

Oregon Energy Facility Siting Council (EFSC)

RE: Potential Changes to the Councils' Review Processes
for Requests for Amendment to a Site Certificate

Staff's Draft Recommended Rules

VERSION 2

1 **DIVISION 27**

2 **EXPIRATION, AMENDMENT AND TERMINATION OF SITE CERTIFICATES, AND DEPARTMENT OF**
 3 **ENERGY APPROVAL OF GAS STORAGE TESTING PIPELINES**

4
 5 **345-027-00~~11~~**

6 **Applicability**

7 The rules in this division apply to all facilities under the Council's jurisdiction except those
 8 facilities described in ORS 469.410(1), including the Trojan energy facility, and except that rules
 9 345-027-0050, -0060, -0070, -0080, -0090 and -0100 apply to proposed changes that have been
 10 included in requests for amendment to site certificates and change requests that have been
 11 received by the Department prior to Month XX, 2017.

12
 13 **345-027-00~~00~~**

14 **Certificate Expiration**

15 If the certificate holder does not begin construction of the facility by the construction beginning
 16 date specified in the site certificate or amended site certificate, the site certificate expires on
 17 the construction beginning date specified, unless expiration of the site certificate is suspended
 18 pending final action by the Council on a request for amendment to a site certificate pursuant to
 19 OAR 345-027-000L(2).

20
 21 **345-027-000A**

22 **Changes Requiring an Amendment**

23 Except for changes allowed under OAR 345-027-000B of this rule, an amendment to a site
 24 certificate is required to:

- 25 (1) Transfer ownership of the facility or the certificate holder as described in OAR 345-027-
 26 0100;
- 27 (2) Apply later-adopted law(s) as described in OAR 345-027-0090;
- 28 (3) Extend the construction beginning or completion deadline as described in OAR 345-027-
 29 000L;
- 30 (4) Add area to the site boundary; and
- 31 (5) Design, construct or operate a facility in a manner different from the description in the site
 32 certificate if the proposed change:
- 33 (a) Could result in a significant adverse impact that the Council has not addressed in an
 34 earlier order and the impact affects a resource or interest protected by a Council
 35 standard;
- 36 (b) Could impair the certificate holder's ability to comply with a site certificate condition; or
- 37 (c) Could require a new condition or a change to a condition in the site certificate.

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 39 **345-027-00AA**

40 **Requests for Amendment Process**

- 41 (1) The transfer process, described in 345-027-0100, shall apply to the Council's review of a
 42 request for amendment to a site certificate to transfer a site certificate.

- 1 (2) The Type I process, consisting of rules 345-027-000E through -000H, -000I, -000J and -000K,
 2 shall apply to the Council's review of a request for amendment proposing a change
 3 described in 345-027-000A(5).
- 4 (3) The Type II process, consisting of rules 345-027-000E through -000H, -000I, -000J and -000K,
 5 shall apply to the Council's review of a request for amendment to:
 6 (a) Apply later-adopted law(s) as described in 345-027-0090, except that -000G is not
 7 applicable;
 8 (b) Extend the construction beginning or completion deadline as described in 345-027-000L;
 9 (c) Add area to the site boundary.
- 10 (4) The Council may act concurrently on any combination of proposed changes included in a
 11 request for amendment. Concurrent proposed changes are subject to the substantive
 12 requirements applicable to each respective proposed change and the Council shall review
 13 all proposed changes through the process with the more procedural steps applicable to any
 14 one of the proposed changes.

16 **345-027-000B**

17 **Changes Exempt from Requiring an Amendment**

18 An amendment to a site certificate is not required if the proposed change in the design,
 19 construction or operation of a facility is in substantial compliance with the terms and conditions
 20 of the site certificate, and is a change:

- 21 (1) To an electrical generation facility that would increase the electrical generating capacity and
 22 would not increase the number of electric generators at the site, change fuel type, increase
 23 fuel consumption by more than 10 percent or enlarge the facility site;
- 24 (2) To the number or location of pipelines for a surface facility related to an underground gas
 25 storage reservoir that would not result in the facility exceeding permitted daily throughput
 26 or a change to the site boundary;
- 27 (3) To the number, size or location of pipelines for a geothermal energy facility that would not
 28 result in a change to the site boundary;
- 29 (4) To a pipeline that is a related or supporting facility that delivers natural gas to the energy
 30 facility if the change would extend or modify the pipeline or expand the right-of-way, when
 31 the change is exclusively to serve gas users other than the energy facility;
- 32 (5) To a transmission line that is a related or supporting facility if the change would extend or
 33 modify the transmission line or expand the right-of-way, when the change is exclusively to
 34 serve the transmission needs of a separate energy facility or energy user; or
- 35 (6) To construct a pipeline less than 16 inches in diameter and less than five miles in length to
 36 test or maintain an underground gas storage reservoir. If the proposed pipeline would
 37 connect to a surface facility related to an underground gas storage reservoir for which the
 38 Council has issued a site certificate or to a gas pipeline for which the Council has issued a
 39 site certificate, the certificate holder must obtain, prior to construction, the approval of the
 40 Department of Energy for the construction, operation and retirement of the proposed
 41 pipeline. To obtain Department approval, the certificate holder must submit a request as
 42 described in OAR 345-027-0210 through OAR 345-027-0240.

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1 **345-027-000C**

2 **Written Evaluations for Changes Not Requiring Amendment**

- 3 (1) If the certificate holder concludes that a proposed change to the facility does not require an
 4 amendment to the site certificate, the certificate holder must complete a written evaluation
 5 if the change:
 6 (a) Could be included in and governed by the site certificate, but the certificate holder has
 7 concluded the change is not described in 345-027-000A; or
 8 (b) Is exempt from requiring an amendment under -000B.
 9 (2) The written evaluation must explain why an amendment is not required, must be
 10 completed before implementing any change, and must be included in the next semiannual
 11 construction progress report or the Facility Modification Report required under 345-026-
 12 0080. The written evaluation must be retained for the life of the facility.
 13 (3) The Department of Energy may, at any time, inspect the changes made to the facility and
 14 may inspect the certificate holder's written evaluation concluding that the change did not
 15 require an amendment.
 16 (4) When the certificate holder implements a change without an amendment, the Department
 17 may initiate an enforcement action as described in Division 29 if the Department
 18 determines the change required an amendment to the site certificate.

19

20 **345-027-000D**

21 **Amendment Determination Request**

- 22 (1) The certificate holder may request a written determination of whether an amendment to
 23 the site certificate is required by OAR 345-027-000A by submitting the following
 24 information in a written request to the Department of Energy:
 25 (a) A narrative description of the proposed change(s);
 26 (b) Maps and/or geospatial data layers representing the effects and/or location of the
 27 proposed change;
 28 (c) The certificate holder's evaluation of whether the proposed change requires an
 29 amendment as described in OAR 345-027-000A or OAR 345-027-000B; and
 30 (d) Any additional information the certificate holder believes will assist the Department's
 31 evaluation.
 32 (2) Upon receiving a request for a written determination described in section (1), the
 33 Department shall, as promptly as possible, issue a written determination indicating whether
 34 the proposed change requires an amendment, or refer the request to the Council for a
 35 written Council determination.
 36 (3) At the request of the certificate holder, the Department must refer its determination to the
 37 Council for concurrence, modification or rejection.

