



Oregon

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To: Energy Facility Siting Council

From: Sisily Fleming, Fiscal Analyst

Date: April 8, 2022

Subject: Agenda Item F (Information & Action Item):
Bond and Letter of Credit Claims Process and Bond Template Update for the
April 22, 2022 EFSC Meeting.

Attachments: Attachment 1: Proposed Bond Template

BACKGROUND

Council approved the form of their financial assurance templates in January 2022, and requested staff provide an overview of the financial assurance claims process, and further review of the Bond Template language, specifically the intent and need for paragraphs 4 and 5.

DRAWING ON A LETTER OF CREDIT

Letters of Credit are an undertaking of payment issued by banks for applicants to authorize specific payments to beneficiaries. Payment is authorized when the required documentation to meet the terms and conditions of the Letter of Credit is presented to the issuing bank.

If Council were required to seek payment of a Letter of Credit, the following documentation would need to be presented at the office address listed in the original letter of credit (or most recent amendment) if applicable:

- The original letter of credit and all subsequent amendments
- A sight draft drawn on issuing bank from the Council/Department
- A dated draw certificate in the form of Exhibits A, B or C of the Letter of Credit

The issuing bank is bound by the provisions of the Uniform Customs and Practice for Documentary Credits and is expected to honor the draft by the close of business on the 3rd business day after receiving the documents.

SURETY BOND CLAIMS

Surety Bonds are issued by insurance companies to guarantee payment, performance, or compliance by a Principal to an Obligee. Payment is authorized after the surety completes an investigation to determine whether the claim is valid.

If Council were required to seek payment of a Bond, a claim must be filed with the insurance company/surety to initiate the process. The Surety would complete an investigation to determine whether the terms of the bond have been met, particularly whether the facility has been retired and the site has been restored according to a final retirement plan approved by the Council. (Paragraph 4 of the Bond Template). Once the Surety determines the claim to be valid, the Surety will offer the Principal the opportunity to satisfy the bond (typically 30-60 days), and if the Principal fails to do so, the Surety issues payment as authorized by the Bond, and seeks reimbursement from Principal.

EFSC SURETY BOND TEMPLATE

During the review and approval of the financial assurance templates in January 2022, Council requested further evaluation of the language of the Bond Template, specifically the intent and need for paragraphs 4 and 5. Concern was raised over whether a bond would be considered void without an approved retirement plan.

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- (4) WHEREAS the Principal is required to retire the facility and restore the site according to a final retirement plan approved by the Council under Condition (Number) of the Site Certificate.
- (5) THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH that if the said Principal complied with the conditions of the Site Certificate referenced above, OR, if the Principal obtains and provides alternate financial assurance approved by the Council then this obligation shall be void, otherwise this obligation will remain in full force and effect.

Paragraph 4 describes the requirements the Site Certificate Holder (Principal) must complete to satisfy their obligations of the Bond and is necessary to serve as the basis of an investigation by the Surety in the event that a claim is filed: whether the facility was retired, and the site restored according to the final retirement plan approved by the Council under mandatory condition 345-025-0006(9) of their site certificate. This condition states that:

(9) The certificate holder must retire the facility if the certificate holder permanently ceases construction or operation of the facility. The certificate holder must retire the facility according to a final retirement plan approved by the Council, as described in OAR 345-027-0410. The certificate holder must pay the actual cost to restore the site to a useful, non-hazardous condition at the time of retirement, notwithstanding the Council's approval in the site certificate of an estimated amount required to restore the site.

Paragraph 5 conditions the obligation to be void, only in the event that the site certificate holder has **complied** with all of the retirement conditions; once the facility has been retired and

the site has been restored according to the plan approved by the Council. Lack of approval of a final retirement plan does not void the obligation of the bond upon receipt, as questioned, since the site certificate holder has **not** yet complied with the conditions, and the condition itself has not yet required the submittal of a proposed retirement plan as described in rule.

OAR 345-027-0410 requires certificate holders to submit a proposed retirement plan with their application for termination of their site certificate within 2 years of ceasing construction or operation of a facility. Bonds of this nature are performance based and do not typically include expiration dates, and this only clause specifies the end of the obligation for a site certificate holder, and therefore needed.

STAFF RECOMMENDATION

During the review of the process for filing a bond claim, it was noted that an indefinite amount of time could be spent during the review and determination of validity, and payment timelines are not defined in the Bond template. In an effort to reduce delays in payments of bond obligations, the following language, shown in red, is proposed to be added to Paragraph 6:

The Surety shall become liable on this bond obligation if the Principal fails to fulfill its obligations to comply with the conditions of the Site Certificate referenced above. Upon notification by the Obligee that the Principal has failed to perform as guaranteed by this bond, the Surety will be obligated to pay monies to the Obligee, limited to the penal sum of this bond, **within 90 days.**

ATTACHMENTS:

Attachment 1: Proposed Bond Template