inspection Program established by PGE pursuant to Section (6)(a) of this rule shall include daily readings of Concrete Cask air outlet and ambient temperatures. The program shall include provisions for more frequent measurements if temperatures approach Technical Specification limits. The program shall also include a requirement to check air inlet and outlet vents for blockage weekly. PGE may reduce these surveillance frequencies with Department approval. PGE may apply extensions of up to 25 percent of individual surveillance intervals to accommodate minor variations in work scheduling.~~

~~(f) Contractors: PGE shall~~ **Contractors: The certificate holder must** require contractors who perform portions of the ISFSI storage or transporting operations to adhere to all applicable provisions of OAR 345-026-0390.

~~[Publications: Publications referenced are available from the agency.]~~ this rule.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.410, 469.501

AMEND: 345-070-0005

RULE SUMMARY: Changes are made to clarify that security program information must be reviewed by the Council and Director under ORS 469.530.

CHANGES TO RULE:

345-070-0005

Purpose ¶

The purpose of these rules is to protect the confidentiality of information submitted to the ~~Energy Facility Siting~~ Council and the ~~Secretary~~Director regarding security programs for nuclear-fueled power plants, nuclear installations, and the transportation of radioactive materials to and from such facilities.

Statutory/Other Authority: :ORS 469.530

Statutes/Other Implemented: ORS 469.530

AMEND: 345-070-0015

RULE SUMMARY: Revised rule clarifies the Trojan Independent Spent Fuel Installation's legal status as part of the Trojan Nuclear Power Plant and revises the definition of "Safeguards Information" to align with federal regulations.

CHANGES TO RULE:

345-070-0015

Definitions ¶

- (1) "Nuclear installation" is defined in ORS 469.300.¶
- (2) "Nuclear power plant" includes the Trojan Independent Spent Fuel Storage Installation.¶ 
- (3) "Security program" means any plan or procedure the primary function of which is to protect nuclear power plants, nuclear installations, transportation and storage of new or irradiated nuclear fuel elements or transportation and storage of fissile material against any deliberate act that could directly endanger the public health and safety including exposure to radiation, including, but not limited to, plans or procedures for:¶
- (a) Controlling entry to the site or portions of the site of fixed installations;¶
 - (b) Deterring or discouraging penetrations of sites or carriers by unauthorized persons;¶
 - (c) Detecting such penetrations in the event they occur;¶
 - (d) Apprehending in a timely manner unauthorized persons or authorized persons acting in a manner constituting a threat of sabotage or theft;¶
 - (e) Providing for appropriate authorities to take custody of violators.¶
- (~~34~~) "Fissile material" means fissile plutonium, uranium-233, and uranium-235 in any combination sufficient to cause $(\text{gm Pu}/200 \text{ gm}) + (\text{gm U-233}/200 \text{ gm}) + (\text{gm U-235 contained in uranium enriched to more than 20 percent in U-235})/350\text{gm}$ to be greater than unity.¶
- (~~45~~) "Safeguards information (SI)" ~~means information that specifically identifies:~~¶
- ~~(a) Detailed security measures for the protection of special nuclear material; or~~¶
 - ~~(b) Detailed security measures for the physical protection and location of certain plant equipment vital to the safety of production or utilization facilities as defined in 10 CFR 72.2.~~ 
- Statutory/Other Authority: ORS 469.470
- Statutes/Other Implemented: ORS 469.530

AMEND: 345-070-0015

RULE SUMMARY: Revised rule clarifies the Trojan Independent Spent Fuel Installation's legal status as part of the Trojan Nuclear Power Plant and revises the definition of "Safeguards Information" to align with federal regulations.

CHANGES TO RULE:

345-070-0015

Definitions ¶

- (1) "Nuclear installation" is defined in ORS 469.300.¶
 - (2) "Nuclear power plant" includes the Trojan Independent Spent Fuel Storage Installation.¶ 
 - (3) "Security program" means any plan or procedure the primary function of which is to protect nuclear power plants, nuclear installations, transportation and storage of new or irradiated nuclear fuel elements or transportation and storage of fissile material against any deliberate act that could directly endanger the public health and safety including exposure to radiation, including, but not limited to, plans or procedures for:¶
 - (a) Controlling entry to the site or portions of the site of fixed installations;¶
 - (b) Deterring or discouraging penetrations of sites or carriers by unauthorized persons;¶
 - (c) Detecting such penetrations in the event they occur;¶
 - (d) Apprehending in a timely manner unauthorized persons or authorized persons acting in a manner constituting a threat of sabotage or theft;¶
 - (e) Providing for appropriate authorities to take custody of violators.¶
 - (34) "Fissile material" means fissile plutonium, uranium-233, and uranium-235 in any combination sufficient to cause (gm Pu/200 gm) + (gm U-233/200 gm) + (gm U-235 contained in uranium enriched to more than 20 percent in U-235)/350gm) to be greater than unity.¶
 - (45) "Safeguards information (SI)" means information that specifically identifies:¶
 - (a) Detailed security measures for the protection of special nuclear material; or¶
 - (b) Detailed security measures for the physical protection and location of certain plant equipment vital to the safety of production or utilization facilities as defined in 10 CFR 72.2. 
- Statutory/Other Authority: ORS 469.470
 Statutes/Other Implemented: ORS 469.530