38

39 **345-027-000E**

40 **Pre-Amendment Conference**

- 41 (1) Prior to submitting a preliminary request for amendment to the site certificate as described
 42 in OAR 345-027-000F, the certificate holder may request a pre-amendment conference with
 43 the Department of Energy to discuss the scope, timing, and applicable laws and Council
 44 standards associated with the request for amendment. If the certificate holder is requesting

1 an amendment to add area to the site boundary, the certificate holder must request a pre-
2 amendment conference before submitting a preliminary request for amendment.

3 (2) A pre-amendment conference request must be in writing and must include a description of
4 the proposed change and, if applicable, maps or geospatial data layers representing the
5 location of the proposed change.

6 (3) Upon receipt of a request as described in section (1), the Department must, as promptly as
7 possible, set a date and time for a pre-amendment conference.

8
9 **345-027-000F**

10 **Preliminary Request for Amendment**

11 (1) To request an amendment to the site certificate required by OAR 345-027-000A(3) – (5), the
12 certificate holder shall submit a written preliminary request for amendment to the
13 Department of Energy that includes the following:

14 (a) The name of the facility, the name and mailing address of the certificate holder, and the
15 name, mailing address, email address and phone number of the individual responsible
16 for submitting the request.

17 (b) A detailed description of the proposed change, including:

18 (A) a description of how the proposed change affects the facility,

19 (B) a description of how the proposed change affects those resources or interests
20 protected by applicable laws and Council standards, and

21 (C) the specific location of the proposed change, and any updated maps and/or
22 geospatial data layers relevant to the proposed change.

23 (c) References to any specific Division 21 information that may be required for the
24 Department to make its findings.

25 (d) The specific language of the site certificate, including conditions, that the certificate
26 holder proposes to change, add or delete through the amendment.

27 (e) A list of the Council standards and all other laws - including statutes, rules and
28 ordinances - applicable to the proposed change, and an analysis of whether the facility,
29 with the proposed change, would comply with those applicable laws and Council
30 standards. For the purpose of this rule, a law or Council standard is “applicable” if the
31 Council would apply or consider the law or Council standard under OAR 345-027-
32 000K(2).

33 (f) An updated list of the owners of property located within or adjacent to the site of the
34 facility, as described in OAR 345-021-0010(1)(f).

35 (2) For any Council standard that requires evaluation of impacts within an analysis area, the
36 analysis area shall be the larger of either the study area(s) as defined in OAR 345-001-
37 0000(59) or the analysis area(s) described in the project order for the application for site
38 certificate, unless otherwise approved in writing by the Department following a pre-
39 amendment conference.

40 (3) The certificate holder may incorporate, by specific reference, evidence previously submitted
41 to the Department in the application for site certificate or previous request for amendment,
42 or evidence that is otherwise included in the Department’s record on the facility.

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44

1 **345-027-000G**

2 **Determination of Completeness for a Request for Amendment**

- 3 (1) Until the Department of Energy determines the request for amendment to the site
4 certificate is complete, it is a preliminary request for amendment. After receiving a
5 preliminary request for amendment, the Department may seek comments from reviewing
6 agencies to determine whether that request is complete.
- 7 (2) Unless the certificate holder agrees to additional time, within 60 days after receipt of a
8 preliminary request for amendment, the Department shall notify the certificate holder
9 whether the request for amendment is complete. In the notification, the Department shall:
10 (a) State that the request for amendment is complete; or
11 (b) State that the request for amendment is incomplete and:
12 (A) Describe any additional information needed to complete the request for
13 amendment to the extent known to the Department at the time of the notification,
14 including identification of applicable laws and Council standards not addressed in
15 the preliminary request for amendment,
16 (B) Ask the certificate holder to submit the additional information by the due dates
17 described in section (4), and
18 (C) Estimate the additional time the Department will need to make a determination of
19 completeness following the submittal of the additional information by the certificate
20 holder.
- 21 (3) If the Department does not notify the certificate holder as described in section (2), the
22 request for amendment is deemed complete 60 days after receipt of a preliminary request
23 for amendment. Otherwise, the request for amendment is complete as determined under
24 section (5).
- 25 (4) The Department may specify a date by which the certificate holder must submit additional
26 information needed to complete the request for amendment. If follow-up requests for
27 additional information are needed, the Department may specify dates by which the
28 certificate holder must submit the information. At the request of the certificate holder, the
29 Department may allow additional time for submission of the information. If the certificate
30 holder does not submit the information by the deadline specified by the Department,
31 including any allowed extension, the Council may reject the preliminary request for
32 amendment. The rejection of a preliminary request for amendment is subject to appeal
33 under ORS 469.403(3).
- 34 (5) A request for amendment is complete when the Department finds that the certificate holder
35 has submitted information adequate for the Council to make findings or impose conditions
36 on all applicable laws and Council standards. The Department shall notify the certificate
37 holder when the Department finds that the request for amendment is complete.
- 38 (6) After receiving notification from the Department that the preliminary request for
39 amendment is complete, the Department may require the certificate holder to prepare a
40 consolidated request for amendment that includes all revisions to the preliminary request
41 for amendment and all additional information requested by the Department before the
42 determination of completeness. Upon a request by the Department, the certificate holder
43 shall submit paper and non-copy-protected electronic copies of the consolidated request
44 for amendment to the Department as specified by the Department.

- 1 (7) If, after a determination that a request for amendment is complete, the Department
 2 identifies a need for additional information during its review of the request for amendment,
 3 the Department may request additional information from the certificate holder.
 4

5 **345-027-000H**

6 **Draft Proposed Order for a Request for Amendment**

- 7 (1) Within 15 days after a request for amendment to the site certificate described in OAR 345-
 8 027-000A(3) - (5) or a request for amendment to apply later-adopted laws described in OAR
 9 345-027-0090 is determined to be complete, the Department of Energy shall:
 10 (a) Send notice to the certificate holder specifying a date for issuance of a draft proposed
 11 order that is no later than 120 days after the date of the notice.
 12 (b) Post an announcement on the Department's website to notify the public that a complete
 13 request for amendment has been received. The announcement shall include:
 14 (A) A copy of the complete request for amendment;
 15 (B) The date the draft proposed order will be issued, as specified in the notice required
 16 by subsection (1)(a); and
 17 (C) A statement that the public comment period begins upon issuance of the draft
 18 proposed order.
 19 (2) No later than the date specified in the notice required by subsection (1)(a), the Department
 20 shall issue a draft proposed order recommending approval, modification, or denial of the
 21 requested amendment. The Department may issue the draft proposed order at a later date,
 22 but the Department shall, no later than the date the Department has specified in the notice
 23 required by subsection (1)(a), notify the certificate holder in writing of the reasons for the
 24 delay. The draft proposed order may include, but is not limited to draft proposed findings of
 25 fact, conclusions of law, and conditions concerning the facility's compliance with applicable
 26 laws and Council Standards, and
 27

28 **345-027-000I**

29 **Type I Process: Public Comment and Hearing on the Draft Proposed Order for a Request for
 30 Amendment**

