

**Oregon Energy Facility Siting Council
Statement of Need and Justification for Temporary Rulemaking
August 22, 2019**

Introduction regarding need for the Temporary Rules:

Given the Oregon Supreme Court's August 1, 2019 decision in *Friends of the Columbia River Gorge v. EFSC*, S065478, the Oregon Energy Facility Siting Council ("EFSC" or the "Council") needs to adopt temporary rules governing the process for amending energy facility site certificates in order to ensure that the Oregon Department of Energy ("ODOE") and the Council may process pending applications for site certificate amendments without prejudice to the certificate holders that submitted those applications and to provide regulatory certainty and continuity in the processing of new applications for site certificate amendments.

Authority for the Rules:

The Energy Facility Siting Council has the authority to adopt rules pertaining to the amendment of site certificates pursuant to ORS 469.405(1), 469.470(2) and 469.501. EFSC has the authority to adopt temporary rules pursuant to ORS 183.335(5).

Statement of Need / Justification for Temporary Filing:

(1) Specific consequences that would result from the failure to immediately adopt, temporary rules.

In October 2017, the Council amended its administrative rules relating to the procedures for the amendment of site certificates. Those rules were challenged in the Oregon Supreme Court by the Friends of the Columbia River Gorge (Friends) and other groups. On August 1, 2019, the Supreme Court issued a decision declaring that the rules are invalid. That decision will become legally effective on the date that the appellate judgment issues; that future date is unknown, but could occur as soon as August 22, 2019. Because the Council repealed its previous rules for the amendment of site certificates, the invalidation of the October 2017 rules could result in there being no rules in place to allow for amendment of a site certificate. As a result, there is confusion among interested parties as to how applications that are already pending should be processed, and what, if any, rules will be in effect when the appellate judgment issues.

While the current rules are legally operative until the entry of the appellate judgment, EFSC will respect the decision of the court even before the appellate judgment issues. The petitioners in the court case have taken the position that, following the Supreme Court ruling invalidating the current rules, the pre-October 2017 rules are in effect and certificate holders that had applied for amendments under the now invalidated rules must reapply for amendments under the pre-October 2017 rules. However, when Council adopted the amendment rules in October 2017, it also repealed OAR 345-027-0070 (the rule that had previously governed the process for site

certificate amendments) in Order EFSC 5-2017 (see *Attachment 7*, EFSC Order 5-2017). Given the Council's prior repeal of the pre-October 2017 amendment rule, if the Council does not take any action now, upon the Supreme Court's entry of the appellate judgment, it is possible that there will be no rules in place governing site certificate amendments whatsoever. Therefore, certificate holders have questions and significant concerns regarding how the Council will proceed with pending requests for amendment, and ODOE is uncertain how to process any new requests that it may receive. Further, even if Council assumed that the pre-October 2017 rules are effective, it would be unfair and substantially prejudicial to require certificate holders who have pending applications for site certificate amendments to resubmit their requests for amendment under the pre-October 2017 rules and restart the entire amendment process.

The specific consequences for each of the six pending amendment requests, as well as amendment requests that may be filed before permanent rules are adopted, are more specifically set forth in the discussion below.

(2) Who would suffer these consequences.

The consequences of the uncertainty will fall on the public, the applicants, the agency, and on participants in the site certificate amendment process, as further discussed below.

(3) Why or how failure to immediately take rulemaking action would cause these consequences.

If no action is taken, the Council may be unable to process requests for amendment until permanent rules are adopted or, at best, the amendment rules would revert to the version that was in effect prior to October 24, 2017 and Council would need to require all certificate holders with pending applications for site certificate amendments to resubmit their requests under the pre-October 2017 rules, causing those certificate holders to suffer serious prejudice.

(4) How the temporary action will avoid or mitigate those consequences.

The adoption of temporary rules will allow the orderly processing of amendment requests, including requests in progress, by allowing those amendments to be addressed under the temporary rules without requiring the certificate holder to reapply for an amendment and restart the amendment process. The temporary rules will also remove particular provisions regarding judicial review that the Supreme Court held were not within the Council's statutory authority.

Statement of Findings that failure to act promptly will result in serious prejudice to the interest of parties concerned.

There are currently six site certificate amendment requests in process with the Council. (Although not directly relevant to the Council's adopting temporary rules, it bears noting that each of these requests has been proceeding under the Type A amendment process, which does not implicate the legal concerns regarding judicial review of Type B amendments identified in the Supreme Court decision).

If it does not adopt temporary rules governing the process for reviewing and taking action on those amendment requests, in order to process those requests Council would have to assume that the pre-October 2017 amendment rules are in effect (which is a legally questionable position) and require those six certificate holders to resubmit their requests for amendment under the pre-October 2017 rules, thus restarting the amendment process under those rules. As discussed further below, pursuing this course of action would cause serious prejudice to the interests of those certificate holders.

Additionally, if it does not adopt temporary rules, as new amendment requests are submitted, Council would also have to process them under the pre-October 2017 amendment rules (the legality of which is uncertain) or refuse to process such requests until it has an opportunity to adopt new permanent amendment rules. Were Council to begin processing new amendment applications under the pre-October 2017 rules, Council would have to determine how to handle those applications once new permanent amendment rules are adopted.

In addition to the findings above, the Council makes the following findings with regard to each of the six projects currently under review by the Council:

Summit Ridge Wind Farm

On August 16, 2018, the holder of the site certificate submitted a request for amendment to extend the construction start and end deadlines by two years. The certificate holder responded to a number of requests for additional information, and on January 16, 2019, ODOE issued a draft proposed order (DPO) under the Type B amendment process. After issuance of the DPO, the certificate holder voluntarily requested to use the Type A process. ODOE issued a new DPO in accordance with the Type A amendment process on February 1. The Council heard testimony on the proposal on February 22, 2019, and a written comment period was also open until the close of the public hearing on February 22, 2019, and ODOE prepared a Proposed Order (PO) and contested case notice, released on April 2, 2019. Three requests for contested case were received, which were evaluated by the Council at its May 17, 2019 meeting. Council directed ODOE to prepare an amended PO addressing issues raised in the contested case requests. ODOE prepared an amended PO and contested case notice, released on July 3, 2019, and two contested case requests were filed on August 5, 2019. At the August Council meeting, Council is scheduled to consider the contested case requests, and if contested case requests are denied, Council will also consider the amended PO.

The certificate holder advises, and the Council finds, that if, as the result of the Supreme Court opinion, the certificate holder were forced to start the site certificate amendment process anew, it would result in serious prejudice to the interests of the certificate holder because it will have lost a year of time and the significant financial expenditures made on the amendment to date. (See *Attachment 1*, August 12, 2019 letter from counsel for the Summit Ridge Wind Farm certificate holder). The certificate holder advises, and the Council finds, that if the certificate holder were forced to reapply for an amendment (or is otherwise subject to substantial delay), it would result in serious prejudice to the interests of the certificate holder because processing the request anew under the pre-October 2017 amendment rules would likely result in a final decision on the request for amendment being pushed well into 2020. The delay would likely impact the

certificate holder's ability to retain construction contractors, procure equipment, and market the power to be produced.

Further, petitioners in the lawsuit have taken the position that as a result of the Supreme Court's decision, the permission to construct the Summit Ridge Wind Farm has expired and if the certificate holder still desires to pursue the project it must file an application for a new site certificate – “effectively starting the permitting process over from scratch.” (See *Attachment 2*, August 1, 2019 Friends of the Columbia River Gorge press release). Under such circumstances, the entire facility may then be in jeopardy, causing serious prejudice to the certificate holder.

The Council finds that failure to act promptly by adopting these temporary rules will result in serious prejudice to the interests of the Summit Ridge Wind Farm certificate holder. The Council finds that this prejudice presents a separate and independent basis for the need to adopt temporary rules for the amendment of site certificates.

Perennial Wind Chaser Station

The certificate holder submitted a request to extend the deadlines for starting and completing construction on August 2, 2018. On July 8, 2019, ODOE issued a DPO on the project and initiated a public comment period, which extends through the close of a public hearing scheduled for August 22, 2019.

The Council finds that Perennial will be seriously prejudiced if it were to have to resubmit an amendment request because the certificate holder will have lost at least a year of time and financial resources invested. If Perennial were to proceed under the rules in effect prior to October 2017, the DPO already issued, the public comment period currently running, and the public hearing scheduled for August 22 would all be set aside to ensure compliance with the procedures required under the earlier rules. Perennial contends (See *Attachment 3*, August 12, 2019 letter from Perennial Power Holdings, Inc.) and the Council finds that Perennial would be harmed and seriously prejudiced by the delay.

Further, petitioners in the lawsuit have taken the position that as a result of the Supreme Court's decision, the permission to construct the Perennial Wind Chaser facility has expired and if the certificate holder still desires to pursue the project it must file applications for new site certificates – “effectively starting the permitting process over from scratch.” (See *Attachment 2*, August 1, 2019 Friends of the Columbia River Gorge press release). Under such circumstances, the entire facility may then be in jeopardy.

The Council finds that failure to act promptly by adopting these temporary rules will result in serious prejudice to the interests of the Perennial Wind Chaser Station certificate holder. The Council finds that this prejudice alone presents a separate and independent basis for the need to adopt temporary rules for the amendment of site certificates.

Council further finds that failure to act promptly by adopting these temporary rules will result in serious prejudice to the interests of the public and in particular those who have or intend to

submit comments regarding the requested amendment to the Perennial Wind Chaser Station site certificate, by having their concerns set aside and deferred.

Wheatridge Wind Energy Facility

The certificate holder submitted a request for amendment to the site certificate on November 30, 2018, seeking a number of amendments to the original certificate. The certificate holder responded to a number of requests for information from ODOE, and its application was deemed complete on July 1, 2019. ODOE issued a DPO on July 25, and the Council is scheduled to hold a public hearing on August 22, 2019. A written comment period is open until September 9, 2019.

Like other applicants, Wheatridge will lose significant time and financial resources already expended if forced to start the amendment process again. The approval process would likely extend well into 2020. The certificate holder advises (See *Attachment 4*, August 9, 2019 letter from counsel or Wheatridge Wind Energy LLC), and the Council finds that, if required to start the amendment process again, the Wheatridge Wind Energy Facility certificate holder would be in jeopardy of not meeting contractual obligations to begin construction of certain components of the facility in 2021.

The Council finds that failure to act promptly by adopting these temporary rules will result in serious prejudice to the interests of the Wheatridge Wind Energy Facility certificate holder. The Council finds that this prejudice alone presents a separate and independent basis for the need to adopt temporary rules for the amendment of site certificates.

Council further finds that failure to act promptly by adopting these temporary rules will result in serious prejudice to the interests of the public and in particular those who have or intend to submit comments regarding the requested amendment to the Wheatridge Wind Energy Facility site certificate, by having their concerns set aside and deferred.

Port Westward Generating Project

The certificate holder, Portland General Electric, submitted a request for amendment to the site certificate on April 23, 2019 requesting Council approval to amend the site certificate in order to construct and operate a battery energy storage facility adjacent to the existing power generating station. The certificate holder did not request Type B review, although the amendment is considered by PGE to be minor, and the request is being processed as a Type A amendment. Before the Supreme Court decision was issued, ODOE informed the certificate holder that the amendment request was complete on July 17, 2019, and that ODOE intended to issue a DPO on or before August 30. Assuming that to be the case, the certificate holder expects that a final order could issue as soon as November 2019. The certificate holder has stated, and the Council finds, that any delay would have serious implications for the certificate holder, in that HB 2193 (2015) requires electric companies like the certificate holder to invest in energy storage projects and to have a contract to procure 5 MWh of energy storage executed by January 1, 2020. (See *Attachment 5*, August 13, 2019 letter from Portland General Electric).

If the certificate holder were required to start a new amendment request, the best case scenario would be that a final order could issue in early 2020. The certificate holder might then be required to enter into the energy storage contract without knowing fully what conditions might be imposed on any amendment that is approved, or could be forced to meet the statutory requirement with a different project not requiring council approval; until bids are received, it is unknown if another project might meet the statutory mandate. (See *Attachment 5*). Adoption of temporary rules allowing for the continued processing of the current request for amendment would likely eliminate these uncertainties.

For the foregoing reasons, the Council finds that failure to act promptly by adopting these temporary rules will result in serious prejudice to the interests of Portland General Electric – the Port Westward Generating Project certificate holder. The Council finds that this prejudice alone presents a separate and independent basis for the need to adopt temporary rules for the amendment of site certificates.

The Council further finds that failure to act promptly by adopting these temporary rules will also result in serious prejudice to the interests of the public and in particular those who have submitted comments regarding the requested amendment by having their concerns set aside and deferred.

Montague Wind Power Facility

The certificate holder filed a request for amendment on January 9, 2018. Throughout 2018, the certificate holder responded to a number of requests for information from ODOE, and the certificate holder also changed certain details regarding the facility design. The department deemed the request for amendment complete on April 4, 2019. A DPO was issued on April 5, 2019. A public hearing was held in front of Council on May 16, 2019. On July 9, 2019, ODOE issued a PO and contested case notice. No requests for contested case were made. The Council is scheduled to consider the PO at its August 22-23, 2019 meeting. Because this request is at the final decision stage, requiring Montague to file a new request at a later date, after permanent rulemaking was completed, would result in the complete loss of the time and financial resources expended on this request, as well as the efforts of ODOE staff and members of the public who may have reviewed. Further, as the certificate holder has pointed out, regulatory uncertainty regarding the current status of the amendment rules can pose increased risk for project financing, contract obligations, and investor relations. (See *Attachment 6*, August 13, 2019 letter from Avangrid Renewables).

The Council finds that failure to act promptly by adopting these temporary rules will result in serious prejudice to the interests of the Montague Wind Power Facility certificate holder. The Council finds that this prejudice alone presents a separate and independent basis for the need to adopt temporary rules for the amendment of site certificates.

The Council further finds that failure to act promptly by adopting these temporary rules will result in serious prejudice to the interests of the public and in particular those who have or intend to submit comments regarding the requested amendment to the Montague Wind Power Facility site certificate, by having their concerns set aside and deferred.

Other Facilities

If a certificate holder were to apply for an amendment to a site certificate at this time, it is not clear what, if any, rules would govern the Department and Council's review of that request.

The Supreme Court's decision concludes "The rules approved by the Energy Facility Siting Council through Permanent Administrative Orders EFSC 4-2017 and EFSC 5-2017 are invalid." It does not state, for example, that "all actions taken" by EFSC under those Administrative Orders are invalid. Therefore, given that EFSC 5-2017 repealed OAR 345-027-0070 (the rule that had previously governed the process for site certificate amendments) if Council does not take action, upon the Court's issuing an appellate judgment it is possible that there will be no rules in place governing site certificate amendments. At best, the amendment rules would revert to the version that was in effect prior to October 24, 2017. It is necessary to take immediate action to resolve this situation, not only to avoid serious prejudice to certificate holders with pending requests for amendments, but also to provide regulatory certainty to certificate holders seeking new site certificate amendments regarding what rules apply. Adopting the temporary rules will provide certainty that the temporary rules govern the amendment process until the Council can adopt new permanent rules. Further, adopting the temporary rules may also improve the prospects for continuity in the processing of applications for site certificate amendments once the permanent rules are adopted, as the new permanent rules are likely to be more similar to the temporary rules than the pre-October 2017 amendment rules.

In addition, the rules adopted on October 24, 2017 contained provisions allowing for streamlined review of requests for amendment under the Type B process. A primary focus of the challenge to the rules was the Council's authority to enact these provisions. The opinion of the Supreme Court confirmed the Council's authority to develop the amendment process "largely as [Council] sees fit", which includes processing amendments under the Type B review. The Council finds that failure to promptly adopt these temporary rules, which will continue to allow for the possibility of a Type B review, would impose unnecessary delays and costs to certificate holders seeking site certificate amendments that qualify for Type B review under the rules. This would run contrary to the public interest in the development of important energy facilities and to the interests of certificate holders that may need to amend existing certificates. The Council finds that failure to act promptly by adopting these temporary rules will result in serious prejudice to the interests of the public in the orderly processing of requests for amendment of site certificates and serious prejudice to the interests of certificate holders of site certificates that may require amendment.

