



Oregon

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To: Oregon Energy Facility Siting Council

From: Christopher M. Clark, Rules Coordinator

Date: August 20, 2019

Subject: Agenda Item C Supplement: Summary of proposed temporary rules for Site Certificate Amendment Rulemaking for the August 22-23, 2019 EFSC Meeting.

Staff recommends Council adopt temporary rules in place of the October 2017 site certificate amendment rules. Specifically, temporary rules would allow Council to: (1) replace the amendment rules adopted on October 24, 2017; (2) clarify the process the Council will use to review requests for amendments and other review processes submitted on or after October 24, 2017 for which Council has not yet made a final decision; and (3) amend provisions which exceeded the Council's statutory authority under the Type B review process, as identified by the Supreme Court. Additionally, Council must provide a statement of need and justification for temporary rulemaking. Staff and Oregon Department of Justice are providing Council with recommended draft statement of need and justification as a separate document, for Council's consideration.

Staff proposes the following rulemaking actions:

- 1. Amend** OAR 345-015-0014, 345-015-0016, 345-015-0080, 345-015-0083, 345-025-0006, 345-025-0010, and 345-025-0016 to reflect changes to rules made under Administrative Orders EFSC 4-2017 and EFSC 5-2017.
- 2. Suspend** OAR 345-027-0011, 345-027-0013, 345-027-0050, 345-027-0051, 345-027-0053, 345-027-0055, 345-027-0057, 345-027-0059, 345-027-0060, 345-027-0063, 345-027-0065, 345-027-0067, 345-027-0068, 345-027-0071, 345-027-0072, 345-027-0075, 345-027-0080, 345-027-0085, 345-027-0090, and 345-027-0100.
- 3. Adopt** OAR 345-027-0311, 345-027-0313, 345-027-0350, 345-027-0351, 345-027-0353, 345-027-0355, 345-027-0357, 345-027-0359, 345-027-0360, 345-027-0363, 345-027-0365, 345-027-0367, 345-027-0368, 345-027-0371, 345-027-0372, 345-027-0375, 345-027-0380, 345-027-0385, 345-027-0390, 345-027-0400.

Adopted rules will reflect rules adopted by Administrative Order EFSC 5-2017, except for the following changes (deleted language is in ~~strikethrough~~; new language is underlined):

OAR 345-027-00311:

(1) The rules in this division apply to all requests for amendment to a site certificate and amendment determination requests for facilities under the Council's jurisdiction that are submitted to, or were already under review by, the Council on or after the effective date of the rules. The Department and Council will continue to process all requests for amendment and amendment determination requests submitted on or after October 24, 2017 for which Council has not made a final decision prior to the effective date of these rules, without requiring the certificate holder to resubmit the request or to repeat any steps taken as part of the request prior to the effective date of these rules.

(2) Notwithstanding section (1) of this rule, these rules do not apply to except those facilities described in ORS 469.410(1), including the Trojan energy facility, and except that rules OAR 345-027-0050 through 345-027-0100 that were in effect prior to October 24, 2017 apply to requests for amendments to site certificates and change requests that have been received by the Department prior to October 24, 2017.

OAR 345-027-00368(3)(e)(E):

“(3) Notice of the complete request for amendment, draft proposed order and written comment deadline shall include: * * *

(e) A statement that:

* * *

~~“(E) Only those persons, including the site certificate holder, who provided written comment by the written comment deadline may seek judicial review shall be as provided in ORS 469.403 and issues eligible for judicial review are limited to the issues raised in that person’s written comments.”~~

OAR 345-027-00372(3)(d):

“(3) Notice of the proposed order shall include:

~~* * *(d) A statement that only those persons, including the site certificate holder, who provided written comment by the written comment deadline may seek judicial review shall be as provided in ORS 469.403 and issues eligible for judicial review are limited to the issues raised in that person’s written comments.”~~

OAR 345-027-00372(5):

“(5) Judicial review of the Council’s final order either granting or denying an amended site certificate shall be as provided in ORS 469.403, ~~provided that only those persons, including the site certificate holder, who provided written comment by the written comment deadline may seek judicial review as provided in ORS 469.403 and issues eligible for judicial review are limited to the issues raised in that person’s written comments.”~~