- 31 (1) After issuance of the draft proposed order as described in OAR 345-027-000H, the Council
 32 or a hearing officer appointed by the Council shall conduct a public hearing on the request
 33 for amendment to the site certificate in the vicinity of the facility. The public hearing must
 34 be held at least 20 days after the draft proposed order is issued. The public hearing is not a
 35 contested case hearing.
 36 (2) Concurrent with the issuance of the draft proposed order as described in OAR 345-027-
 37 000H, the Department of Energy shall:
 38 (a) Send the notice described in section (3) of this rule by mail or email to:
 39 (A) Persons on the Council's general mailing list as defined in OAR 345-011-0020;
 40 (B) Persons on any special mailing list established for the facility;
 41 (C) The reviewing agencies as defined in OAR 345-001-0010(52); and
 42 (D) The updated property owner list as described in OAR 345-021-0010(1)(f) Exhibit F,
 43 (b) Post the complete request for amendment, draft proposed order, and the notice of the
 44 draft proposed order and public hearing on the Department website, and

- 1 (c) Make physical copies of the draft proposed order available to the public for inspection.
 2 (3) Notice of the complete request for amendment, draft proposed order and public hearing
 3 shall include:
 4 (a) A description of the facility and the facility's general location.
 5 (b) The date, time and location of the public hearing described in this rule.
 6 (c) The name, address, email address and telephone number of the Department
 7 representative to contact for additional information.
 8 (d) Addresses of the physical location(s) and the website where the public may review
 9 copies of the complete request for amendment and draft proposed order.
 10 (e) The deadline for the public to submit written comments to be included in the record of
 11 the public hearing and how such comments should be submitted.
 12 (f) A statement that:
 13 (A) A complete request for amendment has been received and reviewed by the
 14 Department.
 15 (B) The Department has issued a draft proposed order.
 16 (C) To raise an issue on the record of the public hearing, a person must raise the issue in
 17 person at the public hearing or in a written comment submitted after the date of the
 18 notice of the public hearing and received by the Department before the close of the
 19 record of the public hearing.
 20 (D) The Council will not accept or consider any further public comment on the request
 21 for amendment or on the draft proposed order after the close of the record of the
 22 public hearing.
 23 (E) Only persons who comment in person or in writing on the record of the public
 24 hearing have the right to appeal the Council's final order.
 25 (F) Failure to raise an issue in person or in writing on the record of the public hearing
 26 precludes consideration of the issue by the Supreme Court in the event of an appeal
 27 of the Council's final order.
 28 (4) During the public hearing, the Department shall explain the amendment process, including
 29 the means and opportunities for the general public to participate in the process. The
 30 Department may provide this explanation by a written handout.
 31 (5) At the commencement of the public hearing, the presiding officer shall state that a person
 32 who intends to raise an issue that may be the basis for an appeal of the Council's final order on
 33 the request for an amendment must raise the issue in person at the hearing or in a written
 34 statement submitted to Department before the deadline stated in the notice of the public
 35 hearing. At the public hearing, any person may present information regarding the pending
 36 request for amendment without administration of an oath. The presiding officer shall
 37 record all presentations made during the public hearing. The presentations are part of the
 38 decision record for the request for amendment.
 39

40 **345-027-0011**

41 **Type II Process: Public Comment and Hearing on the Draft Proposed Order for a Request for** 42 **Amendment**

- 43 (1) After issuance of the draft proposed order as described in OAR 345-027-000H, the Council
 44 or a hearing officer appointed by the Council shall conduct a public hearing on the request

- 1 for amendment to the site certificate in the vicinity of the facility. The public hearing must
2 be held at least 20 days after the draft proposed order is issued. The public hearing is not a
3 contested case hearing.
- 4 (2) Concurrent with the issuance of the draft proposed order as described in OAR 345-027-
5 000H, the Department of Energy shall:
- 6 (a) Send the notice described in section (3) of this rule by mail or email to:
7 (A) Persons on the Council's general mailing list as defined in OAR 345-011-0020;
8 (B) Persons on any special mailing list established for the facility;
9 (C) The reviewing agencies as defined in OAR 345-001-0010(52); and
10 (D) The updated property owner list as described in OAR 345-021-0010(1)(f) Exhibit F.
- 11 (b) Post the complete request for amendment, draft proposed order, and the notice of the
12 draft proposed order and public hearing on the Department website, and
13 (c) Make physical copies of the draft proposed order available to the public for inspection.
- 14 (3) Notice of the complete request for amendment, draft proposed order and public hearing
15 shall include:
- 16 (a) A description of the facility and the facility's general location.
17 (b) The date, time and location of the public hearing described in this rule.
18 (c) The name, address, email address and telephone number of the Department
19 representative to contact for additional information.
20 (d) Addresses of the physical location(s) and the website where the public may review
21 copies of the complete request for amendment and draft proposed order.
22 (e) The deadline for the public to submit written comments to be included in the record of
23 the public hearing and how such comments should be submitted.
24 (f) A statement that:
- 25 (A) A complete request for amendment has been received and reviewed by the
26 Department.
27 (B) The Department has issued a draft proposed order.
28 (C) To raise an issue on the record of the public hearing, a person must raise the issue in
29 person at the public hearing or in a written comment submitted after the date of the
30 notice of the public hearing and received by the Department before the close of the
31 record of the public hearing.
32 (D) A person's failure to raise an issue in person or in writing on the record of the public
33 hearing precludes the Council's consideration of whether to grant that person's
34 subsequent contested case request.
35 (E) Failure to raise an issue with sufficient specificity to afford the Council, the
36 Department, and the certificate holder an opportunity to respond to the issue
37 precludes the Council from considering whether that issue justifies a contested case
38 proceeding.
39 (F) To raise an issue with sufficient specificity, a person must present facts, on the
40 record of the public hearing, that support the person's position on the issue.
41 (G) The Council will not accept or consider any further public comment on the request
42 for amendment or on the draft proposed order after the close of the record of the
43 public hearing.

- 1 (4) During the public hearing, the Department shall explain the amendment process, including
 2 the means and opportunities for the general public to participate in the process. The
 3 Department may provide this explanation by a written handout.
- 4 (5) At the commencement of the public hearing, the presiding officer shall read aloud the
 5 following:
 6 (a) A person who intends to request a contested case on the proposed order for a site
 7 certificate amendment must comment in person or in writing on the record of the public
 8 hearing.
 9 (b) A person who intends to raise an issue that may be the basis for granting a contested
 10 case proceeding must raise that issue on the record of the public hearing with sufficient
 11 specificity to afford the Council, the department and the certificate holder an adequate
 12 opportunity to respond to the issue. To raise an issue with sufficient specificity, a person
 13 must present facts, on the record of the public hearing, that support the person's
 14 position on the issue.
- 15 (6) At the public hearing, any person may present information regarding the pending request
 16 for amendment without administration of an oath. The presiding officer shall record all
 17 presentations made during the public hearing. The presentations are part of the decision
 18 record for the request for amendment.

19

20 **345-027-000J**21 **Type I Process: Proposed Order and Council's Final Decision**

- 22 (1) No later than 30 days after the close of the record of the public hearing, the Department of
 23 Energy shall issue a proposed order recommending approval, modification or denial of the
 24 request(s) for amendment to the site certificate. The Department must consider any oral
 25 comments made at the public hearing, written comments received before the close of the
 26 record of the public hearing, and agency consultation. The Department may issue the
 27 proposed order at a later date, but the Department shall, no later than 30 days after the
 28 close of the record of the public hearing, notify the certificate holder in writing of the
 29 reasons for the delay.
- 30 (2) Concurrent with issuing the proposed order, the Department shall issue public notice of the
 31 proposed order by posting public notice as an announcement on its website and by sending
 32 public notice by mail or email to:
 33 (a) Persons on the Council's general mailing list as defined in OAR 345-011-0020,
 34 (b) Persons on any special list established for the facility,
 35 (c) The reviewing agencies as defined in OAR 345-001-0010(52), and
 36 (d) The updated property owner list as described in OAR 345-021-0010(1)(f) Exhibit F.
- 37 (3) Notice of the proposed order shall include:
 38 (a) A description of the facility and the facility's general location.