List of principal documents relied upon in considering the need for the rule and in preparing the rule.

Attachment 1, August 12, 2019 letter from counsel for the Summit Ridge Wind Farm certificate holder;

Attachment 2, August 1, 2019 Friends of the Columbia River Gorge press release;

Attachment 3, August 12, 2019 letter from Perennial Power Holdings, Inc.;

Attachment 4, August 9, 2019 letter from counsel of Wheatridge Wind Energy LLC;

Attachment 5, August 13, 2019 letter from Portland General Electric;
Attachment 6, August 13, 2019 letter from Avangrid Renewables.
Attachment 7, EFSC 5-2017

Conclusion / Action taken

Based upon the circumstances, findings and documents set forth above, the Council adopts these temporary rules to ensure the orderly processing of pending requests for amendment of site certificates and of public comments and requests for contested case regarding those requests. These temporary rules are adopted to avoid serious prejudice to the interests of certificate holders with pending requests for amendment or which may make requests for amendment before new permanent rules become effective. These temporary rules maintain the current process except as to those judicial review provisions declared invalid by the Oregon Supreme Court and ensure that the existing public notice and comment periods are maintained.

DRAFT

Attachment 1
August 12, 2019 letter from counsel for the Summit Ridge Wind Farm certificate holder

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August 12, 2019

**VIA EMAIL (JANINE.BENNER@OREGON.GOV;
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Ms. Janine Benner, Director
Mr. Todd Cornett, Assistant Director, Siting Division
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Dear Ms. Benner and Mr. Cornett:

This office represents Summit Ridge Wind, LLC (Certificate Holder) with respect to the Summit Ridge Wind Farm (Facility). The Certificate Holder, a wholly owned subsidiary of Pattern Renewables 2 LP, holds a site certificate for the Facility, an approved but not yet constructed wind energy generation facility in Wasco County. On August 16, 2018, the Certificate Holder submitted a request for amendment (RFA 4) in accordance with the site certificate amendment rules in place at the time, asking the Energy Facility Siting Council (Council) to extend the construction start and end deadlines by two years. Through the end of 2018, the Certificate Holder worked to respond to requests for additional information from the Oregon Department of Energy (Department), resulting in the Department's issuance of a completeness determination on January 10, 2019. During that time, the Certificate Holder worked collaboratively with Department staff as they evaluated RFA 4 under the Council's standards and updated the site certificate conditions to conform with more recently-issued site certificates. On January 1, 2019, the Department issued the Draft Proposed Order (DPO) on RFA 4. After a coalition of environmental groups expressed concern over the Department's application of the "Type B" amendment process to RFA 4, the Certificate Holder voluntarily agreed to proceed under the "Type A" process and the Department reissued the DPO on February 1, 2019 notwithstanding the greater cost and uncertainty associated with the "Type A" process. The Council heard testimony on the DPO at its meetings on February 22, 2019 and March 22, 2019, and the Department issued its Proposed Order (PO) and contested case notice on April 2, 2019. The Council evaluated two contested case requests on the PO at its May 17, 2019 meeting and directed the Department to issue an amended PO addressing certain issues raised in the contested case requests. The Department issued an amended PO on July 3, 2019, and two parties filed contested case requests on August 5, 2019. At its August meeting, the Council is scheduled to

hear the contested case requests on RFA 4 and determine whether to adopt the PO as the Final Order.

We understand that the Oregon Department of Energy is currently evaluating a potential rulemaking response to the recent Oregon Supreme Court decision in *Friends of the Gorge v. Energy Facility Siting Council* which invalidated the 2017 site certificate amendment rules that were in effect when the Certificate Holder submitted the RFA4. The Department, through the Oregon Department of Justice, has asked the Certificate Holder what impact it would have if the Certificate Holder were required to resubmit the pending RFA 4, restarting the entire amendment process. As explained below, the impact to the Certificate Holder and the Project would be significant, and we urge the Department and Council to work expeditiously to resolve the issues identified by the Supreme Court.

If the Council fails to act promptly to cure the narrow legal issues that resulted in the Oregon Supreme Court's decision to invalidate the rules and the Certificate Holder is forced to reapply (or is otherwise subject to substantial delay), it would result in serious prejudice to the interests of the Certificate Holder and materially jeopardize its ability to finalize development of and market the power of the project. First, the Certificate Holder would have no way to recoup the time and money invested to secure approval of RFA 4. As of today's date, the Certificate Holder has devoted more than a year to the amendment process and has made significant financial investments to secure the necessary technical and legal support in pursuit of that authorization. In addition, the Certificate Holder has made significant financial investments through its cost recovery agreement with the Department to support the Department review of RFA 4. If the Certificate Holder was forced to reapply, it would require significant additional investments to go through the same review process a second time.

Second and more importantly, if the Certificate Holder were forced to reapply, approval of the RFA could be delayed by 6-18 months (depending on contested case and judicial review timeline). Even under a "best case" scenario where the Department's review was shortened based on the prior amendment review process, the required regulatory timeline could easily push final approval of RFA 4 well into 2020. Such an outcome would have serious negative impacts on the ability to solicit construction contractor work, procure equipment, and market the power of the Facility. With the potential for a contested case and judicial review and the need to complete pre-construction compliance tasks prior to construction, reapplication at this juncture could prevent the Certificate Holder from starting construction by the requested amended construction start deadline of August 19, 2020, putting the Facility in jeopardy.

For these reasons, we urge the Council to act expeditiously to address the narrow legal issues identified by the Supreme Court in *Friends of the Gorge*.

Oregon Department of Energy
August 12, 2019
Page 3

Thank you in advance for your consideration.

Very truly yours,

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

Sarah Stauffer Curtiss

Attachment 2
August 1, 2019 Friends of the Columbia River Gorge press release

DRAFT

[Back to Newsroom](#)

Oregon Supreme Court Invalidates Energy Council's Rules for Modifying Power Plants

August 1, 2019

Categorie(s): Latest News

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PORTLAND, OR - Today the Oregon Supreme Court [held in favor](#) of a coalition of nine conservation organizations, invalidating rules adopted in 2017 by the Oregon Energy Facility Siting Council (EFSC) that had dramatically reduced transparency and discouraged public participation in permitting decisions for large power plants throughout Oregon. Today's legal victory is also expected to terminate the previously issued permits for two controversial power projects, the [Summit Ridge Wind Farm](#) proposed in Wasco County along the Deschutes River, and the [Perennial Wind Chaser Station](#), a natural gas power plant proposed in Umatilla County.

In October 2017, the siting council adopted the [controversial rules](#), which changed the procedures for amending permits (called site certificates) for thermal power plants, wind energy projects, and other large energy facilities. In adopting these rules, the siting council disregarded extensive public comments calling for more transparency and public participation opportunities. Instead, the new rules hid agency decisions to expand power plants from the public, unlawfully delegated important decisions to Oregon Department of Energy (ODOE) staff, and illegally modified judicial review procedures for challenging council decisions. In December 2017, Friends of the Columbia Gorge and eight other conservation organizations [filed an appeal](#) in the Oregon Supreme Court challenging the new rules.

"The supreme court's decision establishes an important precedent that all state agencies in Oregon must follow when adopting rules, in order to ensure full public transparency," said Nathan Baker, senior staff attorney for Friends of the Columbia Gorge. "When asked by the public, an agency adopting a new rule must issue a statement explaining how the agency intends

to measure its own success at achieving the goals of the rule. The agencies failed to do that here, and as a result, their rules are invalid."

The Oregon Supreme Court also held that the siting council unlawfully restricted the rights of the public to challenge the council's permitting decisions on energy projects. "An agency cannot insulate its own decisions from judicial review. The siting council exceeded its statutory authority by adopting these rules," Baker added.

"Oregonians are increasingly engaging in the effort to clean up our state's energy system, but these newly adopted rules were unfortunately limiting public involvement," said Ryan Houston, executive director of the Oregon Natural Desert Association (ONDA). "ONDA is encouraged by the court's decision striking down these flawed rules. The siting council now has an opportunity to reform its rules to promote citizen involvement in decisions on large energy projects."

Today's court ruling also means that [all pending applications for amendments to site certificates](#) that were submitted after October 2017 under the invalid rules are similarly invalid, and cannot be processed by ODOE and the siting council. For most of these energy projects, the developers can simply reapply for amendments under the pre-October 2017 rules, which are now reinstated under the court's ruling. However, as a result of today's ruling, the permission to build two specific projects has now expired. The controversial [Summit Ridge Wind Farm](#) was originally proposed in 2009 to be sited in Wasco County along the Lower Deschutes Wild and Scenic River. And the [Perennial Wind Chaser Station](#), a 415-megawatt natural gas power plant, was first proposed in 2014 to be sited in western Umatilla County. Both of these projects would have resulted in significant environmental impacts. If the developers still desire to pursue either of these projects, they must file applications for new site certificates—effectively starting the permitting process over from scratch.

"Friends supports well-planned renewable energy projects and full public transparency," said Michael Lang, conservation director for Friends of the Columbia Gorge. "Unfortunately, the Summit Ridge project was neither well-planned nor ensured full transparency. This massive wind energy project would have been built on the canyon rim above the Lower Deschutes Wild and Scenic River and in full view from the Columbia River Gorge National Scenic Area, harming the scenic beauty and sensitive wildlife that Oregonians have fought so hard to protect."

In 2017, the proposed Summit Ridge project was [acquired](#) by [Pattern Energy Group](#), after being abandoned by the original developer. In 2018 and 2019, Pattern sought a third round of extensions of the construction deadlines for the project, yet [refused to update](#) the outdated and inaccurate baseline surveys and data regarding the project's potential impacts to birds, bats, and wildlife habitat. In 2010, the U.S. Fish and Wildlife Service called for a [six-mile buffer](#) between the

proposed Summit Ridge wind turbines and any golden eagle nest, except for in non-use locations. Pattern never publicly announced whether it was intending to honor these buffer prescriptions.

"The proposed Summit Ridge wind energy project threatened bald eagles, golden eagles, and several other important bird and bat species," said Doug Heiken, conservation and restoration coordinator for Oregon Wild. "Despite these threats, Pattern Energy refused to update the outdated wildlife surveys and data—many of which were a decade old—so that the agencies and the public would fully understand the project's impacts to eagles and other wildlife. Oregon Wild is relieved to know that this poorly planned project is expected to be terminated as a result of today's court ruling."

"We expect the court's decision will send the Perennial Wind Chaser power plant—a 415-MW fracked gas power plant—back to the drawing board. The proposed fracked gas facility's outdated permit has now expired as a result of this decision. Oregonians are demanding clean energy solutions, not dirty fossil fuel polluters," said Lauren Goldberg, Legal and Program Director for Columbia Riverkeeper.

The petitioners in the case were a coalition of nine conservation and community groups that collectively represent more than 45,000 members and supporters. The coalition was led by Friends of the Columbia Gorge and also included Northwest Environmental Defense Center, Oregon Natural Desert Association, Oregon Wild, the Hood River Valley Residents Committee, Columbia Riverkeeper, WildLands Defense, the Greater Hells Canyon Council, and the Oregon Coast Alliance.

Attachment 3
August 12, 2019 letter from Perennial Power Holdings, Inc.

DRAFT



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August 12, 2019

Oregon Department of Energy

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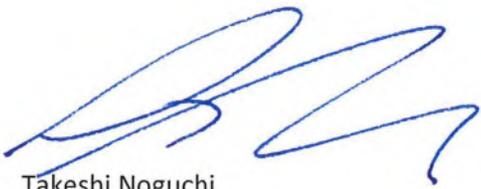
To Whom it may concern:

Perennial-WindChaser LLC (“Perennial”) is the holder of the Site Certificate dated September 18, 2015, issued by the Energy Facility Siting for the Perennial Wind Chaser Station. We are writing in support of a proposal by the Oregon Department of Energy to submit to the Council temporary Division 27 rules regarding the process for amending a site certificate. It is our understand that such rules would be consistent with the amendment procedures contained in the Council’s October 2017 rulemaking, which was overturned by the Oregon Supreme Court decision in Friends of the Columbia Gorge v. Energy Facility Siting Council issued on August 1, 2019.

Perennial currently has pending a Request for Amendment by which Perennial seeks to extend the deadlines for beginning and completing construction of the Wind Chaser Station. Perennial submitted its Preliminary Request for Amendment on August 2, 2018. That application has been processed in accordance with the Council’s October 2017 revisions to Division 27. On July 8, 2019 – weeks prior to the Supreme Court’s decision -- the Department issued a Draft Proposed Order on the Request for Amendment; the public comment period extends through the close of a public hearing scheduled for August 22, 2019.

The temporary rulemaking is necessary to prevent serious prejudice to the interest of Perennial in the current site certificate amendment process. The Division 27 rules in effect prior to the October 2017 rulemaking differed substantially from the rules under which Perennial’s Request for Amendment has been processed. For example, the “old” rules required a public comment period on the Request for Amendment – a step not included in the October 2017 rules -- but did not include the Draft Proposed

Order stage through which Perennial's Request for Amendment is currently proceeding. Returning to those prior rules could require that the Department withdraw the Draft Proposed Order and cancel the current public comment period and upcoming public hearing, and instead provide a public comment period on our Request for Amendment in order to ensure compliance with the different procedures of the earlier rules. That delay harms Perennial and arguably harms the public interest as well by setting aside a public comment period already underway.



Takeshi Noguchi

Perennial Power Holdings, Inc

President

Attachment 4
August 9, 2019 letter from counsel of Wheatridge Wind Energy, LLC.

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August 9, 2019

**VIA EMAIL (JANINE.BENNER@OREGON.GOV;
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Ms. Janine Benner, Director
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Salem, OR 97301

Dear Ms. Benner and Mr. Cornett:

This office represents Wheatridge Wind Energy LLC (Certificate Holder) with respect to the Wheatridge Wind Energy Facility (Facility). The Certificate Holder, a wholly-owned subsidiary of Wheatridge Wind Holdings, LLC, an indirect subsidiary of parent company NextEra Energy Resources, LLC, holds a site certificate for the Facility, an approved but not yet constructed wind energy generation facility in Morrow and Umatilla Counties. On November 30, 2018, the Certificate Holder submitted a preliminary request for amendment (RFA 4) in accordance with the site certificate amendment rules in place at the time, asking the Energy Facility Siting Council (Council) to: (1) amend the site boundary from 13,097 to 14,624 acres; (2) increase the individual MW of previously approved but not yet constructed wind turbines from 2.5 to 2.8 MW; (3) construct and operate a 150 MW photovoltaic solar energy system and 41 distributed energy storage system sites; and (4) expand a previously approved substation site from 5 to 10 acres. Through early 2019, the Certificate Holder worked to respond to requests for additional information from the Oregon Department of Energy (Department), resulting in the Department's issuance of a completeness determination on July 1, 2019. On July 25, 2019, the Department issued the Draft Proposed Order (DPO) on RFA 4. At its August meeting, the Council is scheduled to hold a public hearing on the DPO.

Based on recent conversations with the Oregon Department of Justice, we understand that the Department is currently evaluating a potential rulemaking response to the recent Oregon Supreme Court decision in *Friends of the Gorge v. Energy Facility Siting Council* which invalidated the 2017 site certificate amendment rules. The Department, through the Oregon Department of Justice, has asked the Certificate Holder what impact it would have if the Certificate Holder were required to resubmit the pending RFA 4, restarting the entire amendment process. As explained below, the impact to the Certificate Holder and the Facility would be significant, and we urge the Department and Council to work expeditiously to resolve the narrow issues identified by the Supreme Court.