Summary of comments: 2021-12-09-R191-TESTIMONY-PGE.pdf

Page:15

 Author: E37638 Subject: Sticky Note Date: 2021-12-07 15:43:00

This defines Trojan as a Nuclear Power Plant which appears to contradict ORS 469.300 which states: "Nuclear power plant" means an electrical or any other facility using nuclear energy with a nominal electric generating capacity of 25 megawatts or more, for generation and distribution of electricity, and associated transmission lines." We believe that we fall under the definition for Nuclear Installation which better matches our mission: "Nuclear installation" means any power reactor, nuclear fuel fabrication plant, nuclear fuel reprocessing plant, waste disposal facility for radioactive waste, and any facility handling that quantity of fissionable materials sufficient to form a critical mass. "Nuclear installation" does not include any such facilities that are part of a thermal power plant." This point may be moot if ORS 469.300 is also being revised to spell out that Trojan's current configuration and mission are within the definition of a Nuclear Power Plant

 Author: E37638 Subject: Sticky Note Date: 2021-12-09 12:43:51

We believe that to be a typo and should read "...as defined in 10 CFR 73.2"

AMEND: 345-070-0020

RULE SUMMARY: Clarifies that the Council and Director must take all reasonable precautions to limit the number of persons having access to safeguards information, regardless of whether those persons are employees of the Oregon Department of Energy.

CHANGES TO RULE:

345-070-0020

Confidential Treatment Required ¶

The Council and the Director shall receive, and maintain as confidential, information submitted by any person pursuant to ORS 469.530 for review and approval to the extent the information falls within the definitions of "security program" or "safeguards information" in OAR 345-070-0015. The Council and Director shall take all reasonable precautions to:¶

- (1) Limit the number of persons ~~within the Department of Energy~~ having access to such information; and¶
- (2) Physically safeguard such information.

Statutory/Other Authority: ORS 469.530

Statutes/Other Implemented: ORS 469.530, 192.533



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Public Comment On Updates To Rules For The Trojan Independent Spent Fuel Installation

December 10, 2021

On October 22, 2021, the Oregon Department of Energy (Staff) filed, with the Archives Division of the Secretary of State, a Notice of Proposed Rulemaking including statement of need, fiscal impact and proposed rulemaking changes. The Oregon Conservancy Foundation (OCF) provides the following public comment:

1. On page 4 of the Staff's Notice are proposed changes amending 345-026-0300 Regulations Applicable to ~~Nuclear~~ the Trojan Independent Spent Fuel Installations by adding language in subpart (2) to address the purpose of these rules:

(2) The purpose of these rules is to cooperate with the federal government in accordance with Oregon's siting policy in ORS 469.310 to ensure the safety of interim on-site storage and to ensure spent nuclear fuel and related radioactive materials and waste will not be an undue financial burden to utilities or people of Oregon.

How does EFSC propose to "ensure" that Trojan's nuclear waste "will not be an undue financial burden to utilities or people of Oregon" when it already is? The ratepayers of Portland General Electric, who pay for this installation, along with the taxpayers of Oregon, are already unduly bearing the financial burden of this nuclear waste. This does not even begin to address the additional burden placed on ourselves and future generations:

No degree of prosperity could justify the accumulation of large amounts of highly toxic substances which nobody knows how to make safe and which remain an incalculable danger to the whole of creation for historical or even geological ages. To do such a thing is a transgression against life itself, a transgression infinitely more serious than any crime perpetrated by man. The idea that a civilization could sustain itself on such a transgression is an ethical, spiritual, and metaphysical monstrosity. It means conducting the economic affairs of man as if people did not matter at all.