- 1 (b) A statement that there is not an opportunity to request a contested case.
 2 (c) The physical and website addresses of where the public may review copies of the
 3 proposed order.
 4 (d) The name, address, email address and telephone number of the Department
 5 representative to contact for more information.
- 6 (4) After giving notice of the proposed order, the Council may adopt, modify or reject the
 7 proposed order based on the considerations described in OAR 345-027-000K. In a written
 8 order, the Council shall either grant or deny issuance of an amended site certificate. If the
 9 Council grants issuance of an amended site certificate, the Council shall issue an amended
 10 site certificate, which is effective upon execution by the Council Chair and by the certificate
 11 holder.
- 12 (5) Judicial review of the Council's final order either granting or denying an amended site
 13 certificate under a Type II process shall be as provided in ORS 469.403.

14

15 **345-027-00JJ**16 **Type II Process: Proposed Order, Requests for Contested Case and Council's Final Decision**

- 17 (1) No later than 30 days after the close of the record of the public hearing, the Department of
 18 Energy shall issue a proposed order recommending approval, modification or denial of the
 19 request(s) for amendment to the site certificate. The Department must consider any oral
 20 comments made at the public hearing, written comments received before the close of the
 21 record of the public hearing, and agency consultation. The Department may issue the
 22 proposed order at a later date, but the Department shall, no later than 30 days after the
 23 close of the record of the public hearing, notify the certificate holder in writing of the
 24 reasons for the delay.
- 25 (2) Concurrent with issuing the proposed order, the Department shall issue public notice of the
 26 proposed order by posting public notice as an announcement on its website and by sending
 27 public notice by mail or email to:
 28 (a) Persons on the Council's general mailing list as defined in OAR 345-011-0020,
 29 (b) Persons on any special list established for the facility,
 30 (c) The reviewing agencies as defined in OAR 345-001-0010(52), and
 31 (d) The updated property owner list as described in OAR 345-021-0010(1)(f) Exhibit F.
- 32 (3) Notice of the proposed order shall include:
 33 (a) A description of the facility and the facility's general location.
 34 (b) A description of the process for requesting a contested case.
 35 (c) The physical and website addresses of where the public may review copies of the
 36 proposed order.
 37 (d) The name, address, email address and telephone number of the Department
 38 representative to contact for more information.
- 39 (4) On the same date the notice of proposed order as described in section (2) is issued, the
 40 Department shall send a notice of the opportunity to request a contested case to the
 41 certificate holder and to all persons who commented in person or in writing on the record
 42 of the public hearing as described in OAR 345-027-000I. The notice shall include the

- 1 deadline for requesting a contested case and restatements of sections (5), (6), (7), (8) and
2 (9).
- 3 (5) Only those persons, including the site certificate holder, who commented in person or in
4 writing on the record of the public hearing described in OAR 345-027-000I may request a
5 contested case proceeding on the proposed order for an amendment to the site certificate.
6 To properly raise an issue in a request for a contested case proceeding on the proposed
7 order for an amendment, the issue must be within the jurisdiction of the Council, and the
8 person must have raised the issue in person or in writing on the record of the public
9 hearing, unless the Department of Energy did not follow the requirements of OAR 345-027-
10 000I, or unless the action recommended in the proposed order differs materially from the
11 draft proposed order, including any recommended conditions of approval, in which case the
12 person may raise only new issues within the jurisdiction of the Council that are related to
13 such differences. If a person has not raised an issue at the public hearing with sufficient
14 specificity to afford the decision maker an opportunity to respond to the issue, the Council
15 shall not grant a contested case proceeding for that issue. To have raised an issue with
16 sufficient specificity, the person must have presented facts at the public hearing that
17 support that person's position on the issue.
- 18 (6) Contested case requests must be submitted in writing and must be received by the
19 Department by a specified deadline that is at least 30 days from the date of notice in
20 section (4). Contested case requests must include:
- 21 (a) The person's name, mailing address and email address and any organization the person
22 represents;
 - 23 (b) A short and plain statement of the issue or issues the person desires to raise in a
24 contested case proceeding;
 - 25 (c) A statement that describes why the Council should find that the requester properly
26 raised each issue, as described in section (7), including a specific reference to the
27 person's prior comments to demonstrate that the person raised the specific issue or
28 issues on the record of the public hearing, if applicable;
 - 29 (d) A statement that describes why the Council should determine that each identified issue
30 justifies a contested case, under the evaluation described in section (9).
 - 31 (e) A detailed description of the person's interest in the proceeding and how that interest
32 may be affected by the outcome of the proceeding.
 - 33 (f) Name and address of the person's attorney, if any;
 - 34 (g) A statement of whether the person's request to participate in a contested case is as a
35 party or a limited party, and if as a limited party, the precise area or areas in which
36 participation is sought;
 - 37 (h) If the person seeks to protect a personal interest in the outcome of the proceeding, a
38 detailed statement of the person's interest, economic or otherwise, and how such
39 interest may be affected by the results of the proceeding;
 - 40 (i) If the person seeks to represent a public interest in the results of the proceeding, a
41 detailed statement of such public interest, the manner in which such public interest will
42 be affected by the results of the proceeding, and the person's qualifications to
43 represent such public interest; and

- 1 (j) A statement of the reasons why others who commented on the record of the public
2 hearing cannot adequately represent the interest identified in subsections (h) or (i).
- 3 (7) Before considering whether an issue justifies a contested case proceeding under section (9),
4 the Council must determine that the person requesting a contested case commented in
5 person or in writing on the record of the public hearing and properly raised each issue
6 included in the request. To determine that a person properly raised each issue included in
7 the request, the Council must find that:
- 8 (a) The person making the contested case request raised the issue on the record of the
9 public hearing described in OAR 345-027-0001 with sufficient specificity to afford the
10 Council, the Department and the certificate holder an adequate opportunity to respond
11 to the issue;
- 12 (b) The Department did not follow the requirements of OAR 345-027-0001; or
- 13 (c) If the action recommended in the proposed order, including any recommended
14 conditions of approval, differs materially from the action recommended in the draft
15 proposed order, the contested case request identified new issues that are related to
16 such material differences.
- 17 (8) If the Council finds that the person requesting a contested case failed to comment in person
18 or in writing on the record of the public hearing or failed to properly raise any issue, as
19 described in section (7), the Council must deny that person's contested case request. If the
20 Council finds that the person requesting a contested case commented in person or in
21 writing on the record of the public hearing and properly raised one or more issues, the
22 Council's determination of whether an issue justifies a contested case, as described in
23 section (9), shall be limited to those issues the Council finds were properly raised.
- 24 (9) After identifying the issues properly raised the Council shall determine whether any properly
25 raised issue justifies a contested case proceeding on that issue. To determine that an issue
26 justifies a contested case proceeding, the Council must find that the request raises a
27 significant issue of fact or law that may affect the Council's determination that the facility,
28 with the change proposed by the amendment, meets the applicable laws and Council
29 standards included in chapter 345 divisions 22, 23 and 24. If the Council does not have
30 jurisdiction over the issue raised in the request, the Council must deny the request.
- 31 (10) The Council must take one of the following actions when determining if a request
32 identifying one or more properly raised issues justifies a contested case proceeding:
- 33 (a) If the Council finds that the request identifies one or more properly raised issues that
34 justify a contested case proceeding, the Council shall conduct a contested case
35 proceeding according to the applicable provisions of OAR 345-015-0012 to -0014 and
36 345-015-0018 to -0085. The Council shall identify the contested case parties and shall
37 identify the issues each contested case party may participate on. The parties to a
38 contested case proceeding shall be limited to those persons who commented on the
39 record of the public hearing and who properly raised issues in their contested case
40 request that the Council found sufficient to justify a contested case, except that the
41 certificate holder is an automatic party to a contested case. The issues a party to a
42 contested case proceeding may participate on shall be limited to those issues that party
43 properly raised in its contested case request that the Council found sufficient to justify a