If the Council fails to act promptly to cure the narrow legal issues that resulted in the Oregon Supreme Court's decision to invalidate the rules and the Certificate Holder is forced to reapply (or is otherwise subject to substantial delay in the processing of RFA 4), it would result in serious prejudice to the interests of the Certificate Holder. First, the Certificate Holder would have no way to recoup the time and money it has already invested to secure approval of RFA 4. As of today's date, the certificate holder has devoted roughly nine months to the amendment process (not including the time to prepare the preliminary request) and has made significant financial investments to secure the necessary technical and legal support in pursuit of that authorization. In addition, the Certificate Holder has made significant financial investments through its cost recovery agreement with the Department to support the Department's review of RFA 4. If the Certificate Holder was forced to reapply, it would require significant additional investments to go through the same review process a second time.

Second and more importantly, if the Certificate Holder were forced to reapply, approval of the RFA could be delayed by 6-18 months (depending on contested case and judicial review timeline). Even under a "best case" scenario where the Department's review was expedited based on the prior amendment review process and there was no contested case, the required regulatory timeline could easily push final approval of RFA 4 well into 2020. With the potential for a contested case and subsequent judicial review and the need to complete pre-construction compliance tasks (*e.g.* sensitive species surveys) prior to construction, reapplication at this juncture could prevent the Certificate Holder from meeting its contractual obligations to begin construction of the solar and battery components of the Facility in 2021. *See* PGE Press Release (Feb. 12, 2019), attached as Exhibit A.

Finally, requiring the Certificate Holder to resubmit RFA 4 would be particularly prejudicial because the Department is processing RFA 4 pursuant to the "Path A" amendment process and the Oregon Supreme Court found no error with the "Path A" process in *Friends of the Gorge*. Indeed, the Oregon Supreme Court's narrow substantive ruling therein relating to restrictions on judicial review are simply not present in a Path A proceeding. In other words, the legal concerns identified by the court are not present here, and thus there is no practical or legal basis to invalidate RFA 4, which is being processed under a separate amendment path.

For these reasons, we urge the Council to act expeditiously to address the narrow legal issues identified by the Supreme Court in *Friends of the Gorge*.

Thank you in advance for your consideration.

Very truly yours,



Sarah Stauffer Curtiss

Portland General Electric and NextEra Energy Resources to develop nation's first major energy facility co-locating wind, solar and battery storage

Project will advance Oregon's clean energy future while delivering affordable electricity for PGE customers

Portland, Ore. Feb. 12, 2019 — Portland General Electric Company (NYSE: POR) and NextEra Energy Resources, LLC, a subsidiary of NextEra Energy, Inc. (NYSE: NEE), today announced plans to construct a new energy facility in Eastern Oregon combining 300 megawatts of wind generation with 50 megawatts of solar generation and 30 megawatts of battery storage.

The new project, called the Wheatridge Renewable Energy Facility, will be the first of this scale in North America to co-locate and integrate these three technologies, creating an improved zero-emissions resource and accelerating Oregon's transition to clean energy.

"We're moving aggressively to integrate smart grid technologies and renewable energy to give customers affordable, clean, low-carbon energy," said Maria Pope, PGE president and CEO. "Wheatridge will be a model for integrating renewable generation and storage to cost-effectively reduce emissions while maintaining a reliable grid." The new facility, combined with PGE's existing resources, will bring the company's wind generation portfolio to a nameplate total of more than 1,000 megawatts (one gigawatt), available from five owned or contracted wind farms in the Northwest – enough power to serve the equivalent of 340,000 homes. The solar farm will be one of the largest in Oregon, while the battery storage facility will be the largest in Oregon and one of the largest in the United States.

With the addition of these new renewable resources, PGE expects to meet about 50 percent of its customers' power needs with emissions-free generation.

"We're pleased to work with Portland General Electric on the Wheatridge Renewable Energy Facility, an exciting opportunity to combine wind, solar and energy storage," said Armando Pimentel, president and CEO of NextEra Energy Resources, the world's largest generator of renewable energy from the wind and the sun. "This venture will allow PGE's customers to benefit from more renewable energy over more hours of the day and create substantial economic value for the communities that host this project, many of whom stand to benefit for years to come."

U.S. Senator Ron Wyden has supported the project from its inception.

"Portland General Electric's decision to join with NextEra Energy Resources in constructing the Wheatridge Renewable Energy Facility provides both a well-earned economic boost to Eastern Oregon and an important step on our country's needed path to green energy," said Wyden. "I am proud to have worked with Morrow County and all the local officials who teamed up in the 'Oregon Way' spirit of finding solutions to make sure this homegrown renewable energy project could achieve this milestone."

Project details

Power from the facility will be generated by 120 wind turbines manufactured by GE Renewable Energy, Inc. The wind farm will be located just north of Lexington, Oregon, in Morrow County. The specific equipment to be used at the associated solar farm and battery storage facility is still to be determined.

Wheatridge will provide up to 300 jobs during construction of the wind site and up to 175 jobs during construction of the solar and storage sites. Approximately 10 full-time employees will operate the combined facilities once they're commissioned for service.

Ownership and construction

Swaggart Wind Power, LLC began development and permitting of the Wheatridge wind farm in 2009. Swaggart is an affiliate of MAP® Energy. The project was then acquired by a NextEra Energy Resources subsidiary in 2017. NextEra and PGE expanded the project scope to include solar generation and battery storage.

PGE will own 100 megawatts of the wind project. A subsidiary of NextEra Energy Resources will own the balance of the project and sell its output to PGE under 30-year power purchase agreements. NextEra Energy Resources' subsidiary will build and operate the combined facility. The split ownership and PPA structure will allow the two energy companies to share project risks and benefits.

The wind component of the facility will be operational by December 2020 and qualify for the federal production tax credit at the 100 percent level. Construction of the solar and battery components is planned for 2021 and will qualify for the federal investment tax credit. The tax credits help reduce the cost of the project over time, thus reducing costs to PGE's customers.

PGE expects to invest approximately \$160 million for its owned portion of the project.

Competitive selection process

The Wheatridge project was the prevailing bid submitted in response to a request for proposals for renewable resources PGE issued in May 2018. The agreements signed by PGE and NextEra Energy Resources' subsidiary will be subject to prudence review on customers' behalf by the Oregon Public Utility Commission. The agreements are also subject to approval by NextEra Energy management, which is anticipated in March.

Quotes regarding the Wheatridge Renewable Energy Facility:

"Portland General Electric's decision to join with NextEra Energy Resources in constructing the Wheatridge renewable energy facility provides both a well-earned economic boost to Eastern Oregon and an important step on our country's needed path to green energy. I am proud to have worked with Morrow County and all the local officials who teamed up in the 'Oregon Way' spirit of finding solutions to make sure this homegrown renewable energy project could achieve this milestone." — U.S. Senator Ron Wyden

"This is great news for Morrow County's residents and businesses! This project will benefit our communities through jobs, property taxes and community support. We have a long, positive history of working with PGE, and they have been a good community partner. We look forward to working with them to make this project a success." — Don Russell, Morrow County Commissioner

“One of Beaverton’s top priorities is being a positive force in addressing climate change while maintaining a healthy economy. We’re glad to have PGE as a partner in advancing these goals and applaud the addition of this new resource that will ensure our residents and businesses are served with increasingly clean and affordable electricity.” — Denny Doyle, Mayor of Beaverton, Oregon

“We are excited to hear this news. These types of renewable Oregon-based projects are critical to the growth and economy of the region, including Morrow County and Port of Morrow. PGE is one of the businesses located at the Port of Morrow Industrial Park, and we have appreciated PGE’s partnership and continued investment in Morrow County.” — Ryan Neal, Port of Morrow general manager

“We’re moving aggressively to integrate smart grid technologies and renewable energy to give customers affordable, clean, low-carbon energy. Wheatridge will be a model for integrating renewable generation and storage to cost-effectively reduce emissions while maintaining a reliable grid.” — Maria Pope, PGE president and CEO

“We’re pleased to work with Portland General Electric on the Wheatridge Renewable Energy Facility, an exciting opportunity to combine wind, solar and energy storage. This venture will allow PGE’s customers to benefit from more renewable energy over more hours of the day and create substantial economic value for the communities that host this project, many of whom stand to benefit for years to come.” — Armando Pimentel, president and CEO of NextEra Energy Resources

For more information contact Steve Corson, PGE, 503-464-8444, Steven.Corson@pgn.com (<mailto:Steven.Corson@pgn.com>).

About Portland General Electric Company

Portland General Electric (NYSE: POR) is a fully integrated energy company based in Portland, Oregon, serving approximately 887,000 customers in 51 cities. For more than 130 years, PGE has been delivering safe, affordable and reliable energy to Oregonians. Together with its customers, PGE has the No. 1 voluntary renewable energy program in the U.S. With approximately 3,000 employees across the state, PGE is committed to helping its customers and the communities it serves build a clean energy future. For more information, visit PortlandGeneral.com/CleanVision ([/our-company/energy-strategy/oregons-clean-energy-future](http://our-company/energy-strategy/oregons-clean-energy-future)).

Safe Harbor Statement

Statements in this news release that relate to future plans, objectives, expectations, performance, events and the like may constitute “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995, Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Such forward-looking statements include statements concerning the future performance of the Tucannon River Wind Farm and other expected benefits of the project, as well as other statements identified by words including, but not limited to, “will,” “anticipates,” “believes,” “intends,” “estimates,” “promises,” “expects,” “should,” “conditioned upon” and similar expressions. Investors are cautioned that any such forward-looking statements are subject to risks and uncertainties, including regulatory, operational and legal matters, as well as other factors that could affect the deployment and successful operation of turbines at the Tucannon River Wind Farm project. As a result, actual results may differ materially from those projected in the forward-looking statements. All forward-looking statements included in this news release are based on information available to the Company on the date hereof and such statements speak only as of the date hereof. The Company assumes no obligation to update any such forward-looking statements. Prospective investors should also review the risks and uncertainties listed in the Company’s most recent Annual Report on Form 10-K and the Company’s reports on Forms 8-K and 10-Q filed with the United States Securities and Exchange Commission, including Management’s Discussion and Analysis of Financial Condition and Results of Operation and the risks described therein from time to time.

Attachment 5
August 13, 2019 letter from Portland General Electric

DRAFT



Portland General Electric
121 SW Salmon Street · Portland, Ore. 97204

August 13, 2019

Janine Benner, Oregon Department of Energy
Todd Cornett, Energy Facility Siting Division Administrator
Oregon Department of Energy
550 Capitol Street NE
Salem, OR 97301

Dear Ms. Benner and Mr. Cornett,

Portland General Electric Company (PGE) is writing in regard to temporary rules for amendments to site certificates that may be considered by the Energy Facility Siting Council (EFSC) on August 22, 2019. These temporary rules would enable pending Requests for Amendments (RFAs) to be processed according to the rules that existed when requests were submitted, prior to Oregon Supreme Court's decision in the *Friends of Columbia River Gorge vs. Energy Facility Siting Council*. As the Council considers these rules, we wanted to provide information about how PGE's amendment request for the battery storage project at Port Westward would be impacted should the rules not be adopted. PGE recommends that the temporary rulemaking adopted only apply to pending site certificate amendments. Until final rules can be promulgated, future amendments should be processed under the pre-October 24, 2017 rules. PGE looks forward to participating with all concerned stakeholders in a careful evaluation of any new permanent rulemaking to govern future site certificate amendments.

Two of PGE's important energy projects would be negatively impacted if temporary rules are not adopted: the Port Westward Battery Energy Storage System (BESS) project (Port Westward Generating Project RFA No. 11) and the Wheatridge Renewable Energy Project to add solar and a BESS (Wheatridge RFA No. 4). Because the site certificate for the Wheatridge Renewable Energy Project is currently held by NextEra, NextEra will be submitting information identifying the anticipated impacts to that project. The information below applies to the Port Westward BESS project.

On April 23, 2019, PGE submitted a Request for Amendment (RFA) No. 11 to the Port Westward Generating Project Site Certificate. Although the amendment is minor, PGE did not request a "Type B" Amendment Determination Request; therefore, the amendment was being processed as a "Type A" Amendment. PGE decided not to pursue a "Type B" amendment for this project in order to mitigate the impact to the project pending the outcome of the *Friends of the Columbia Gorge v. Energy Facility Siting Council* case. The RFA was submitted to allow PGE to add a 4–6 megawatt (MW) BESS as a related or supporting facility. After PGE responded to the Department's requests for additional information, the Department deemed the RFA complete on July 17, 2019. Prior to the court decision, the Department was in the process of preparing the Draft Proposed Order (DPO) and had indicated to PGE they expected to issue the DPO on or before August 30, 2019. Following the "Type A" amendment process, PGE expected to have an amended site certificate by November 2019. That same timing could be achieved through the temporary rulemaking PGE recommends be provided; the timeline is outlined in the table below.

“Type A” Review Process Steps per Temporary Rulemaking	Anticipated Milestones
ODOE Issues Determination of Completeness of RFA	July 17, 2019 (completed)
ODOE Issues Draft Proposed Order (DPO)	August 30, 2019
Public Hearing; assumes 27-day comment period to make the September EFSC meeting	September 26, 2019
ODOE Issues Proposed Order (PO); assumes within 20 days following the public hearing	October 16, 2019
Deadline for Contested Case Request; assumes 30-day period	November 15, 2019
ODOE Review and Council Decision on Contested Case Requests; assumes at next regularly scheduled Council meeting after contested case deadline	November 21-22, 2019
Issuance of Final Order and Amended Site Certificate	November 21-22, 2019

That timing is critical due to PGE’s statutory obligation under House Bill (HB) 2193. House Bill 2193, passed in 2015, requires electric companies like PGE to invest in energy storage projects (approved by the Oregon Public Utility Commission (OPUC)) to help accelerate the investment of energy storage, which is essential to integrating new renewables onto the energy grid and managing peak demand. In accordance with requirements of HB 2193, PGE is required to enter into a contract with a vendor to procure a minimum of 5 megawatt-hours (MWh) of energy storage by January 1, 2020. PGE has issued requests for proposals for two projects, one of which is at the Port Westward site (the second project is not subject to the Council’s approval and is called Coffee Creek). Bids for both projects will be received August 16, 2019. PGE anticipates signing a contract with the winning bidder for the Port Westward project by mid-December, with the intent to issue notice to proceed in the second half of 2020. There are no provisions within HB 2193 that would extend the January 1, 2020 date, even due to the Oregon Supreme Court decision.

PGE understands that the Department has stated that if temporary rules are not adopted, applicants with pending site certificate amendments would need to reapply to have those amendment requests processed under the OAR 345 Division 27 Amendment rules in place prior to October 24, 2017. Although PGE does not necessarily agree with that conclusion, we have assumed for purposes of our analysis that the Department would require that PGE reapply.

Under the pre-October 2017 amendment rules, it appears PGE would not receive an amended site certificate until January 2020 at the earliest – a month after PGE is required under HB 2193 to have 5 MWh of energy storage under contract. See table below for timeline and assumptions.

Pre-October 2017 Amendment Rules Process Steps	Milestones
PGE re-submits RFA No. 11 to the Department (assumes PGE would submit request as soon as it is known that temporary rules will not be adopted)	August 26, 2019
ODOE distributes copies, sends/posts notifications, and establishes comment period on RFA (assume 15 days)	September 10, 2019
End of comment period on RFA (assumes 30 days)	October 10, 2019
ODOE issues Proposed Order (assumes 30 days, assumes short amount of time since ODOE will already have a Draft Proposed Order prepared under the previous “Type A” process)	November 9, 2019

End of comment period on Proposed Order and opportunity to request a contested case	December 9, 2019
Complete assessment of any contested case request and prepared Draft of Final Order (assumes 15 days)	December 24, 2020
ODOE Review and Council Decision on Contested Case Requests (at next regularly scheduled Council meeting after contested case deadline)	January 2020 EFSC Meeting
Issuance of Final Order and Amended Site Certificate	January 2020 EFSC Meeting

Note: The evaluation of timing under the pre-October 2017 rules makes assumptions about the amount of time needed for the Department to prepare documents and the length of the comment periods established. These assumptions will depend on the Department's workload, which could increase substantially if they are required to simultaneously reprocess all pending amendment applications under the old rules.