– E. F. Schumacher "Small is Beautiful"

2. On page 6, Staff proposes amendments 345-026-0340 Security Plans. In subpart (3) Staff proposes the following changes:

(3) The certificate holder ~~shall~~may not make ~~modification~~changes to the security plan that involve a reduction in ~~the ability to detect or prevent unauthorized entry, or a reduction in the ability to detect or prevent the introduction of unauthorized material into a Protected Area or otherwise~~ lessen the effectiveness of the physical security plan without written ~~Department~~ written approval prior to implementation.

We do not support the deletion of the following language:

the ability to detect or prevent unauthorized entry, or a reduction in the ability to detect or prevent the introduction of unauthorized material into a Protected Area or otherwise lessen

This language emphasizes the purpose and necessity of a security plan and should remain in subpart (3). Keeping this language does not take away from the rest of the proposed Staff changes to this subpart.

In subpart (4) new language allows the certificate holder to make changes to the security plan that “do not reduce the effectiveness of the plan without prior approval from the Council and Director.” The certificate holder must notify the Department of these changes within 60 days after their implementation. Upon notice the Department promptly notifies the Council of the plan changes at a scheduled Council meeting, whenever that meeting happens to be scheduled. All of this builds in unnecessary and risky delay, especially if changes to the plan are found by the Department, or EFSC, to reduce its effectiveness. **There is no reason why the certificate holder should not immediately notify the Department upon implementation of these kind of Security plan changes.**

3. On page 7, Staff proposes to amend 345-026-0350 addressing Emergency Planning. In subpart (3) The certificate holder may make changes to the plan, that would not reduce its effectiveness, without prior council approval. The certificate holder then submits any changes made under this section within 30 days after the certificate holders implementation date and the Department promptly notifies the Council of the plan changes at a scheduled Council meeting, whenever that is scheduled to take place. As in the proposed changes to the Security Plan, this builds in unnecessary delay, especially if there are changes that the Department or EFSC later determine do reduce the effectiveness of the Emergency Plan, though, unlike the Security Plan, for some reason the delay is shortened from 60 days to 30 days, implying that emergency planning is somehow more important that security planning. **There is no reason why the certificate holder should not immediately notify the Department upon implementation of these kind of Emergency Plan changes.**
4. On pages 8-9 are Staff changes proposed to amend 345-026-0370, ISFSI Decommissioning Plan. At the bottom of page 8 and at the beginning of page 9 are subparts (4) (e) and (f) outlining what significant revisions to the decommissioning plan the certificate holder must not implement unless the Council has reviewed and approved the revisions:

(4) The certificate holder ~~shall~~must not implement significant revisions to the decommissioning plan unless the Council has reviewed and approved the revisions. A revision is significant if it involves one of the following items:

(e) A significant change in the types or significant increase in the amounts of any effluents that may be released offsite; or

(f) A significant increase in radiological or hazardous material exposure to site workers or to members of the public, including exposure due to transport of radioactive or hazardous material.

While the lead in language to subpart (4) does provide definition for the use of the term “significant” in determining whether “revisions to the decommissioning plan” are significant, in both subparts (e) and (f) there is no definition of what the term “significant” means leaving it to the certificate holder to make that initial determination. The use of the term “significant” should be defined for both subpart (e) and (f) leaving no room for question or dispute.

Once again in subpart (5) the following language is used for decommissioning plan revisions that are initially deemed by the certificate holder to not be significant:

The certificate holder ~~shall~~**must** notify the Department of revisions to the plan that are not significant within 30 days after implementation of the revision. The Department ~~shall~~**must** promptly notify the Council of such revisions at a regularly scheduled meeting.

OCF’s comments number 2 and 3 apply here as well. **There is no reason why the certificate holder should not immediately notify the Department upon implementation of these kind of Decommissioning Plan changes.**

5. On pages 10-12 are the Staff changes proposed to amend 345-026-0390 Spent Nuclear Fuel Storage. In the proposed new subpart (4)(a)(E) on page 11, it states:

(4) The certificate holder must operate the ISFSI consistent with a Safety Analysis Report submitted in compliance with 10 CFR 72.70 and the following requirements:

(a) The Safety Analysis Report must provide for the following programs:

(E) A program for maintaining equipment onsite and having equipment available within a reasonable time period to respond to credible accident scenarios and a plan for construction of new concrete casks.

Subpart (E) requires equipment on site and having equipment available in a “reasonable time period to respond to credible accident scenarios” but it provides no definition of what a “reasonable time period” is for having equipment available. This time frame could be crucial and should be defined.

Respectfully submitted,

Lloyd K. Marbet
Cathryn A. Chudy
David Hupp

And the cost of a thing is the amount of what I will call life which is required to be exchanged for it, immediately or in the long run.

Henry David Thoreau