1 contested case, except that the certificate holder may participate on any issue the
2 Council found sufficient to justify a contested case proceeding.

3 (b) If the Council finds that the request identifies one or more properly raised issues that an
4 amendment to the proposed order, including modification to conditions, would settle in
5 a manner satisfactory to the Council, the Council may deny the request as to those
6 issues and direct the Department to amend the proposed order and send a notice of the
7 amended proposed order to the persons described in section (4). Only the certificate
8 holder and those persons who commented on the record of the hearing may, in a
9 writing received by the Department within 30 days after the Department issues the
10 notice of the amended proposed order, request a contested case proceeding limited to
11 issues related to the amendment to the proposed order. As described in section (9), the
12 Council shall determine whether any issue identified in the request for a contested case
13 proceeding justifies a contested case proceeding. A person's contested case request
14 under this subsection shall include:

15 (A) The person's name, mailing address and email address;

16 (B) A statement of the contested issues related to the amendment to the proposed
17 order, including facts believed to be at issue; and

18 (C) A statement that describes why the Council should find an issue justifies a contested
19 case, as described in section (8).

20 (c) If the Council finds that the request does not identify a properly raised issue that
21 justifies a contested case proceeding, the Council shall deny the request. In a written
22 order denying the request, the Council shall state the basis for the denial. The Council
23 shall then adopt, modify or reject the proposed order based on the considerations
24 described in OAR-345-027-000K. In a written order the Council shall either grant or deny
25 issuance of an amended site certificate. If the Council grants issuance of an amended
26 site certificate, the Council shall issue an amended site certificate, which is effective
27 upon execution by the Council Chair and by the certificate holder.

28 (11) If there is no request for a contested case proceeding as described in section (6) or
29 subsection (10)(b), the Council, may adopt, modify or reject the proposed order based on
30 the considerations described in OAR 345-027-000K. In a written order, the Council shall
31 either grant or deny issuance of an amended site certificate. If the Council grants issuance
32 of an amended site certificate, the Council shall issue an amended site certificate, which is
33 effective upon execution by the Council Chair and by the certificate holder.

34 (12) Judicial review of the Council's final order either granting or denying an amended site
35 certificate under a Type I process shall be as provided in ORS 469.403.

36 37 **OAR 345-027-000K**

38 **Scope of Council's Review**

39 (1) In making a decision to grant or deny issuance of an amended site certificate, the Council
40 shall apply the applicable laws and Council standards required under section (2) and in
41 effect on the dates described in section (3).

42 (2) To issue an amended site certificate, the Council shall determine that the preponderance of
43 evidence on the record supports the following conclusions:

- 1 (a) For a request for amendment proposing to add new area to the site boundary, the
2 portion of the facility within the area added to the site by the amendment complies with
3 all laws and Council standards applicable to an original site certificate application.
- 4 (b) For a request for amendment to extend the deadlines for beginning or completing
5 construction, after considering any changes in facts or law since the date the current
6 site certificate was executed, the facility complies with all laws and Council standards
7 applicable to an original site certificate application. However, for requests to extend
8 completion deadlines, the Council need not find compliance with an applicable law or
9 Council standard if the Council finds that:
- 10 (A) The certificate holder has spent more than 50 percent of the budgeted costs on
11 construction of the facility;
- 12 (B) The inability of the certificate holder to complete the construction of the facility by
13 the deadline in effect before the amendment is the result of unforeseen
14 circumstances that are outside the control of the certificate holder;
- 15 (C) The standard, if applied, would result in an unreasonable financial burden on the
16 certificate holder; and
- 17 (D) The Council does not need to apply the standard to avoid a significant threat to the
18 public health, safety or the environment;
- 19 (c) For any other requests for amendment not described above, the facility, with the
20 proposed changes, complies with the applicable laws or Council standards that protect a
21 resource or interest that could be affected by the proposed changes.
- 22 (d) For all requests for amendment, the amount of the bond or letter of credit required
23 under OAR 345-022-0050 is adequate.
- 24 (3) In making the findings required to grant an amendment under section (2), the Council shall
25 apply the applicable law and Council standards in effect on the following dates:
- 26 (a) For the applicable substantive criteria under the Council's land use standard, as
27 described in OAR 345-022-0030, the date the certificate holder submitted the request
28 for amendment, and
- 29 (b) For all other applicable laws and Council standards, the date the Council issues the
30 amended site certificate.

1 345-027-000L**2 Request for Amendment to Extend Construction Deadlines**

- 3 (1) The certificate holder may request an amendment to the site certificate to extend the
4 deadlines for beginning or completing construction of the facility that the Council has
5 specified in a site certificate or an amended site certificate by submitting a preliminary
6 request for amendment in accordance with 345-027-000F. The preliminary request for
7 amendment must include an explanation of the need for an extension and must be
8 submitted to the Department of Energy before the applicable construction deadline, but no
9 earlier than the date twelve months before the applicable construction deadline.
- 10 (2) A preliminary request for amendment received by the Department within the time allowed
11 under section (1) to extend the deadlines for beginning and completing construction
12 suspends expiration of the site certificate or amended site certificate until the Council acts
13 on the request for amendment. If the Council denies the extension request after the
14 applicable construction deadline, the site certificate is deemed expired as of the applicable
15 construction deadline specified in the site certificate or amended site certificate.
- 16 (3) If the Council grants an amendment under this rule, the Council shall specify new deadlines
17 for beginning or completing construction that are the later of:
18 (a) Three years from the deadlines in effect before the Council grants the amendment, or
19 (b) Following a contested case proceeding conducted pursuant to OAR 345-027-000J, two
20 years from the date the Council grants the amendment.
- 21 (4) The Council shall not grant more than two amendments to extend the deadline for
22 beginning construction of a facility or a phase of a facility.