If temporary rules are not adopted, and PGE is required to resubmit the RFA to be processed under the pre-October 2017 amendment rules, PGE would have to either sign the Port Westward project contract prior to having a final site certificate (and thus be unable to include all applicable requirements in the contract), or delay signing a contract until after a final site certificate can be obtained. There are possible financial implications if PGE signs a contract prior to having a final site certificate if it ultimately contains new requirements not envisioned nor incorporated into the signed contract. The OPUC has capped the capital funds allowed for the Port Westward project, so any additional costs or change orders required after signing the contract will limit our ability to complete the project within the available budget. If PGE instead delays the signing of a contract for the Port Westward BESS project, then PGE will have to rely on signing a contract for only the Coffee Creek project to meet the requirements of HB 2193 to procure a minimum of 5 MWh of energy storage by January 1, 2020. PGE's approach has been to have multiple project options available to meet the HB 2193 requirement so that the best combination of bids could be selected to maximize project benefits and minimize costs. Since bids have not yet been received, it is unknown if an acceptable bid meeting the 5 MWh requirement will be submitted for the Coffee Creek project; therefore, PGE cannot know at this time if delaying signature of a Port Westward contract is feasible.

Thank you for taking these issues into consideration when considering the adoption of temporary rules that provide a solution to avoid unnecessary delays and costs for pending applications. We look forward to participating in any new permanent rulemaking to govern future site certificate amendments. Please feel free to contact me at 503-464-2634 if you have any questions or need additional information concerning PGE's support for the temporary rulemaking.

Best Regards,



Lenna Cope
Portland General Electric
Senior Environmental Specialist

cc: Maxwell Woods, ODOE

Attachment 6
August 13, 2019 letter from Avangrid Renewables

DRAFT



August 13, 2019

VIA EMAIL

Todd Cornett
Council Secretary
Oregon Energy Facility Siting Council
Oregon Department of Energy
550 Capitol St. NE, 1st Floor
Salem OR 97301

Re: Support for Temporary Rulemaking to Address Oregon Supreme Court Ruling in *Friends of the Gorge v. EFSC*, 47 OR 371 (2019)

Dear Mr. Cornett:

Avangrid Renewables LLC, via its project subsidiaries, holds several site certificates from the Oregon Energy Facility Siting Council ("EFSC"). Since EFSC adopted new Division 27 rules in October 2017 ("2017 Div. 27 rules"), Avangrid has filed two "Type A" Requests for Amendment ("RFA") and two Amendment Determination Requests ("ADR") under the 2017 Div. 27 rules. On August 1, 2019, the Oregon Supreme Court issued a ruling in *Friends of the Gorge v. EFSC* invalidating the 2017 Div. 27 rules on one procedural ground and one substantive ground involving the Type B review process ("*Friends* decision"). The *Friends* decision is narrow, however, the *Friends* decision poses significant regulatory uncertainty for pending reviews, particularly in light of recent threats of litigation from the petitioners involved in the *Friends* decision. Once the appellate judgment is entered in the *Friends* case, certificate holders with pending reviews will face uncertainty about what rules even apply to amendments and whether EFSC may proceed with pending reviews. Such regulatory uncertainty is harmful and EFSC must correct it immediately. Regulatory uncertainty can pose increased risk for project financing, contract obligations, and investor relations.

We request that EFSC act quickly to correct the problems identified by the Court, otherwise EFSC will be seriously prejudicing many certificate holders. Thank you for your consideration.

Very truly yours,

A handwritten signature in black ink that reads "Brian O. Walsh".

Brian Walsh
Sr. Project Developer
Avangrid Renewables LLC

cc: Patrick Rowe
Jeffrey Durocher
Elaine Albrich

Attachment 7
EFSC Order 5-2017

DRAFT

OFFICE OF THE SECRETARY OF STATE
DENNIS RICHARDSON
SECRETARY OF STATE

LESLIE CUMMINGS
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION
MARY BETH HERKERT
DIRECTOR

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

PERMANENT ADMINISTRATIVE ORDER

EFSC 5-2017
CHAPTER 345
DEPARTMENT OF ENERGY
ENERGY FACILITY SITING COUNCIL

FILED

10/24/2017 4:37 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Reorganization of Div. 27 and rewrite of rules governing requests for amendments to site certificates.

EFFECTIVE DATE: 10/24/2017

AGENCY APPROVED DATE: 10/19/2017

CONTACT: Jason Sierman
503-373-2127
jason.sierman@oregon.gov

550 Capitol St. NE
Salem, OR 97301

Filed By:
JASON SIERMAN
Rules Coordinator

RULES:

345-015-0014, 345-015-0016, 345-015-0080, 345-015-0083, 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, 345-027-0070, 345-027-0071, 345-027-0072, 345-027-0075, 345-027-0080, 345-027-0085, 345-027-0090, 345-027-0100

AMEND: 345-015-0014

NOTICE FILED DATE: 06/13/2017

RULE SUMMARY: States how and to whom the Department sends notice of a contested case to. 10/24/17 changes were necessary to state that the contents of a contested case notice and who the notice of contested case gets sent to, will both vary depending on whether the contested case is on an application for a site certificate or on a request for amendment.

CHANGES TO RULE:

345-015-0014

Contested Case Notices ¶

(1) The Department shall issue notices for Council contested case proceedings as provided in OAR 137-003-0001. ~~and shall include in the notices.~~ ¶

(a) Contested case notices regarding proposed orders for site certificate applications shall include: ¶

(aA) A date by which persons must request party or limited party status. ¶

(bB) The date of the pre-hearing conference. ¶

(C) The time and place of the hearing. ¶

(b) Contested case notices regarding proposed orders for site certificate amendments shall include: ¶

(A) The date of the pre-hearing conference. ¶

(eB) The time and place of the hearing. ¶

(C) The issues and the parties the Council identified for the contested case as described in OAR 345-027-0071.¶

(2) In addition to the requirements of section (1), for a contested case notice on a proposed order as described in OAR 345-015-0230 or following a Council decision to grant a contested case hearing under 345-015-0310, the Department shall include in the notice a statement that participation as a party or limited party in the contested case proceeding and the opportunity to raise any issue are subject to the limitations described in OAR 345-015-0016.¶

(3) The Department shall send a contested case notice by registered or certified mail to the following persons:¶

(a) For a contested case notice on a proposed order as described in OAR 345-015-0230, to the applicant and to all persons who commented in person or in writing on the record of the public hearing described in 345-015-0220.¶

(b) Following the Council's decision to grant a contested case proceeding on a proposed order on an application for a site certificate for a special criteria facility, to the applicant and to all persons who commented in person or in writing on the record of the public hearing on the proposed order described in OAR 345-015-0320.¶

(c) Following a Council decision to grant a contested case proceeding on a proposed site certificate amendment under OAR 345-027-0070, ~~345-027-0080~~1 or 345-027-0090, to the certificate holder and to ~~all persons who request~~the parties the Council granted a contested case proceeding as described in 345-027-0070(6) or 345-027-0080(5) arty status to.¶

(d) For Council contested case proceedings described under OAR 345-029-0070, 345-029-0100 or 345-060-0004, to persons who have an interest or represent a public interest in the outcome of the proceeding.¶

(4) The Department shall request that the applicant notify the hearing officer and the Department, by the date described in subsection (1)(a), of any issues the applicant desires to raise in the contested case proceedings described in subsections (3)(a) and (b).

Statutory/Other Authority: ORS 469.373, 469.470

Statutes/Other Implemented: ORS 183.415, 469.085, 469.370, 469.405, 469.440, 469.605, 469.615, 469.992

AMEND: 345-015-0016

NOTICE FILED DATE: 06/13/2017

RULE SUMMARY: States who is eligible to request party status to a contested case on an application for a site certificate and the process by which those requests must be made.

CHANGES TO RULE:

345-015-0016

Requests for Party or Limited Party Status in Contested Cases on Applications for a Site Certificate ¶¶

(1) Notwithstanding OAR 137-003-0005(2), a person requesting to participate as a party or limited party in a contested case proceeding shall submit a petition to the hearing officer by the date specified in the Department of Energy's contested case notice issued under OAR 345-015-0014.¶¶

(2) Persons who have an interest in the outcome of the Council's contested case proceeding or who represent a public interest in such result may request to participate as parties or limited parties.¶¶

(3) Except as described in section (4), only those persons who have commented in person or in writing on the record of the public hearing described in OAR 345-015-0220 may request to participate as a party or limited party in a contested case proceeding on an application for a site certificate. To raise an issue in a contested case proceeding, the issue must be within the jurisdiction of the Council, and the person must have raised the issue in person or in writing on the record of the public hearing, unless the Department of Energy did not follow the requirements of ORS 469.370(2) or (3) or unless the action recommended in the proposed order described in OAR 345-015-230, including any recommended conditions of approval, differs materially from the action recommended in the draft proposed order, in which case the person may raise only new issues within the jurisdiction of the Council that are related to such differences. If a person has not raised an issue at the public hearing with sufficient specificity to afford the decision maker an opportunity to respond to the issue, the hearing officer shall not consider the issue in the contested case proceeding. To have raised an issue with sufficient specificity, the person must have presented facts at the public hearing that support the person's position on the issue.¶¶

(4) Following a Council decision to grant a contested case hearing under OAR 345-015-0310, only those persons who have commented in person or in writing on the record of the public hearing described in 345-015-0320 may request to participate as a party or limited party in a contested case proceeding on an application for a site certificate. To raise an issue in a contested case proceeding, the issue must be within the jurisdiction of the Council, and the person must have raised the issue in person or in writing on the record of the public hearing. If a person has not raised an issue at the public hearing with sufficient specificity to afford the decision maker an opportunity to respond to the issue, the hearing officer shall not consider the issue in the contested case proceeding. To have raised an issue with sufficient specificity, the person must have presented facts at the public hearing that support the person's position on the issue.¶¶

(5) In a petition to request party or limited party status, the person requesting such status shall include:¶¶

(a) The information required under OAR 137-003-0005(3).¶¶

(b) A short and plain statement of the issue or issues that the person desires to raise in the contested case proceeding.¶¶

(c) A reference to the person's comments at the public hearing showing that the person raised the issue or issues at the public hearing.¶¶

(d) A detailed description of the person's interest in the contested case proceeding and how that interest may be affected by the outcome of the proceeding.¶¶

(6) The hearing officer's determination on a request to participate as a party or limited party is final unless the requesting person submits an appeal to the Council within seven days after the date of service of the hearing officer's determination.

Statutory/Other Authority: ORS 469.373, 469.470

Statutes/Other Implemented: ORS 183.415, 469.370, 469.405, 469.440, 469.605, 469.615, 469.992

AMEND: 345-015-0080

NOTICE FILED DATE: 06/13/2017

RULE SUMMARY: States the process by which any state or local government agency may request to participate in a contested case. 10/24/17 changes clarify how gov't agencies participate in contested cases on a site certificate amendment.

CHANGES TO RULE:

345-015-0080

Participation by Government Agencies ¶

(1) Any state or local government agency other than the Department of Energy may request participation in a contested case as a party, limited party or interested agency, subject to the limitations described in OAR 345-015-0016. ~~¶For a contested case on a site certificate application,~~ the agency shall submit the request to the hearing officer in writing by the date specified in the Department of Energy's contested case notice issued under 345-015-0014. For a contested case on a site certificate amendment, the agency shall submit the request to the Department by the date specified in the notice of the opportunity to request a contested case issued under OAR 345-027-0071.¶

(2) The Department of Energy shall participate in all contested case proceedings conducted by the Council and shall have all the rights of a party.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 183.415, 469.370, 469.405, 469.440, 469.605, 469.615, 469.992

AMEND: 345-015-0083

NOTICE FILED DATE: 06/13/2017

RULE SUMMARY: States the purpose and requirements of the prehearing conference and prehearing order related to contested cases. 10/24/17 changes clarified that failure to raise an issue in a prehearing conference "on an application for a site certificate" constitutes a waiver for that issue.

CHANGES TO RULE:

345-015-0083

Prehearing Conference and Prehearing Order ¶

- (1) The hearing officer may cancel or reschedule any previously noticed prehearing conference.¶
- (2) The hearing officer may conduct one or more prehearing conferences for the purposes and in the manner described in OAR 137-003-0035. At the conclusion of the conference(s), the hearing officer shall issue a prehearing order stating the issues to be addressed in the contested case hearing and, in a contested case on an application for a site certificate, limiting parties to those issues they raised on the record of the public hearing described in OAR 345-015-0220. The hearing officer shall not receive evidence or hear legal argument on issues not identified in the prehearing order.¶
- (3) Failure to raise an issue in the prehearing conference(s) for the contested case hearing on an application for a site certificate constitutes a waiver of that issue.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 183.415, 469.370, 469.405, 469.440, 469.605, 469.615, 469.992

AMEND: 345-027-0011

NOTICE FILED DATE: 06/13/2017

RULE SUMMARY: States the applicability of the Division 27 rules. 10/24/17 changes allowed the procedural rules for how the Department and the Council review a request for amendment to be applicable to those requests for amendments already in process and submitted to the Department before the 10/24/17 effective date of the new procedural rules.

CHANGES TO RULE:

345-027-0011

Applicability ¶

The rules in this division ~~do not~~ apply to all facilities covered under the Council's jurisdiction except those facilities described by 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.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.501

AMEND: 345-027-0013

NOTICE FILED DATE: 06/13/2017

RULE SUMMARY: States that site certificates expire when deadlines to begin construction are not met.

CHANGES TO RULE:

345-027-0013

Certificate Expiration ¶

If the certificate holder does not begin construction of the facility by the construction beginning date specified in the site certificate or amended site certificate, the site certificate expires on the construction beginning date specified, unless expiration of the site certificate is suspended pending final action by the Council on a request for amendment to a site certificate pursuant to OAR 345-027-0085(2).

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.370, 469.501

AMEND: 345-027-0050

NOTICE FILED DATE: 06/13/2017

RULE SUMMARY: States what types of changes require a certificate holder to submit a request for amendment (RFA) to the Department. 10/24/17 changes clarified all the different changes that trigger an amendment to the site certificate.

CHANGES TO RULE:

345-027-0050

~~When an Amendment is Required~~ Changes Requiring an Amendment ¶

~~(1) Except as allowed under sections (2) and (6), the certificate holder must submit a request to amend the site certificate to design, construct or operate a facility in a manner different from the description in the site certificate if the proposed change:¶~~

~~(a) Could result in a significant adverse impact that the Council has not addressed in an earlier order and the impact affects a resource protected by Council standards;¶~~

~~(b) Could impair the certificate holders ability to comply with a site certificate condition; or¶~~

~~(c) Could require a new condition or a change to a condition in the site certificate.~~ for changes allowed under OAR 345-027-0053 of this rule, an amendment to a site certificate is required to:¶

~~(2) A site certificate amendment is not required if a proposed change in the design, construction or operation of a facility is in substantial compliance with the terms and conditions of the site certificate and is a change:¶~~

~~(a) To an electrical generation facility that would increase the electrical gen Transfer ownership of the facility or the cerating capacity and would not increase the number of electric generators at the site, change fuel type, increase fuel consumption by more than 10 percent or enlarge the facility site;¶~~

~~(b) To the number or location of pipelines for a surface facility related to an underground gas storage reservoir that would not result in the facility exceeding permitted daily throughput or enlarge the facility site~~ certificate holder as described in OAR 345-027-0100;¶

~~(c) To the number, size or location of pipelines for a geothermal energy facility that would not enlarge the facility site;¶~~

~~(d) To a pipeline or transmission line that is a related or supporting facility that would extend or modify the pipeline or transmission line or expand the right-of-way, when the change is to serve customers other than the energy facility; or¶~~

~~(e) To an aspect or feature of the facility, operating procedures or management structures not addressed in the site certificate.¶~~

~~(3) If the certificate holder concludes that a proposed change does not require a site certificate amendment under section (1), the certificate holder shall, nevertheless, complete an investigation sufficient to demonstrate that the proposed change in the design, construction or operation of the facility would comply with applicable Council standards. The certificate holder shall complete the investigation before implementing the proposed change. The certificate holder shall prepare a written evaluation describing the investigation and shall make the evaluation available to the Department for inspection at any time.¶~~

~~(4) In the annual reports and semiannual construction progress reports required by~~ Apply later-adopted law(s) as described in OAR 345-027-0090;¶

~~(3) Extend the construction beginning or completion deadline as described in OAR 345-0267-0080,~~ the certificate holder shall describe all significant changes made during the reporting period to the design, construction and operation of the ~~5;¶~~

~~(4) Design, construct or operate a facility without an amendment of the site certificate. The certificate holder shall keep a written record of the basis for concluding that an amendment of the site certificate was not required. The Department, at any time, may inspect the changes made to the facility and may inspect the certificate holders written record of the basis for concluding that an amendment of the site certificate was not required.¶~~

~~(5) A certificate holder may submit a change request in writing to the Department for a determination whether a proposed change requires a site certificate amendment. In the change request, the certificate holder must~~

describe the proposed change, explain the basis for the certificate holders conclusion that an amendment is not required under section (1), and provide the written evaluation described in section (3). The Department shall respond in writing as promptly as possible. The Department may refer its determination to the Council for concurrence, modification or rejection. At the request of the certificate holder or a Council member, the Department must refer its determination to the Council for concurrence, modification or rejection.¶

(6) A site certificate amendment is not required for the construction of a pipeline less than 16 inches in diameter and less than five miles in length that is proposed to be constructed to test or maintain an underground gas storage reservoir. If the proposed pipeline would connect to a surface facility related to an underground gas storage reservoir for which the Council has issued a site certificate or to a gas pipeline for which the Council has issued a site certificate, the certificate holder must obtain, prior to construction, the approval of the Department for the construction, operation and retirement of the proposed pipeline. To obtain Department approval, the certificate holder shall submit a request as described in OAR 345-027-0210 through 345-027-0240 in a manner different from the description in the site certificate if the proposed change: ¶

(a) Could result in a significant adverse impact that the Council has not addressed in an earlier order and the impact affects a resource or interest protected by a Council standard; ¶

(b) Could impair the certificate holders ability to comply with a site certificate condition; or ¶

(c) Could require a new condition or a change to a condition in the site certificate.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.405

ADOPT: 345-027-0051

NOTICE FILED DATE: 06/13/2017

RULE SUMMARY: States the different review processes for different types of requests for amendments.

CHANGES TO RULE:

345-027-0051

Review Processes for Requests for Amendment

(1) The transfer review process, described in 345-027-0100, shall apply to the Councils review of a request for amendment to a site certificate to transfer a site certificate.¶

(2) The type A review process, consisting of rules 345-027-0059, -0060, -0063, -0065, -0067, -0071 and -0075, is the default review process and shall apply to the Councils review of a request for amendment proposing a change described in 345-027-0050(2), (3), and (4).¶

(3) The type B review process, consisting of rules 345-027-0059, -0060, -0063, -0065, -0068, -0072, and -0075, shall apply to the Councils review of a request for amendment that the Department or the Council approves for type B review under 345-027-0057.¶

(4) The type C review process, described in 345-027-0080, shall apply to the Councils review of a request for amendment that the Department or the Council approves for type C review under 345-027-0080.¶

(5) The Council may act concurrently on any combination of proposed changes included in a request for amendment. Concurrent proposed changes are subject to the substantive requirements applicable to each respective proposed change and the Council shall review all proposed changes through the process with the more procedural steps applicable to any one of the proposed changes.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.405

ADOPT: 345-027-0053

NOTICE FILED DATE: 06/13/2017

RULE SUMMARY: States what types of changes are exempt from requiring an amendment to the site certificate.

CHANGES TO RULE:

345-027-0053

Changes Exempt from Requiring an Amendment

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

(1) To an electrical generation facility that would increase the electrical generating capacity and would not increase the number of electric generators at the site, change fuel type, increase fuel consumption by more than 10 percent or enlarge the facility site;¶

(2) To the number or location of pipelines for a surface facility related to an underground gas storage reservoir that would not result in the facility exceeding permitted daily throughput or a change to the site boundary;¶

(3) To the number, size or location of pipelines for a geothermal energy facility that would not result in a change to the site boundary;¶

(4) To a pipeline that is a related or supporting facility that delivers natural gas to the energy facility if the change would extend or modify the pipeline or expand the right-of-way, when the change is exclusively to serve gas users other than the energy facility;¶

(5) To a transmission line that is a related or supporting facility if the change would extend or modify the transmission line or expand the right-of-way, when the change is exclusively to serve the transmission needs of a separate energy facility or energy user; or ¶

(6) To construct a pipeline less than 16 inches in diameter and less than five miles in length to test or maintain an underground gas storage reservoir. If the proposed pipeline would connect to a surface facility related to an underground gas storage reservoir for which the Council has issued a site certificate or to a gas pipeline for which the Council has issued a site certificate, the certificate holder must obtain, prior to construction, the approval of the Department of Energy for the construction, operation and retirement of the proposed pipeline. To obtain Department approval, the certificate holder must submit a request as described in OAR 345-027-0210 through OAR 345-027-0240.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.405

ADOPT: 345-027-0055

NOTICE FILED DATE: 06/13/2017

RULE SUMMARY: States that a certificate holder must perform a written evaluation for changes that it determines do not require an amendment, and states what the certificate holder must do with that evaluation. This new rule reflects much of the same concept and functionality as the rule language under 345-026-0060 in effect prior to 10/24/17.

CHANGES TO RULE:

345-027-0055

Written Evaluations for Changes Not Requiring Amendment

(1) For a proposed change that would add area to the site boundary, see OAR 345-027-0057(1). For a proposed change to the facility that does not include adding area to the site boundary, the certificate holder may evaluate OAR 345-027-0050 and 345-027-0053 and conclude that the proposed change does not require an amendment. If the certificate holder concludes that a proposed change to the facility does not require an amendment to the site certificate, the certificate holder must complete a written evaluation if the change:¶

(a) Could be included in and governed by the site certificate, but the certificate holder has concluded the change is not described in 345-027-0050; or¶

(b) Is exempt from requiring an amendment under 345-027-0053. ¶

(2) The written evaluation must explain why an amendment is not required, must be completed before implementing any change, and must be included in the next semiannual construction progress report or the Facility Modification Report required under 345-026-0080. The written evaluation must be retained for the life of the facility. ¶

(3) The Department of Energy may, at any time, inspect the changes made to the facility and may inspect the certificate holders written evaluation concluding that the change did not require an amendment.¶

(4) When the certificate holder implements a change without an amendment, the Department may initiate an enforcement action as described in Division 29 if the Department determines the change required an amendment to the site certificate.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.405

ADOPT: 345-027-0057

NOTICE FILED DATE: 06/13/2017

RULE SUMMARY: States the process a certificate holder must go through when submitting an Amendment Determination Request to the Department. This new rule reflects much of the same concept, purpose and function as the "change request" under rule 345-027-0060 in effect prior to 10/24/17.

CHANGES TO RULE:

345-027-0057

Amendment Determination Request

(1) For a proposed change that would add area to the site boundary, the certificate holder must either:

(a) submit a request for amendment to the Department of Energy; or

(b) submit an amendment determination request to the Department for a written determination of whether the proposed change requires an amendment under OAR 345-027-0050 and is not exempt under 345-027-0053.

(2) For a proposed change that would not add area to the site boundary, the certificate holder may submit an amendment determination request to the Department for a written determination of:

(a) whether the proposed change requires an amendment under OAR 345-027-0050; or

(b) whether the proposed change is exempt from requiring an amendment under 345-027-0053.

(3) For any request for amendment, the certificate holder may submit an amendment determination request to the Department for a written determination of whether a request for amendment justifies review under the type B review process described in 345-027-0051(3).

(4) Requests described in section (1), (2), and (3) must be submitted in writing to the Department and must include:

(a) A narrative description of the proposed change;

(b) Maps and/or geospatial data layers representing the effects and/or location of the proposed change;

(c) The certificate holders evaluation of the determination(s) it is requesting under sections (1), (2), and (3); and

(d) Any additional information the certificate holder believes will assist the Departments evaluation.

(5) After receiving an amendment determination request, the Department shall post an announcement on the Departments website to notify the public that an amendment determination request has been received. The announcement shall include a copy of the amendment determination request.

(6) Upon receiving a request for a written determination described in section (1) and (2), the Department shall, as promptly as possible, issue a written determination to the certificate holder. After the Department issues its written determination, the Department shall, as promptly as possible, provide the request and the written determination to the Council and post the written determination to its website. At the first Council meeting after the Department issues its written determination, the Department shall provide verbal notice of the request and the written determination to the Council during the consent calendar agenda item. The Department may refer its determination to the Council for concurrence, modification, or rejection. At the request of the certificate holder or a Council member, the Department must refer its determination to the Council for concurrence, modification or rejection.

(7) Upon receiving a request for a written determination described in section (3), the Department shall, as promptly as possible, issue a written determination to the certificate holder. At the request of the certificate holder, the Department must refer its determination to the Council for concurrence, modification, or rejection.

(8) In determining whether a request for amendment justifies review under the type B review process described in 345-027-0051(3), the Department and the Council may consider factors including but not limited to:

(a) The complexity of the proposed change;

(b) The anticipated level of public interest in the proposed change;

(c) The anticipated level of interest by reviewing agencies;

(d) The likelihood of significant adverse impact; and

(e) The type and amount of mitigation, if any.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.405

ADOPT: 345-027-0059

NOTICE FILED DATE: 06/13/2017

RULE SUMMARY: States that a certificate holder may elect to participate in a pre-amendment conference with the Department.

CHANGES TO RULE:

345-027-0059

Pre-Amendment Conference

(1) Prior to submitting a preliminary request for amendment to the site certificate as described in OAR 345-027-0060, the certificate holder may request a pre-amendment conference with the Department of Energy to discuss the scope, timing, and applicable laws and Council standards associated with the request for amendment.¶

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

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

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.405

AMEND: 345-027-0060

NOTICE FILED DATE: 06/13/2017

RULE SUMMARY: States what a certificate holder must submit to the Department when making a request for amendment, and that this submittal is considered a preliminary request for amendment until the Department determines the request is complete.

CHANGES TO RULE:

345-027-0060

Preliminary Request to Amend Certificate

(1) To request an amendment of a site certificate required by OAR 345-027-0050(3) and (4), the certificate holder shall submit a written preliminary request for amendment to the Department of Energy that includes the information described in section (2) and the following:

(a) Following:

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

(b) A detailed description of the facility including its location and other information relevant to the proposed change.

(c) A detailed description of proposed change, including:

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

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

(C) the specific location of the proposed change, and the certificate holder any updated maps and/or geospatial data layers analysis of relevant to the proposed change under the criteria of OAR 345-027-0050(1).

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

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

(e) A list of the Council standards relevant and all other laws - including statutes, rules and ordinances - applicable to the proposed change.

(f) A, and an analysis of whether the facility, with the proposed change, would comply with the requirements of ORS Chapter 469, applicable Council rules, and applicable state and local laws, rules and ordinances if the Council amends the site certificate as requested under applicable laws and Council standards. For the purpose of this rule, a law, rule or ordinance or Council standard is applicable if the Council would apply or consider the law, rule or ordinance or Council standard under OAR 345-027-0070(105)(2).

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

(2) In a After receiving a preliminary request to amend a site certificate, the certificate holder shall provide the information described in applicable subsections of OAR 345-021-0000 and 345-021-0010. The certificate holder may incorporate by reference relevant information that the certificate holder has previously submitted to the Department or that is otherwise included in the Department's administrative record, the Department shall post an announcement on its website to notify the public that a preliminary request for amendment has been received. The announcement shall include a copy of the facility.

(3) Before submitting a preliminary request to amend a site certificate, the certificate holder may prepare a draft.

(3) For any Council standard that request and may confer with the Department about the content of the request. Although the Council does not require the certificate holder to prepare an evaluation of impacts within an analysis area, the analysis area shall be the larger of either the study area(s) as draft request and confer with the

Department, the Council recommends that the certificate holder defined in OAR 345-001-0000(59) or the analysis area(s) described in the project order follow this procedure.¶

~~(4) The certificate holder shall submit an original and two printed copies of the amendment request for the application for site certificate, unless otherwise approved in writing by the Department. Upon following a pre request by the Department, t-amendment conference.¶~~

(4) The certificate holder must submit printed copies of the amendment request for members of the Council. In addition to the printed copies, the certificate holder shall submit the full amendment request in a non-copy-protected electronic format acceptable to the Department. The certificate holder shall provide additional copies of the amendment request to the Department upon request and copies or access to copies to any person requesting copies. If requestay incorporate, by specific reference, evidence previously submitted to the Department in the application for site certificate or previous request for amendment, or evidence that is otherwise included byin the Department, the certificate holder shall send copies of the request to persons on a mailing list provided by the Departments record on the facility.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.405

ADOPT: 345-027-0063

NOTICE FILED DATE: 06/13/2017

RULE SUMMARY: States that the Department must first determine a request for amendment is complete (and how that completeness is determined) before it proceeds to writing and issuing a Draft Proposed Order.

CHANGES TO RULE:

345-027-0063

Determination of Completeness for a Request for Amendment

(1) Until the Department of Energy determines the request for amendment to the site certificate is complete, it is a preliminary request for amendment. After receiving a preliminary request for amendment, the Department may seek comments from reviewing agencies to determine whether that request is complete.¶

(2) Unless the certificate holder agrees to additional time, within 60 days after receipt of a preliminary request for amendment under type A review, and within 21 days after receipt of a preliminary request for amendment under type B review, the Department shall notify the certificate holder whether the request for amendment is complete. In the notification, the Department shall:¶

(a) State that the request for amendment is complete; or¶

(b) State that the request for amendment is incomplete and:¶

(A) Describe any additional information needed to complete the request for amendment to the extent known to the Department at the time of the notification, including identification of applicable laws and Council standards not addressed in the preliminary request for amendment. ¶

(B) Ask the certificate holder to submit the additional information by the due dates described in section (4), and¶

(C) Estimate the additional time the Department will need to make a determination of completeness following the submittal of the additional information by the certificate holder.¶

(3) If the Department does not notify the certificate holder as described in section (2), the request for amendment under type A review is deemed complete 60 days after receipt of a preliminary request for amendment, and the request for amendment under type B review is deemed complete 21 days after receipt of a preliminary request for amendment. Otherwise, the request for amendment is complete as determined under section (5). ¶

(4) The Department may specify a date by which the certificate holder must submit additional information needed to complete the request for amendment. If follow-up requests for additional information are needed, the Department may specify dates by which the certificate holder must submit the information. At the request of the certificate holder, the Department may allow additional time for submission of the information. If the certificate holder does not submit the information by the deadline specified by the Department, including any allowed extension, the Council may reject the preliminary request for amendment. The rejection of a preliminary request for amendment is subject to appeal under ORS 469.403(3).¶

(5) A request for amendment is complete when the Department finds that the certificate holder has submitted information adequate for the Council to make findings or impose conditions on all applicable laws and Council standards. The Department shall notify the certificate holder when the Department finds that the request for amendment is complete.¶

(6) After receiving notification from the Department that the preliminary request for amendment is complete, the Department may require the certificate holder to prepare a consolidated request for amendment that includes all revisions to the preliminary request for amendment and all additional information requested by the Department before the determination of completeness. Upon a request by the Department, the certificate holder shall submit paper and non-copy-protected electronic copies of the consolidated request for amendment to the Department as specified by the Department.¶

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

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.405

ADOPT: 345-027-0065

NOTICE FILED DATE: 06/13/2017

RULE SUMMARY: States the process by which the Department issues a Draft Proposed Order.