23

24 345-027-0090**25 Request by Any Person for Amendment to Apply Later-Adopted Laws**

- 26 (1) Any person may request an amendment of a site certificate to apply a law(s), including local
27 government ordinances, statutes, rules or Council standards, adopted after the date the site
28 certificate was executed, if the person contends failure to apply the law(s) results in a
29 significant threat to the public health or safety or to the environment. The Department of
30 Energy itself may initiate such a request.
- 31 (2) To request an amendment to apply later-adopted law(s) under this rule, the person shall
32 submit a preliminary request for amendment to the Department with the information
33 described in 345-027-000F(1)(a),(c),(d) and the following:
34 (a) Identification of the law(s) that the person seeks to apply to the facility; and
35 (b) The particular facts that the person believes clearly show a significant threat to the
36 public health, safety or the environment that requires application of the later adopted
37 law(s).
- 38 (3) If the Department receives a preliminary request for amendment to apply later-adopted
39 law(s) as described in this rule from any person other than the certificate holder, the
40 Department shall send a copy of the request to the certificate holder. The transmittal shall
41 include a deadline by which the certificate holder must submit a response to the
42 Department. In its response, the certificate holder shall state whether it agrees that there is
43 a clear showing of a significant threat to the public health, safety or the environment that
44 requires application of the later-adopted law(s).

- 1 (a) If the certificate holder concludes the later-adopted law(s) should be applied to the
 2 facility, the Council shall review the request to apply later-adopted law(s) as a complete
 3 request for amendment in accordance with section (5).
- 4 (b) If the certificate holder concludes that the law(s) should not be applied to the facility, or
 5 if the certificate holder does not respond with its conclusion before the specified
 6 deadline, the Department shall ask the Council to determine whether the request
 7 clearly shows a significant threat to the public health, safety or the environment that
 8 requires application of the later-adopted law(s).
- 9 (A) If the Council determines there is not a clear showing of a significant threat to the
 10 public health, safety or the environment that requires application of the later
 11 adopted law(s), the Council shall deny the request to apply later-adopted law(s).
- 12 (B) If the Council determines there is a clear showing of a significant threat to the public
 13 health, safety or the environment that requires application of the later adopted
 14 law(s), the Council shall review the request to apply later-adopted law(s) as a
 15 complete request for amendment in accordance with section (5)
- 16 (4) A preliminary request for amendment to apply later-adopted law(s) under this rule is
 17 considered a complete request for amendment for purposes of OAR 345-027-000G on:
- 18 (a) If the request to apply later-adopted law(s) is made by the certificate holder, the date
 19 the request is received by the Department.
- 20 (b) If the request to apply later-adopted law(s) is made by a person other than the
 21 certificate holder, and if the certificate holder responds as described in subsection
 22 (3)(a), the date the response described in subsection (3)(a) is received by the
 23 Department.
- 24 (c) If the request to apply later-adopted law(s) is made by a person other than the
 25 certificate holder, and if the certificate holder responds as described in subsection (3)(b)
 26 or does not respond before the specified deadline under section (3), the date of the
 27 Council's determination under paragraph (3)(b)(B).
- 28 (5) After a receiving a complete request for amendment under section (4) of this rule, the
 29 Council shall review the request for amendment as described in OAR 345-027-000H, 345-
 30 027-000I, 345-027-000J and 345-027-000K, except that:
- 31 (a) If the Department recommends approval or modified approval of the requested
 32 amendment, the Department shall include in the proposed order described in OAR 345-
 33 027-000J any new or modified site certificate conditions necessary to assure compliance
 34 with the law(s) applied to the facility under the proposed order;
- 35 (b) If the Department in its proposed order recommends approval or modified approval of
 36 the requested amendment, the certificate holder may, by written request submitted to
 37 and received by the Department within 30 days after the Department issues the
 38 proposed order, ask the Council to hold a contested case proceeding on the proposed
 39 order. In the request, the certificate holder shall provide a description of the issues to
 40 be contested and a statement of the facts believed to be at issue. If the certificate
 41 holder requests a contested case proceeding, the Council shall conduct a contested case
 42 proceeding according to the applicable provisions of OAR 345-015-0012 to -0014, and
 43 345-015-0018 to 345-015-0085 limited to the issues stated by the certificate holder; and

- 1 (c) The Council shall include new conditions in a site certificate amended under this rule
2 only if the Council finds that the conditions are necessary based upon a clear showing of
3 a significant threat to the public health, safety or the environment.
4

5 **345-027-0100**

6 **Request for Amendment to Transfer Ownership, Possession or Control of the Facility or the**
7 **Certificate Holder**

- 8 (1) For the purpose of this rule:

9 (a) A request for amendment to a site certificate to transfer the site certificate is required
10 for a transaction that results in a change in the ownership, possession or control of the
11 facility or the certificate holder.

12 (b) "New owner" means the person or entity that will gain ownership, possession or control
13 of the facility or the certificate holder.

- 14 (2) When the certificate holder has knowledge that a transaction that requires a transfer of the
15 site certificate as described in section (1)(a) is or may be pending, the certificate holder shall
16 notify the Department of Energy. In the notice, the certificate holder shall include the name
17 and contact information of the new owner, and the date of the transfer of ownership. If
18 possible, the certificate holder shall notify the Department at least 60 days before the date
19 of the transfer of ownership.

- 20 (3) A transaction that would require a transfer of the site certificate as described in subsection
21 (1)(a) does not terminate the transferor's duties and obligations under the site certificate
22 until the Council approves a transfer request and issues an amended site certificate. The
23 new owner is not allowed to construct or operate the facility until an amended site
24 certificate as described in section (10) or a temporary amended site certificate as described
25 in section (11) becomes effective.

- 26 (4) To request an amendment to transfer the site certificate, the new owner shall submit a
27 written request to the Department that includes the information described in OAR 345-021-
28 0010(1)(a), (d), (f) and (m), a certification that the new owner agrees to abide by all terms
29 and conditions of the site certificate currently in effect and, if known, the expected date of
30 the transaction. If applicable, the new owner shall include in the request the information
31 described in OAR 345-021-0010(1)(y)(O)(iv).

- 32 (5) The Department may require the new owner to submit a written statement from the
33 current certificate holder, or a certified copy of an order or judgment of a court of
34 competent jurisdiction, verifying the new owner's right, subject to the provisions of ORS
35 Chapter 469 and the rules of this chapter, to possession or control of the site or the facility.

- 36 (6) Within 15 days after receiving a request for amendment to transfer the site certificate, the
37 Department shall send a notice of the request by mail or email to the reviewing agencies as
38 defined in OAR 345-001-0010, to all persons on the Council's general mailing list as defined
39 in OAR 345-011-0020, to any special list established for the facility and to the updated
40 property owner list submitted by the new owner under section (4). In the notice, the
41 Department shall describe the transfer request, specify a date by which comments are due
42 and state that the date of the Council's transfer hearing will be announced on the
43 Department's website.

- 1 (7) Before acting on the request for amendment to transfer the site certificate, the Council shall
2 hold a transfer hearing. The Council shall hold the transfer hearing during a Council meeting
3 and shall provide notice of the hearing on its meeting agenda, which will be sent by mail or
4 email to the Council's general mailing list in advance of the meeting. The transfer hearing is
5 not a contested case hearing. During the hearing the Council will accept comments from the
6 public, reviewing agencies and new owner regarding the new owner's compliance with the
7 Council standards described in section (8)(a).
- 8 (8) At the conclusion of the transfer hearing or at a later meeting, the Council may issue an
9 order approving the transfer request if the Council finds that:
- 10 (a) The new owner complies with the Council standards described in OAR 345-022-0010,
11 345-022-0050 and, if applicable, OAR 345-024-0710(1); and
- 12 (b) The new owner is or will be lawfully entitled to possession or control of the site or the
13 facility described in the site certificate.
- 14 (9) Except as described in section (12), the Council shall not otherwise change the terms and
15 conditions of the site certificate in an order approving the transfer request.
- 16 (10) Upon issuing the order described in section (8), the Council shall issue an amended site
17 certificate that names the new owner as the new certificate holder or as the new owner of
18 the certificate holder. The amended site certificate is effective upon execution by the
19 Council chair and the new owner. The Council shall issue the amended site certificate in
20 duplicate counterpart originals and each counterpart, upon signing, will have the same
21 effect.
- 22 (11) If the Council chair determines that special circumstances justify emergency action, the
23 Council chair may, upon a written request from the new owner that includes a showing that
24 the new owner can meet the requirements of section (8), issue a temporary amended site
25 certificate that names the new owner as the new certificate holder or as the new owner of
26 the certificate holder. The temporary amended site certificate is effective upon execution
27 by the Council chair and the new owner. The temporary amended site certificate expires
28 when an amended site certificate as described in section (10) becomes effective or as the
29 Council otherwise orders.
30

1 **345-027-0110**

2 **Termination of a Site Certificate**

- 3 (1) A certificate holder may apply to the Council to terminate a site certificate at any time,
4 subject to the requirements of this rule.
- 5 (2) A certificate holder must apply to the Council to terminate a site certificate within two years
6 following cessation of construction or operation of the facility.
- 7 (3) If the certificate holder fails to apply to the Council to terminate the site certificate and the
8 Council finds that the certificate holder has permanently ceased construction or operation
9 of the facility, then the Council may terminate the site certificate according to the
10 procedure described in OAR 345-027-0020(16).
- 11 (4) In an application for termination of the site certificate, the certificate holder shall include a
12 proposed final retirement plan for the facility and site. The certificate holder shall submit an
13 original and two printed copies of the application for termination and the proposed final
14 retirement plan to the Department of Energy. Upon a request by the Department, the
15 certificate holder must submit printed copies of the application for termination and the
16 proposed final retirement plan for members of the Council. In addition to the printed
17 copies, the certificate holder shall submit the full copies of the application for termination
18 and the proposed final retirement plan in a non-copy-protected electronic format
19 acceptable to the Department.
- 20 (5) In the proposed final retirement plan, the certificate holder shall include:
- 21 (a) A plan for retirement that provides for completion of retirement without significant
22 delay and that protects public health, safety and the environment.
- 23 (b) A description of actions the certificate holder proposes to take to restore the site to a
24 useful, non-hazardous condition, including information on how impacts to fish, wildlife
25 and the environment would be minimized during the retirement process.
- 26 (c) A current detailed cost estimate and a plan for ensuring the availability of adequate
27 funds for completion of retirement.
- 28 (d) An updated list of the owners of property located within or adjacent to the site of the
29 facility, as described in OAR 345-021-0010(1)(f).
- 30 (6) Within 15 days after receiving an application for termination of a site certificate, the
31 Department of Energy shall:
- 32 (a) Send a notice of the application by mail or email to all persons on the Council's general
33 mailing list as defined in OAR 345-011-0020, to any special list established for the facility
34 and to the updated property owner list submitted by the certificate holder under
35 subsection (5) specifying a date by which comments on the application are due.
- 36 (b) Send copies of the application for termination by mail or email to the reviewing agencies
37 as defined in OAR 345-001-0010 and shall ask those agencies to comment by a specified
38 date.
- 39 (c) Post an announcement of the application for termination on the Department's website.
- 40 (7) The Council shall review the proposed final retirement plan and shall consider any
41 comments received from the public and the reviewing agencies. The Council may approve
42 the proposed final retirement plan or modify the plan to comply with the rules of this
43 chapter and applicable conditions in the site certificate. The Council shall issue an order
44 authorizing retirement according to the approved or modified final retirement plan and

1 subject to any conditions the Council finds appropriate. The Council's order may be
2 appealed as described in ORS 183.480.

3 (8) When the Council finds that the certificate holder has completed the retirement of the
4 facility according to the Council's order authorizing retirement, the Council shall issue an
5 order terminating the site certificate.

6 (9) When the Council finds that the site certificate has expired as described in OAR 345-027-
7 0000, the Council shall issue an order terminating the site certificate.

8 9 10 **Department of Energy Approval of Gas Storage Testing Pipelines**

11 **345-027-0210**

12 **General**

13 (1) A person shall not construct a gas storage testing pipeline unless the certificate holder of the
14 Council certified facility to which the pipeline would connect obtains, before construction,
15 the approval of the Department of Energy for the construction, operation and retirement of
16 the proposed pipeline as required under ORS 469.405(3).

17 (2) For the purposes of OAR 345-027-0210 through 345-027-0240:

18 (a) "Gas storage testing pipeline" means a pipeline, but not a temporary pipeline, that is less
19 than 16 inches in diameter and less than five miles in length, that is used to test or
20 maintain an underground gas storage reservoir and that would connect to a Council
21 certified facility if the storage reservoir proves feasible for operational use;

22 (b) "Temporary pipeline" means a pipeline that has no potential for operational use;

23 (c) "Council certified facility" means an energy facility for which the Council has issued a site
24 certificate that is either a surface facility related to an underground gas storage
25 reservoir or a gas pipeline;

26 (d) "Connect" means join for the purpose of operational use;

27 (e) "Test or maintain" means transporting gas to an underground gas storage reservoir for
28 the purposes of determining whether the reservoir is feasible for operational use or
29 maintaining the gas storage capacity of the reservoir but does not include operational
30 use;

31 (f) "Operational use" means transporting gas to an underground gas storage reservoir for
32 the purpose of storing gas until it is needed for sale or for withdrawing gas from an
33 underground gas storage reservoir for the purpose of sale;

34 (g) "Council substantive standards" means the following standards:

35 (A) Structural Standard, OAR 345-022-0020;

36 (B) Soil Protection, OAR 345-022-0022;

37 (C) Protected Areas, OAR 345-022-0040(1) but excluding (2) and (3);

38 (D) Retirement and Financial Assurance, OAR 345-022-0050;

39 (E) Fish and Wildlife Habitat, OAR 345-022-0060;

40 (F) Threatened and Endangered Species, OAR 345-022-0070

41 (G) Scenic Resources, OAR 345-022-0080;

42 (H) Historic, Cultural and Archaeological Resources, OAR 345-022-0090;

43 (I) Recreation, 345-022-0100;

44 (J) Public Services, OAR 345-022-0110;

- 1 (K) Waste Minimization, OAR 345-022-0120; and
 2 (L) Public Health and Safety, OAR 345-024-0030(2), (3) and (4);
 3 (h) "Information requirements" means information that would support the findings
 4 described in OAR 345-024-0030(2) and the information described in 345-021-0010(1)(h),
 5 (i), (j), (L), (m), (p), (q), (r), (s), (t), (u), (v), and (w).
 6