CHANGES TO RULE:

345-027-0065

Draft Proposed Order for a Request for Amendment

(1) Within 7 days after a request for amendment to the site certificate described in OAR 345-027-0050(3) and(4), or a request for amendment to apply later-adopted laws described in OAR 345-027-0090, is determined to be complete, the Department of Energy shall:

(a) Send notice to the certificate holder specifying a date for issuance of a draft proposed order. The date of issuance of a draft proposed order for a type A request for amendment shall be no later than 120 days after the date of the notice. The date of issuance of a draft proposed order for a type B request for amendment shall be no later than 60 days after the date of the notice.

(b) Post an announcement on the Departments website to notify the public that a complete request for amendment has been received. The announcement shall include:

(A) A copy of the complete request for amendment;

(B) The date the draft proposed order will be issued, as specified in the notice required by subsection (1)(a); and

(C) A statement that the public comment period begins upon issuance of the draft proposed order.

(2) No later than the date specified in the notice required by subsection (1)(a), the Department shall issue a draft proposed order recommending approval, modification, or denial of the requested amendment. The Department may issue the draft proposed order at a later date, but the Department shall, no later than the date the Department has specified in the notice required by subsection (1)(a), notify the certificate holder in writing of the reasons for the delay. The draft proposed order may include, but is not limited to draft proposed findings of fact, conclusions of law, and conditions concerning the facilitys compliance with applicable laws and Council Standards.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.405

ADOPT: 345-027-0067

NOTICE FILED DATE: 06/13/2017

RULE SUMMARY: States the process by which Public Notice and Comment occurs on Draft Proposed Orders for Request for Amendment under Type A Review.

CHANGES TO RULE:

345-027-0067

Public Comment and Hearing on the Draft Proposed Order for Requests for Amendment Under Type A Review

(1) After issuance of the draft proposed order as described in OAR 345-027-0065, the Council shall conduct a public hearing on the request for amendment to the site certificate in the vicinity of the facility. The public hearing must be held at least 20 days after the draft proposed order is issued. The public hearing is not a contested case hearing. ¶

(2) Concurrent with the issuance of the draft proposed order as described in OAR 345-027-0065, the Department of Energy shall:¶

(a) Send the notice described in section (3) of this rule by mail or email to:¶

(A) Persons on the Councils general mailing list as defined in OAR 345-011-0020;¶

(B) Persons on any special mailing list established for the facility;¶

(C) The reviewing agencies as defined in OAR 345-001-0010(52); and¶

(D) The updated property owner list as described in OAR 345-021-0010(1)(f) Exhibit F.¶

(b) Post the complete request for amendment, draft proposed order, and the notice of the draft proposed order and public hearing on the Department website, and¶

Make physical copies of the draft proposed order available to the public for inspection.¶

(3) Notice of the complete request for amendment, draft proposed order and public hearing shall include:¶

(a) A description of the facility and the facilitys general location.¶

(b) The date, time and location of the public hearing described in this rule.¶

(c) The name, address, email address and telephone number of the Department representative to contact for additional information.¶

(d) Addresses of the physical location(s) and the website where the public may review copies of the complete request for amendment and draft proposed order.¶

(e) The deadline for the public to submit written comments to be included in the record of the public hearing and how such comments should be submitted.¶

(f) A statement that:¶

(A) A complete request for amendment has been received and reviewed by the Department.¶

(B) The Department has issued a draft proposed order.¶

(C) To raise an issue on the record of the public hearing, a person must raise the issue in person at the public hearing or in a written comment submitted after the date of the notice of the public hearing and received by the Department before the close of the record of the public hearing.¶

(D) A persons failure to raise an issue in person or in writing on the record of the public hearing precludes the Councils consideration of whether to grant that persons subsequent contested case request. ¶

Failure to raise an issue with sufficient specificity to afford the Council, the Department, and the certificate holder an opportunity to respond to the issue precludes the Council from considering whether that issue justifies a contested case proceeding.¶

(F) To raise an issue with sufficient specificity, a person must present facts, on the record of the public hearing, that support the persons position on the issue.¶

(G) The Council will not accept or consider any further public comment on the request for amendment or on the draft proposed order after the close of the record of the public hearing.¶

(4) During the public hearing, the Department shall explain the amendment process, including the means and opportunities for the general public to participate in the process. The Department may provide this explanation by

a written handout.¶

(5) At the commencement of the public hearing, the presiding officer shall read aloud the following:¶

(a) A person who intends to request a contested case on the proposed order for a site certificate amendment must comment in person or in writing on the record of the public hearing.¶

(b) A person who intends to raise an issue that may be the basis for granting a contested case proceeding must raise that issue on the record of the public hearing with sufficient specificity to afford the Council, the department and the certificate holder an adequate opportunity to respond to the issue. To raise an issue with sufficient specificity, a person must present facts, on the record of the public hearing, that support the persons position on the issue.¶

(6) At the public hearing, any person may present information regarding the pending request for amendment without administration of an oath. The presiding officer shall record all presentations made during the public hearing. The presentations are part of the decision record for the request for amendment.¶

(7) Following the close of the record of the public hearing on the draft proposed order, the Council shall review the draft proposed order, shall consider all comments received on the record of the hearing, and may provide comments to the Department regarding the draft proposed order. When the Council meets to review a draft proposed order, the Council does not permit the certificate holder, reviewing agencies or the public to comment on any issue that may be the basis for a contested case request.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.405

ADOPT: 345-027-0068

NOTICE FILED DATE: 06/13/2017

RULE SUMMARY: States the process by which Public Notice and Comment occurs on Draft Proposed Orders for Request for Amendment under Type B Review.

CHANGES TO RULE:

345-027-0068

Public Written Comment on the Draft Proposed Order for Requests for Amendment Under Type B Review

(1) After issuance of the draft proposed order as described in OAR 345-027-0065, the Council shall solicit and receive written public comments on the draft proposed order. The Department of Energy shall specify a written comment deadline at least 20 days after the draft proposed order is issued.

(2) Concurrent with the issuance of the draft proposed order as described in OAR 345-027-0065, the Department shall:

(a) Send the notice described in section (3) of this rule by mail or email to:

(A) Persons on the Councils general mailing list as defined in OAR 345-011-0020;

(B) Persons on any special mailing list established for the facility;

(C) The reviewing agencies as defined in OAR 345-001-0010(52); and

(D) The updated property owner list as described in OAR 345-021-0010(1)(f) Exhibit F.

(a) Post the complete request for amendment, draft proposed order, and the notice of the draft proposed order and written comment deadline on the Department website, and

(b) Make physical copies of the draft proposed order available to the public for inspection.

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

(a) A description of the facility and the facilitys general location.

(b) The name, address, email address and telephone number of the Department representative to contact for additional information.

(c) Addresses of the physical location(s) and the website where the public may review copies of the complete request for amendment and draft proposed order.

(d) The deadline for the public to submit written comments to be included in the record of the draft proposed order and how such comments should be submitted.

(e) A statement that:

(A) A complete request for amendment has been received and reviewed by the Department.

(B) The Department has issued a draft proposed order.

(C) To raise an issue on the record of the draft proposed order, a person must raise the issue in a written comment submitted after the date of the notice of the draft proposed order and written comment deadline, and received by the Department before the written comment deadline.

(D) The Council will not accept or consider any further public comment on the request for amendment or on the draft proposed order after the written comment deadline that closes the record on the draft proposed order.

(E) 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 persons written comments.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.405

REPEAL: 345-027-0070

NOTICE FILED DATE: 06/13/2017

RULE SUMMARY: States the process by which most requests for amendment were reviewed prior to the comprehensive rulemaking changes made effective on October 24, 2017.

CHANGES TO RULE:

~~345-027-0070~~

~~Review of a Request for Amendment~~

~~Except as specified in OAR 345-027-0080, the Council shall review a request for amendment of a site certificate as follows:¶¶~~

~~(1) Within 15 days after receiving a request to amend a site certificate, the Department of Energy shall determine whether the amendment requires extended review based on the criteria in section (2) and:¶¶~~

~~(a) Distribute copies of the request, or instruct the certificate holder to distribute copies of the request, to the persons on a distribution list that includes the reviewing agencies as defined in OAR 345-001-0010 and that may include additional persons, with a request for comments on the request by a specified date. The distribution may be done by courier delivery or mailing of printed copies or, with the approval of the Department, any form of electronic delivery.¶¶~~

~~(b) Send a notice of the amendment request by mail or email to all persons on the Councils general mailing list as defined in OAR 345-011-0020, to any special list established for the facility and to the updated property owner list supplied by the certificate holder under 345-027-0060(1)(g) and specify a date by which comments on the request are due.¶¶~~

~~(c) Post an announcement on the Departments website to notify the public that an amendment request has been received.¶¶~~

~~(d) Send a notice by mail or email to the certificate holder specifying a date for issuance of a proposed order. The Department shall specify a date that is no later than 60 days after the date of the notice unless the Department has determined that the amendment requires extended review. For extended review, the Department shall explain the basis of its determination and specify a date that is not more than 180 days after the date of the notice. Within 10 days after the Department sends notification that an amendment requires extended review, the certificate holder may request Council review of the determination. Upon a request for Council review, the Department shall refer its determination to the Council for concurrence, modification or rejection.¶¶~~

~~(2) The Department may determine that an amendment requires extended review if:¶¶~~

~~(a) The certificate holder requests extended review;¶¶~~

~~(b) The Department finds that the amendment request does not contain the information required by OAR 345-027-0060 or does not contain information sufficient for the Department to prepare a proposed order;¶¶~~

~~(c) The Department needs to hire a consultant to assist in reviewing the request;¶¶~~

~~(d) The amendment:¶¶~~

~~(A) Would require construction on land zoned residential or exclusive farm use;¶¶~~

~~(B) Would require construction in a zone for which the use is not permitted;¶¶~~

~~(C) Would require construction on land that may qualify as Habitat Category 1 or 2 land as described in OAR 635-415-0025;¶¶~~

~~(D) Would result in incremental carbon dioxide emissions that the certificate holder elects to offset, in compliance with the applicable carbon dioxide emissions standard, by a means other than by payments described under OAR 345-024-0560(3), 345-024-0600(3) and (4) or 345-024-0630(2), (4) and (5); or¶¶~~

~~(E) Could require the Council to determine, according to OAR 345-022-0000(2), that the overall public benefits of the facility outweigh any adverse effects on a resource or interest that is protected by an applicable standard the facility would not meet if the amendment is approved; or¶¶~~

~~(e) The Department anticipates a high volume of public comment.¶¶~~

~~(3) The Office may hold one or more public meetings during the review of a request for amendment of the site~~

certificate.¶¶

(4) Except as otherwise provided in this section, no later than the date the Department has specified in the notice described in subsection (1)(d), the Department shall issue a proposed order, recommending approval, modification or disapproval of the requested amendment. If the Department needs additional time to prepare the proposed order, the Department may issue the proposed order at a later date, but the Department shall, no later than the date the Department has specified in the notice, notify the certificate holder in writing of the circumstances that justify the delay.¶¶

(5) After issuing the proposed order, the Department shall send a notice of the proposed order by mail or email to the persons on the Councils general mailing list as defined in OAR 345-011-0020, to any special list established for the facility, to the updated property owner list supplied by the certificate holder under OAR 345-027-0060(1)(g) and to the distribution list described in subsection (1)(a). In the notice, the Department shall state that all comments must be submitted in writing and must be received by the Department by a specified deadline that is at least 30 days from the date of the notice. The Department shall post an announcement on its website to notify the public of the issuance of the proposed order.¶¶

(6) Any person may, by written request submitted to the Department no later than the deadline described in section (5), ask the Council to hold a contested case proceeding on the proposed order. For the purpose of this rule, the request is submitted when it is received by the Department. In the request, the person shall provide a description of the issues to be contested, a statement of the facts believed to be at issue and the person's mailing address and email address.¶¶

(7) To determine that an issue justifies a contested case proceeding under section (8), the Council must find that the request raises a significant issue of fact or law that may affect the Councils determination that the facility, with the change proposed by the amendment, meets an applicable standard. If the Council finds that the request would not affect the Councils determination if the alleged facts were found to be true but that those facts could affect a site certificate condition, the Council may deny the request and may adopt appropriate conditions. If the Council does not have jurisdiction over the issue raised in the request, the Council must deny the request.¶¶

(8) The Council shall determine whether any issue identified in a request for a contested case proceeding justifies a contested case proceeding, and:¶¶

(a) If the Council finds that the request identifies one or more issues that justify a contested case proceeding, the Council shall conduct a contested case proceeding according to the applicable provisions of OAR 345-015-0012 to OAR 345-015-0085 limited to the issues that the Council found sufficient to justify the proceeding.¶¶

(b) If the Council finds that the request identifies one or more issues that an amendment of the proposed order would settle in a manner satisfactory to the Council, the Council may deny the request as to those issues and direct the Department to amend the proposed order and send a notice of the amended proposed order to the persons described in section (5). Any person may, by written request submitted to the Department within 30 days after the Department issues the notice of the amended proposed order, ask the Council to hold a contested case proceeding limited to issues raised by the amendment to the proposed order. For the purpose of this rule, the request is submitted when it is received by the Department. In the request, the person shall provide a description of the issues to be contested, a statement of the facts believed to be at issue and the person's mailing address and email address. As described in this section, the Council shall determine whether any issue identified in the request for a contested case proceeding justifies a contested case proceeding.¶¶

(c) If the Council finds that the request does not identify any issue that justifies a contested case proceeding, the Council shall deny the request. In a written order denying the request, the Council shall state the basis for the denial. The Council shall then adopt, modify or reject the proposed order based on the considerations described in section (10). In a written order, the Council shall either grant or deny issuance of an amended site certificate. If the Council grants issuance of an amended site certificate, the Council shall issue an amended site certificate, which is effective upon execution by the Council Chair and by the applicant.¶¶

(9) If there is no request for a contested case proceeding as described in section (6) or subsection (8)(b), the Council, may adopt, modify or reject the proposed order based on the considerations described in section (10). In a written order, the Council shall either grant or deny issuance of an amended site certificate. If the Council grants

issuance of an amended site certificate, the Council shall issue an amended site certificate, which is effective upon execution by the Council Chair and by the applicant.¶¶

(10) In making a decision to grant or deny issuance of an amended site certificate, the Council shall apply the applicable substantive criteria, as described in OAR 345-022-0030, in effect on the date the certificate holder submitted the request for amendment and all other state statutes, administrative rules, and local government ordinances in effect on the date the Council makes its decision. The Council shall consider the following:¶¶

(a) For an amendment that would change the site boundary or the legal description of the site, the Council shall consider, for the area added to the site by the amendment, whether the facility complies with all Council standards;¶¶

(b) For an amendment that extends the deadlines for beginning or completing construction, the Council shall consider:¶¶

(A) Whether the Council has previously granted an extension of the deadline;¶¶

(B) Whether there has been any change of circumstances that affects a previous Council finding that was required for issuance of a site certificate or amended site certificate; and¶¶

(C) Whether the facility complies with all Council standards, except that the Council may choose not to apply a standard if the Council finds that:¶¶

(i) The certificate holder has spent more than 50 percent of the budgeted costs on construction of the facility;¶¶

(ii) The inability of the certificate holder to complete the construction of the facility by the deadline in effect before the amendment is the result of unforeseen circumstances that are outside the control of the certificate holder;¶¶

(iii) The standard, if applied, would result in an unreasonable financial burden on the certificate holder; and¶¶

(iv) The Council does not need to apply the standard to avoid a significant threat to the public health, safety or the environment;¶¶

(c) For any amendment not described above, the Council shall consider whether the amendment would affect any finding made by the Council in an earlier order.¶¶

(d) For all amendments, the Council shall consider whether the amount of the bond or letter of credit required under OAR 345-022-0050 is adequate.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.405

ADOPT: 345-027-0071

NOTICE FILED DATE: 06/13/2017

RULE SUMMARY: States the process by which the Proposed Order is issued, the process for requesting and granting a Contested Case, and the process for how the Council makes its Final Decision on Requests for Amendment Under Type A Review.