7 **345-027-0220**

8 **Request for Approval**

- 9 (1) Before submitting a request for approval to construct, operate and retire a gas storage
 10 testing pipeline, the certificate holder shall:
 11 (a) Inform the Department of Energy of the proposed pipeline, including its diameter,
 12 length, location, capacity and maximum operating pressure; and
 13 (b) Provide to the Department a map showing the location of the proposed pipeline.
 14 (2) After receiving the information described in section (1), the Department shall confer with
 15 the certificate holder about the Council substantive standards and information
 16 requirements that might apply to the proposed pipeline and any extraordinary
 17 circumstances that might affect the time requirements for completing the approval process.
 18 Within 7 days after conferring with the certificate holder, the Department shall send a letter
 19 to the certificate holder that includes the following:
 20 (a) Identification of the Council substantive standards that are applicable to the request for
 21 approval of the proposed pipeline;
 22 (b) Identification of the information requirements that are applicable to the request for
 23 approval of the proposed pipeline;
 24 (c) The time requirements for the approval process, if different from the time requirements
 25 described in OAR 345-027-0230.
 26 (3) The certificate holder shall submit to the Department a written request for approval to
 27 construct, operate and retire a gas storage testing pipeline with the fee required by the fee
 28 schedule established under ORS 469.441. The certificate holder shall submit the original and
 29 two paper copies of the request to the Department. The certificate holder shall provide
 30 additional copies to the Department upon request and copies or access to copies to any
 31 person requesting copies. In addition to the printed copies of the request for approval, the
 32 certificate holder shall submit the full request in a non-copy-protected electronic format
 33 acceptable to the Department.
 34 (4) In a request for approval, the certificate holder shall include:
 35 (a) The name and mailing address of the certificate holder and the name, mailing address,
 36 email address and phone number of the individual responsible for submitting the
 37 request;
 38 (b) A description of the purpose and operation of the proposed pipeline and a discussion of
 39 whether the use of the gas storage testing pipeline for reservoir testing or maintenance
 40 will require an increase in the compression available in the Council certified facility to
 41 which the proposed pipeline would connect in addition to the compression that is
 42 permitted under the site certificate;
 43 (c) Identification of the Council certified facility to which the proposed pipeline would
 44 connect;

- 1 (d) A description of the proposed pipeline, including its diameter, length, location, capacity
2 and maximum operating pressure;
- 3 (e) A map showing the location of the proposed pipeline;
- 4 (f) A list of the names and mailing addresses of all owners of record, as shown on the most
5 recent property tax assessment role, of property where the proposed pipeline is located
6 and within 500 feet of the location of the proposed pipeline;
- 7 (g) The information that the Department has identified in the letter described in section (2);
8 and
- 9 (h) Any other information that the Department requests as needed to make the findings
10 described in the applicable standards.

11

12 **345-027-0230**13 **Review of a Request for Approval**

- 14 (1) Within 7 days after receiving a request for approval to construct, operate and retire a gas
15 storage testing pipeline, the Department of Energy shall:
- 16 (a) Send copies of the request by mail, email or any other form of electronic delivery to the
17 following agencies with a notice asking the agencies to submit written comments on the
18 request within 14 days from the date of the notice:
- 19 (A) Oregon Department of Fish and Wildlife;
- 20 (B) Oregon Department of Geology and Mineral Industries;
- 21 (C) Oregon Public Utility Commission;
- 22 (D) Oregon Department of Agriculture;
- 23 (E) Division of State Lands; and
- 24 (F) State Historic Preservation Office.
- 25 (b) Send a notice of the request, including a map showing the location of the proposed
26 pipeline, by mail, email or any other form of electronic delivery to the following stating
27 that the agencies and planning authority may submit written comments on the request
28 within 14 days from the date of the notice:
- 29 (A) Oregon Department of Forestry;
- 30 (B) Oregon Department of Environmental Quality; and
- 31 (C) The planning authority of the county or counties where the proposed pipeline is
32 located.
- 33 (c) Send a notice of the request, including a map showing the location of the proposed
34 pipeline, by mail or email to the property owners the certificate holder has listed in the
35 request stating that property owners may submit written comments on the request
36 within 14 days from the date of the notice.
- 37 (d) Post an announcement of the request on the Department's website.
- 38 (2) Within 21 days from the deadline for comments described in section (1) or such longer
39 period as the Department has specified in the letter described in OAR 345-027-0220(2), the
40 Department shall issue a final order stating its findings on the applicable Council substantive
41 standards and its approval or disapproval of the request. In an order approving a request,
42 the Department shall include conditions that the Department finds necessary to ensure
43 compliance with the applicable standards and conditions required by 345-027-0240.

- 1 (3) The Department shall send a notice of the final order to the certificate holder, to the
2 property owners the certificate holder listed in the request and to any person who
3 commented on the request. In the notice, the Department shall state that judicial review of
4 the order is as provided in ORS 469.403.
- 5 (4) The Department may amend an order approving the construction, operation and retirement
6 of a gas storage testing pipeline.
- 7 (5) Notwithstanding ORS 469.503(3), the Department shall not review the proposed pipeline for
8 compliance with other state standards.
- 9 (6) Notwithstanding ORS 469.401(3), the approval of a gas storage testing pipeline by the
10 Department does not bind any state or local agency.
- 11

12 **345-027-0240**

13 **Conditions**

- 14 In an order approving the construction, operation and retirement of a gas storage testing
15 pipeline, the Department of Energy may impose conditions it finds necessary to ensure
16 compliance with the Council substantive standards it identified as applicable in the letter
17 described in OAR 345-027-0220(2). In addition, the Department shall impose the following
18 conditions:
- 19 (1) The certificate holder shall design, construct, operate and retire the gas storage testing
20 pipeline in compliance with applicable Council rules and applicable federal, state and local
21 laws, rules and ordinances in effect at the time the Department issues the order;
- 22 (2) The certificate shall design, construct, operate and retire the gas storage testing pipeline
23 substantially as described in representations in the request for approval and supporting
24 record that the Department finds to be binding commitments made by the certificate
25 holder;
- 26 (3) The certificate holder shall prevent the development of any conditions in the area of the gas
27 storage testing pipeline that would preclude restoration of the area to a useful, non-
28 hazardous condition to the extent that prevention of such conditions is within the control of
29 the certificate holder;
- 30 (4) Upon completion of construction of the pipeline, the certificate holder shall dispose of all
31 refuse and remove all temporary structures not needed to test or maintain an underground
32 gas storage reservoir;
- 33 (5) The certificate holder shall notify the Department of Energy, the State Building Codes
34 Division and the Department of Geology and Mineral Industries promptly if investigations or
35 trenching in the area of the pipeline reveal soil or geological conditions that differ
36 significantly from those described in the request for approval;
- 37 (6) The certificate holder shall submit to the Department copies of all incident reports involving
38 the gas storage testing pipeline required under 49 CFR Sec. 191.15;
- 39 (7) The certificate holder shall allow properly identified representatives of the Council or the
40 Department to inspect the pipeline at any time, including all materials, activities, premises
41 and records pertaining to design, construction, operation or retirement of the pipeline;
- 42 (8) The certificate holder shall notify the Department when it begins construction, shall keep
43 the Department informed of construction progress and any unusual events or

- 1 circumstances and shall notify the Department when it begins to use the pipeline for
- 2 reservoir testing or maintenance;
- 3 (9) The certificate holder shall notify the Department if it terminates use of the gas storage
- 4 testing pipeline; and
- 5 (10) If the certificate holder decides to convert the gas storage testing pipeline to operational
- 6 use, the certificate holder shall notify the Department and, if required under OAR 345-027-
- 7 0050, submit a request to amend the site certificate.