CHANGES TO RULE:

345-027-0071

Proposed Order, Requests for Contested Case and Council's Final Decision on Requests for Amendment Under Type A Review

(1) No later than 30 days after the Council has reviewed the draft proposed order and considered all comments received on the record of the public hearing under 345-027-0067, the Department of Energy shall issue a proposed order recommending approval, modification or denial of the request(s) for amendment to the site certificate. The Department must consider any oral comments made at the public hearing, written comments received before the close of the record of the public hearing, agency consultation, and any Council comments. The Department may issue the proposed order at a later date, but the Department shall, no later than 30 days after the Council has reviewed the draft proposed order and considered all comments received on the record of the public hearing, notify the certificate holder in writing of the reasons for the delay.¶

(2) Concurrent with issuing the proposed order, the Department shall issue public notice of the proposed order by posting public notice as an announcement on its website and by sending public notice by mail or email to:¶

(a) Persons on the Councils general mailing list as defined in OAR 345-011-0020.¶

(b) Persons on any special list established for the facility.¶

(c) The reviewing agencies as defined in OAR 345-001-0010(52), and¶

(d) The updated property owner list as described in OAR 345-021-0010(1)(f) Exhibit F.¶

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

(a) A description of the facility and the facilitys general location.¶

(b) A description of the process for requesting a contested case.¶

(c) The physical and website addresses of where the public may review copies of the proposed order.¶

(d) The name, address, email address and telephone number of the Department representative to contact for more information.¶

(4) On the same date the notice of proposed order as described in section (2) is issued, the Department shall send a notice of the opportunity to request a contested case to the certificate holder and to all persons who commented in person or in writing on the record of the public hearing as described in OAR 345-027-0067. The notice shall include the deadline for requesting a contested case and restatements of sections (5), (6), (7), (8) and (9).¶

(5) Only those persons, including the site certificate holder, who commented in person or in writing on the record of the public hearing described in OAR 345-027-0067 may request a contested case proceeding on the proposed order for an amendment to the site certificate. To properly raise an issue in a request for a contested case proceeding on the proposed order for an amendment, the issue must be within the jurisdiction of the Council, and the person must have raised the issue in person or in writing on the record of the public hearing, unless the Department of Energy did not follow the requirements of OAR 345-027-0067, or unless the action recommended in the proposed order differs materially from the draft proposed order, including any recommended conditions of approval, in which case the person may raise only new issues within the jurisdiction of the Council that are related to such differences. If a person has not raised an issue at the public hearing with sufficient specificity to afford the decision maker an opportunity to respond to the issue, the Council shall not grant a contested case proceeding for that issue. To have raised an issue with sufficient specificity, the person must have presented facts at the public hearing that support that persons position on the issue.¶

(6) Contested case requests must be submitted in writing and must be received by the Department by a specified deadline that is at least 30 days from the date of notice in section (4). Contested case requests must include:¶

- (a) The person's name, mailing address and email address and any organization the person represents; ¶
 - (b) A short and plain statement of the issue or issues the person desires to raise in a contested case proceeding; ¶
 - (c) A statement that describes why the Council should find that the requester properly raised each issue, as described in section (7), including a specific reference to the persons prior comments to demonstrate that the person raised the specific issue or issues on the record of the public hearing, if applicable; ¶
 - (d) A statement that describes why the Council should determine that each identified issue justifies a contested case, under the evaluation described in section (9); ¶
 - (e) A detailed description of the persons interest in the proceeding and how that interest may be affected by the outcome of the proceeding; ¶
 - (f) Name and address of the persons attorney, if any; ¶
 - (g) A statement of whether the persons request to participate in a contested case is as a party or a limited party, and if as a limited party, the precise area or areas in which participation is sought; ¶
 - (h) If the person seeks to protect a personal interest in the outcome of the proceeding, a detailed statement of the persons interest, economic or otherwise, and how such interest may be affected by the results of the proceeding; ¶
 - (i) If the person seeks to represent a public interest in the results of the proceeding, a detailed statement of such public interest, the manner in which such public interest will be affected by the results of the proceeding, and the persons qualifications to represent such public interest; and ¶
 - (j) A statement of the reasons why others who commented on the record of the public hearing cannot adequately represent the interest identified in subsections (h) or (i). ¶
- (7) Before considering whether an issue justifies a contested case proceeding under section (9), the Council must determine that the person requesting a contested case commented in person or in writing on the record of the public hearing and properly raised each issue included in the request. To determine that a person properly raised each issue included in the request, the Council must find that: ¶
- The person making the contested case request raised the issue on the record of the public hearing described in OAR 345-027-0067 with sufficient specificity to afford the Council, the Department and the certificate holder an adequate opportunity to respond to the issue; ¶
- The Department did not follow the requirements of OAR 345-027-0067; or ¶
- If the action recommended in the proposed order, including any recommended conditions of approval, differs materially from the action recommended in the draft proposed order, the contested case request identified new issues that are related to such material differences. ¶
- (8) If the Council finds that the person requesting a contested case failed to comment in person or in writing on the record of the public hearing or failed to properly raise any issue, as described in section (7), the Council must deny that persons contested case request. If the Council finds that the person requesting a contested case commented in person or in writing on the record of the public hearing and properly raised one or more issues, the Councils determination of whether an issue justifies a contested case, as described in section (9), shall be limited to those issues the Council finds were properly raised. ¶
- (9) After identifying the issues properly raised the Council shall determine whether any properly raised issue justifies a contested case proceeding on that issue. To determine that an issue justifies a contested case proceeding, the Council must find that the request raises a significant issue of fact or law that may affect the Councils determination that the facility, with the change proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24. If the Council does not have jurisdiction over the issue raised in the request, the Council must deny the request. ¶
- (10) The Council must take one of the following actions when determining if a request identifying one or more properly raised issues justifies a contested case proceeding: ¶
- (a) If the Council finds that the request identifies one or more properly raised issues that justify a contested case proceeding, the Council shall conduct a contested case proceeding according to the applicable provisions of OAR 345-015-0012 to -0014 and 345-015-0018 to -0085. The Council shall identify the contested case parties and shall identify the issues each contested case party may participate on. The parties to a contested case proceeding

shall be limited to those persons who commented on the record of the public hearing and who properly raised issues in their contested case request that the Council found sufficient to justify a contested case, except that the certificate holder is an automatic party to a contested case. The issues a party to a contested case proceeding may participate on shall be limited to those issues that party properly raised in its contested case request that the Council found sufficient to justify a contested case, except that the certificate holder may participate on any issue the Council found sufficient to justify a contested case proceeding. ¶

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

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

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

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

(c) If the Council finds that the request does not identify a properly raised issue that justifies a contested case proceeding, the Council shall deny the request. In a written order denying the request, the Council shall state the basis for the denial. The Council shall then adopt, modify or reject the proposed order based on the considerations described in OAR-345-027-0075. In a written order the Council shall either grant or deny issuance of an amended site certificate. If the Council grants issuance of an amended site certificate, the Council shall issue an amended site certificate, which is effective upon execution by the Council Chair and by the certificate holder.¶

(11) If there is no request for a contested case proceeding as described in section (6) or subsection (10)(b), the Council, may adopt, modify or reject the proposed order based on the considerations described in OAR 345-027-0075. In a written order, the Council shall either grant or deny issuance of an amended site certificate. If the Council grants issuance of an amended site certificate, the Council shall issue an amended site certificate, which is effective upon execution by the Council Chair and by the certificate holder.¶

(12) Judicial review of the Councils final order either granting or denying an amended site certificate shall be as provided in ORS 469.403.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.405

ADOPT: 345-027-0072

NOTICE FILED DATE: 06/13/2017

RULE SUMMARY: States the process by which the Proposed Order is issued, the process for requesting and granting a Contested Case, and the process for how the Council makes its Final Decision on Requests for Amendment Under Type B Review.

CHANGES TO RULE:

345-027-0072

Proposed Order and Councils Final Decision on Requests for Amendment Under Type B Review

(1) No later than 21 days after the written comment deadline that closes the record on the draft proposed order, the Department of Energy shall issue a proposed order recommending approval, modification or denial of the request(s) for amendment to the site certificate. The Department must consider any written comments received before the close of the record on the draft proposed order and any agency consultation. The Department may issue the proposed order at a later date, but the Department shall, no later than 21 days after the close of the record on the draft proposed order, notify the certificate holder in writing of the reasons for the delay.

(2) Concurrent with issuing the proposed order, the Department shall issue public notice of the proposed order by posting public notice as an announcement on its website and by sending public notice by mail or email to:

(a) Persons on the Councils general mailing list as defined in OAR 345-011-0020.

(b) Persons on any special list established for the facility.

(c) The reviewing agencies as defined in OAR 345-001-0010(52), and

(d) The updated property owner list as described in OAR 345-021-0010(1)(f) Exhibit F.

(3) Notice of the proposed order shall include:

(a) A description of the facility and the facilitys general location.

(b) The physical and website addresses of where the public may review copies of the proposed order.

(c) The name, address, email address and telephone number of the Department representative to contact for more information.

(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 as provided in ORS 469.403 and issues eligible for judicial review are limited to the issues raised in that persons written comments.

(4) The Council, may adopt, modify or reject the proposed order based on the considerations described in OAR 345-027-0075. In a written order, the Council shall either grant or deny issuance of an amended site certificate. If the Council grants issuance of an amended site certificate, the Council shall issue an amended site certificate, which is effective upon execution by the Council Chair and by the certificate holder.

(5) Judicial review of the Councils 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 persons written comments.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.405

ADOPT: 345-027-0075

NOTICE FILED DATE: 06/13/2017

RULE SUMMARY: States the scope of Council's review and what standards and laws apply to the Council's review of various types of changes proposed in a request for amendment.

CHANGES TO RULE:

345-027-0075

Scope of Council's Review

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

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

(a) For a request for amendment proposing to add new area to the site boundary, the portion of the facility within the area added to the site by the amendment complies with all laws and Council standards applicable to an original site certificate application.¶

(b) For a request for amendment to extend the deadlines for beginning or completing construction, after considering any changes in facts or law since the date the current site certificate was executed, the facility complies with all laws and Council standards applicable to an original site certificate application. However, for requests to extend completion deadlines, the Council need not find compliance with an applicable law or Council standard if the Council finds that: ¶

(A) The certificate holder has spent more than 50 percent of the budgeted costs on construction of the facility; ¶

(B) The inability of the certificate holder to complete the construction of the facility by the deadline in effect before the amendment is the result of unforeseen circumstances that are outside the control of the certificate holder; ¶

(C) The standard, if applied, would result in an unreasonable financial burden on the certificate holder; and ¶

(D) The Council does not need to apply the standard to avoid a significant threat to the public health, safety or the environment;¶

(c) For any other requests for amendment not described above, the facility, with the proposed change, complies with the applicable laws or Council standards that protect a resource or interest that could be affected by the proposed change. ¶

(d) For all requests for amendment, the amount of the bond or letter of credit required under OAR 345-022-0050 is adequate.¶

(3) In making the findings required to grant an amendment under section (2), the Council shall apply the applicable law and Council standards in effect on the following dates:¶

(a) For the applicable substantive criteria under the Councils land use standard, as described in OAR 345-022-0030, the date the certificate holder submitted the request for amendment, and¶

(b) For all other applicable laws and Council standards, the date the Council issues the amended site certificate.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.405

AMEND: 345-027-0080

NOTICE FILED DATE: 06/13/2017

RULE SUMMARY: States when and how the Type C review process could be approved, and the procedural steps of the Type C review process.

CHANGES TO RULE:

345-027-0080

~~Review of a Request by a C~~Type C Review Process for Pre-Operatificate Holder for Expeditedonal Requests for Amendment ¶

~~(1) A certificate holder may ask the Council Chair to grant expedited review of an amendment request. The certificate holder shall submit a request for expedited review to the Department of Energy in writing and, in addi only request the type C review for a request for amendment when the change proposed in the request for amendment relates to the facility, or portion/phase of the facility, not yet in operation, but approved for construc tion; in the site certificate holder shall submit the full amendment request in a non-copy-protecor amended site certificate. A certificate holder cannot request type C review of a request for amendment proposing to extend electronic format acceptable to the Department. The certificate holder shall include in the request:¶~~

~~(a) Tconstruction deadlines.¶~~

~~(2) Requests under section (1) must be submitted in writing to the Department of Energy and must include:¶~~

~~(a) A complete request for amendment, including the information listdescribed in OAR-345-027-0060(1) and (2), and¶~~

~~(b) R;¶~~

~~(b) The reasons why the certificate holder needs expeditedtype C review of its request and afor amendment;¶~~

~~(c) An explanation of why the need for expedited review arose andproposed change could not have been reasonably been foreseen by the certificate holder.;¶~~

~~(2d) The Chair may grant a request for expedited review if the Chair finds that a delay would unduly harm the certificate holder and if the facility, with the proposed change, would not likely result in aAn explanation of why the proposed change is unavoidable; and¶~~

~~(e) Reasons why the type C review is adequate to prevent significant new-adverse impact. Ifs to the Chair decides not to grant the request for expedited review, the Chair shall issue a written decision as soon as is reasonably practicable. In a written decision denyresources and interests protected by Council standards.¶~~

~~(3) Upon receiving thea request, the Chair shall give an explanation of the reasons for the denial.¶~~

~~(3) Within 7 days after the Chair grants expedited review, the Department shall:¶~~

~~(a) Send copies of the amendment request by mail or email to the reviewing agencies as defined in OAR 345-001-0010 and ask those under sections (1) and (2), the Department shall post the request and the request for agmen cies to comdment on the request within not more than 21 days after the date of the notice.¶~~

~~(b) Send a notice of the amendment request by mail or email to all persons on the Council's general mailing list as defined in OAR 345-011-0020, to any special list established for the facility and to the updated property owner list supplied by the certificate holder under 345-027-0060(1)(g) specifying a date, not more than 21 days after the date of the notice, by which comments are due.¶~~

~~(c) Post an announcement of the amendment requestDepartments website.¶~~

~~(4) Within 3 business days after receiving a request under sections (1) and (2), the Department shall issue a written determination either granting or denying type C review. Upon issuance, the Department shall post the written determination on its website.¶~~

~~(45) Within 60 days after the Chair grants expedited review, the Department shall issue a proposed order, recommending approval, modification or disapproval of the requested amendment. If the Department recommends approval, the Department shall include in the proposed order any new or modified conditions it recommends and shall explain why expedited Council action was warranted.¶~~

(5) The Department shall send a notice of the proposed order by mail or email to the persons on the Council's general mailing list, to any special list established for the facility and to the updated property owner list supplied by the certificate holder under OAR 345-027-0060(1)(g). In addition, the Department shall post the notice on its website. In the notice, the Department shall include information on the availability of the proposed order, the date of the Council meeting when the Department denies type C review, the certificate holder may request the Department's determination to be referred to the Council. If requested, the Department must refer its determination to the Council for concurrence, modification or rejection. Upon a Department determination being referred to the Council, the Council will consider the proposed order and issue a temporary order as described in section (5), a date by which comments on the proposed order are due and the deadline for any person to request a contested case proceeding on the Council's temporary order. ¶

(6) After considering the proposed order, the Council may issue an order temporarily amending the site certificate. In making a decision whether to issue a temporary order under this rule, the Council shall consider the factors listed in OAR 345-027-0070(10). The Council shall apply the applicable substantive criteria. ¶ chair shall convene a Council meeting as promptly as possible as described in OAR 345-011-0015. ¶

(6) To grant a request under section (1), the Department or the Council must find: ¶

(a) Construction of the certificated energy facility, or portion of the certificated energy facility, has described in OAR 345-022-0030, in effect on the date the certificate holder submitted the request for amendment and all other state statutes, administrative rules, and local government ordinances in effect on the date the Council issues the temporary order; not been deemed complete; ¶

(b) The request for amendment is complete; ¶

(c) Type C review is necessary; ¶

(7d) Before implementing any change approved by the Council's temporary order, the proposed change could not have been reasonably foreseen by the certificate holder must submit an authorized acknowledgement that the certificate holder accepts all terms and conditions of the temporary order. The acknowledgement may be submitted; ¶

(e) The proposed change is unavoidable; and ¶

(f) Type C review is adequate to the Department by fax or email if the certificate holder promptly submits a signed original to the Department by mail or hand delivery. ¶

(8) Any person may, by written request submitted to the Department, prevent significant adverse impacts to the resources and interests protected by the Council's standards. ¶

(7) Within 157 days after the date the Council issues the temporary order described in section (5), ask the Council to hold a contested case proceeding on the temporary order. For the purpose of this rule, the request is submitted when it is received by the Department. If a request under section (1) is granted, the Department shall: ¶

(a) Issue a draft temporary order approving or denying the request for amendment, including a recommendation to the Council on whether the request, the person shall provide a description of the issues to be contested, a statement completed through the type A or type B review process; and ¶

(b) Post the draft temporary order on the Department's website. ¶

(9) The Council shall determine whether any issue identified in a request for a contested case proceeding justifies a contested case proceeding. ¶

(a) If the Council finds that the request identifies one or more issues that justify a contested case proceeding, at its first meeting following the Department's issuance of a draft temporary order, consider the draft temporary order and consider whether review should be completed through the type A or type B review process. Upon issuance of a draft temporary order, the Council shall conduct a contested case proceeding. The Council may call a special Council meeting, according to the applicable provisions of OAR 345-015-0012 to 345-015-0015 described in OAR 345-011-0015-0085 limited to the issues that the Council found sufficient to justify the proceeding, to be held as promptly as possible. ¶

(b) If the Council finds that the request does not identify any issue that justifies a contested case proceeding, the Council shall deny the request. After considering the draft temporary order and the Department's recommendation on whether

~~r request. In a written order denying the request, the Council shall state the basis for the denial. The Council shall adopt the review should be completed through the type A or type B review process, the Council shall adopt, modify, or reject the draft temporary order as a final order. In the final order, the Council may modify the language of the temporary order, consistent with due process. In the final order, the Council shall either grant or deny temporarily grant issuance of an amended site certificate. If the Council grants, or deny issuance of an amended site certificate, the Council shall issue an amended site certificate, which is effective upon execution by the Council Chair and by the applicant.~~
(10) Before implementing any change approved by the Council's temporary order, the certificate holder must submit an authorized acknowledgement that the certificate holder accepts all terms and conditions of the temporary order.

~~(10) If the review is to request for a contested case be completed through the type A review process, review proceedings as described in section (8) 345-027-0067, -0071, and -0075, the Council shall adopt the temporary order as a final order. In the final order, the Council may modify the language of the temporary order, consistent with due process. In the final order, the Council shall either grant or deny issuance of an amended site certificate. If the Council grants issuance of an amended site certificate, the Council shall issue an amended site certificate, which is effective upon execution by the Council Chair and by the applicant.~~
(11) If review is to be completed through the type A review process, review proceeds as described in 345-027-0067, -0071, and -0075, where the temporary order replaces all references to the draft proposed or deny issuance of an amended site certificate. If the Council grants issuance of an amended site certificate, the Council shall issue an amended site certificate, which is effective upon execution by the Council Chair and by the applicant.

~~(11) The certificate holder shall not abuse this rule by failing to make timely application for an amendment and thus create a conflict with the language and conditions of the final order is not a violation so long as the inconsistency is remedied by the certificate holder as specified by the Council in the need for expedited review final order.~~
(12) If review is to be completed through the type B review process, review proceeds as described in 345-027-0068, -0072, and -0075, where the temporary order replaces all references to the draft proposed or deny issuance of an amended site certificate. If the Council grants issuance of an amended site certificate, the Council shall issue an amended site certificate, which is effective upon execution by the Council Chair and by the applicant.

~~(12) Action taken by the certificate holder under the authority of the temporary order that is inconsistent with the language and conditions of the final order is not a violation so long as the inconsistency is remedied by the certificate holder as specified by the Council in the need for expedited review final order.~~
(13) Action taken by the certificate holder under the authority of the temporary order that is inconsistent with the language and conditions of the final order is not a violation so long as the inconsistency is remedied by the certificate holder as specified by the Council in the need for expedited review final order.

~~(13) The certificate holder shall not abuse this rule by failing to make timely application for an amendment and thus create a conflict with the language and conditions of the final order is not a violation so long as the inconsistency is remedied by the certificate holder as specified by the Council in the need for expedited review final order.~~
(14) The certificate holder shall not abuse this rule by failing to make timely application for an amendment and thus create a conflict with the language and conditions of the final order is not a violation so long as the inconsistency is remedied by the certificate holder as specified by the Council in the need for expedited review final order.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.405

AMEND: 345-027-0085

NOTICE FILED DATE: 06/13/2017

RULE SUMMARY: States the process by which certificate holders can make a request for amendment to extend construction deadlines.

CHANGES TO RULE:

345-027-0085

Request for Amendment to Extend Construction Deadlines ¶

(1) The certificate holder may request an amendment to the site certificate to extend the deadlines for beginning or completing construction of the facility, or portion/phase of the facility, that the Council has approved in a site certificate or an amended site certificate by submitting a preliminary request for amendment in accordance with 345-027-0060. The preliminary request for amendment must include an explanation of the need for an extension and must be submitted to the Department of Energy before the applicable construction deadline, but no earlier than the date twelve months before the applicable construction deadline. ¶

(2) A preliminary request for amendment received by the Department within the time allowed under section (1) to extend the deadlines for beginning and completing construction suspends expiration of the site certificate or amended site certificate until the Council acts on the request for amendment. If the Council denies the extension request after the applicable construction deadline, the site certificate is deemed expired as of the applicable construction deadline specified in the site certificate or amended site certificate. ¶

(3) If the Council grants an amendment under this rule, the Council shall specify new deadlines for beginning or completing construction that are the later of: ¶

(a) Three years from the deadlines in effect before the Council grants the amendment, or ¶

(b) Following a contested case proceeding conducted pursuant to OAR 345-027-0071, two years from the date the Council grants the amendment. ¶

(4) For requests for amendment to the site certificate received under this rule to extend construction deadlines for facilities or portions of the facility the Council shall not grant more than two amendments to extend the deadline for beginning construction of a facility or a phase of a facility. ¶

(5) For requests for an amendment to the site certificate to extend construction deadlines for facilities, or portions/phases of facilities, not yet in construction, but already approved for construction in the site certificate or amended site certificate prior to October 24, 2017: ¶

(a) Sections (1) and (2) of this rule apply; ¶

(b) Sections (3) and (4) of this rule do not apply; ¶

(c) When considering whether to grant a request for amendment for a deadline extension made under this section, the Council shall consider how many extensions it has previously granted; and ¶

(d) If a request for amendment for a deadline extension made under this section is granted, the Council shall specify new deadlines for beginning or completing construction that are not more than two years from the deadlines in effect before the Council grants the amendment.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.370, 469.405, 469.503

AMEND: 345-027-0090

NOTICE FILED DATE: 06/13/2017

RULE SUMMARY: States the process by which a person may request that subsequent laws or rules (laws that became effective after an approved site certificate or amended site certificate was issued) be made applicable to a facility and a site certificate holder.

CHANGES TO RULE:

345-027-0090

Request by Any Person for Amendment to Apply ~~Subsequent Laws or Rules~~ Later-Adopted Laws ¶

(1) Any person may ~~submit to the Department of Energy a request for an amendment of a site certificate to apply a~~ law(s), including local government ordinances, statutes, rules or Council rule standards, adopted after the date the site certificate was executed, if the person contends failure to apply the law(s) results in a significant threat to the public health or safety or to the environment. The Department of Energy itself may initiate such a request. ¶

(2) ~~In To request an amendment request to apply later-adopted law(s) under this rule, the person shall include the following: ¶~~

(a) ~~The name, mailing address, email address and telephone number of the person submitting the request; ¶~~

(b) ~~The name and address of the certificate holder; ¶~~

(c) ~~Identification of the facility for which the site certificate in question was granted and its location; submit a preliminary request for amendment to the Department with the information described in 345-027-0060(1)(a),(c),(d) and the following: ¶~~

(d) ~~Identification of the local government ordinance, statute or Council rule law(s) that the person seeks to apply to the facility; and ¶~~

(e) ~~The particular facts that the person believes demonstrate that failure to apply the ordinance, statute or rule identified in subsection (d) presents clearly show a significant threat to the public health or safety or to the environment; and ¶~~

(f) ~~The specific language of the site certificate that the person proposes to change, delete or add by an amendment that requires application of the later adopted law(s). ¶~~

(3) If the Department receives a ~~preliminary request to for amend a site certificate~~ ment to apply later-adopted law(s) as described in this rule from any person other than the certificate holder, the Department shall send a copy of the request to the certificate holder with a notice stating the date. The transmittal shall include a deadline by which the certificate holder must submit a response. ¶

(4) ~~The Council shall review the request for amendment as described in OAR 345-027-0070, except that: ¶~~

(a) ~~After receiving the certificate holders response as requested under (3) to the Department. In its response, the certificate holder shall state whether it agrees that there is a clear showing of a significant threat to the public health, safety or the environment that requires application of the later-adopted law(s). ¶~~

(a) If the certificate holder concludes the later-adopted law(s) should be applied to the facility, the Council shall review the request to apply later-adopted law(s) as a complete request for amendment in accordance with section (5). ¶

(b) If the certificate holder concludes that the law(s) should not be applied to the facility, or if the certificate holder does not respond with its conclusion before the specified deadline, the Department may shall ask the Council to determine whether the request demonstrates that failure to apply the ordinance, statute or rule identified in subsection (2)(d) presents clearly shows a significant threat to the public health, safety or the environment that requires application of the later-adopted law(s). ¶

(A) If the Council determines there is not a clear showing of a significant threat to the public health or safety or to the environment. If the Council determin that requires application of the later adopted law(s), the Council shall deny the request that to applying the ordinance, statute or rule is not justified by later-adopted law(s). ¶

(B) If the Council determines there is a clear showing of a significant threat to the public health or safety or to the

environment; then the Council may deny the amendment request.¶

~~(b) Within 15 days after receiving the certificate holder's response as requested under (3) or within 15 days after a Council determination under (a) that applying the ordinance, statute or rule is justified by a significant threat to the public health or safety or to the environment, the Department shall determine whether the amendment request requires expedited review, based at requires application of the later adopted law(s), the Council shall review the request to apply later-adopted law(s) as a complete request for amendment in accordance with section (5).¶~~

~~(4) A preliminary request for amendment to apply later-adopted law(s) under this rule is considered a complete request for amendment for purposes of OAR 345-027-0063 on:¶~~

~~(a) If the request to apply later-adopted law(s) is made by the certificate holder, the date the request is received by the Department.¶~~

~~(b) If the request to apply later-adopted law(s) is made by a person other than the certificate holder, and if the certificate holder responds as described in subsection (3)(a), the date the response described in subsection (3)(a) is received by the Department.¶~~

~~(c) If the request to apply later-adopted law(s) is made by a person other than the certificate holder, and if the certificate holder responds as described in subsection (3)(b) or does not respond before the specified deadline under section (3), the date on¶ the criteria in OAR 345-027-0070(2), and shall send the notices described in OAR 345-027-0070(1)(a), (b) and (d). Council's determination under paragraph (3)(b)(B).¶~~

~~(5) After receiving a complete request for amendment under section (4) of this rule, the Council shall review the request for amendment as described in OAR 345-027-0065, 345-027-0067, 345-027-0071 and 345-027-0075, except that: ¶~~

~~(ea) If the Department recommends approval or modification and approval of the requested amendment, the Department shall include in the proposed order described in OAR 345-027-0070(4) 1 any new or modified site certificate conditions necessary to assure compliance with the ~~statutes, Council rules, and local government ordinances~~ law(s) applied to the facility under the proposed order;¶~~

~~(db) If the Department in its proposed order recommends approval or modification and approval of the requested amendment, the certificate holder may, by written request submitted to and received by the Department within 30 days after the Department issues the proposed order, ask the Council to hold a contested case proceeding on the proposed order. ~~For the purpose of this rule, the request is submitted when it is received by the Department.~~ In the request, the certificate holder shall provide a description of the issues to be contested and a statement of the facts believed to be at issue. If the ~~site~~-certificate holder requests a contested case proceeding, the Council shall conduct a contested case proceeding according to the applicable provisions of OAR 345-015-0012 to ~~-0014~~, and 345-015-0018 to 345-015-0085 limited to the issues stated by the certificate holder; and.¶~~

~~(ec) The Council shall include new conditions in a site certificate amended under this rule only if the ~~certificate holder agrees to the new conditions or~~ the Council finds that the conditions are necessary based upon a clear showing of a significant threat to the public health, safety or the environment.~~

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.401, 469.405

AMEND: 345-027-0100

NOTICE FILED DATE: 06/13/2017

RULE SUMMARY: States the circumstances that require a request for amendment to transfer the site certificate and the process by which that review is completed. Changes that took effect on 10/24/17 were made to clarify that a transfer is a type of request for amendment, to clarify what constitutes a transfer, and to clarify that the transfer hearing is different than informational hearings held during the review of an application for a site certificate.

CHANGES TO RULE:

345-027-0100

Transfer of a Site Request for Amendment to Transfer Ownership, Possession or Control of the Facility or the Certificate Holder

(1) For the purpose of this rule:

~~(a) A transfer of ownership requires a request for amendment to a site certificate to transfer of the site certificate when the person who will have the legal right to is required for a transaction that results in a change in the ownership, possession and/or control of the site or the facility does not have authority under the site certificate to construct, operate or retire the facility.~~

~~(b) Transferee means the person who will become the new applicant and site facility or the certificate holder.~~

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

~~(2) When at the certificate holder has knowledge that any transfer of ownership of the facility action that requires a transfer of the site certificate as described in section (1)(a) is or may be pending, the certificate holder shall notify the Department of Energy. In the notice, the certificate holder shall include, if known, the name, mailing address and telephone number of the transferee the name and contact information of the new owner, and the date of the transfer of ownership. If possible, the certificate holder shall notify the Department at least 60 days before the date of the transfer of ownership.~~

~~(3) The transferee~~A transaction that would require a transfer of the site certificate as described in subsection (1)(a) does not terminate the transferors duties and obligations under the site certificate until the Council approves a request for amendment to transfer the site certificate and issues an amended site certificate. The new owner is not allowed to construct or operate the facility until an amended site certificate as described in section (10) or a temporary amended site certificate as described in section (11) becomes effective.

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

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

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

~~(7) Before acting on the transfer request~~request for amendment to transfer the site certificate, the Council shall hold an informational transfer hearing. The Council shall hold the informational transfer hearing during a Council

meeting and shall provide notice of the hearing on its meeting agenda, which will be sent by mail or email to the Council's general mailing list in advance of the meeting. The ~~informational transfer~~ hearing is not a contested case hearing.¶

~~(8) At the conclusion of the informational hearing, the Council will accept comments from the public, reviewing agencies and new owner regarding the new owner's compliance with the Council standards described in subsection (8)(a). ¶~~

~~(8) At the conclusion of the transfer hearing or at a later meeting, the Council may issue an order approving the transfer request request for amendment to transfer the site certificate if the Council finds that: ¶~~

~~(a) The transferee new owner complies with the Council standards described in OAR 345-022-0010, 345-022-0050 and, if applicable, OAR 345-024-0710(1); and ¶~~

~~(b) The transferee new owner is or will be lawfully entitled to possession or control of the site or the facility described in the site certificate. ¶~~

~~(9) Except as described in section (12) OAR 345-027-0051(5), the Council shall not otherwise change the terms and conditions of the site certificate in an order approving the transfer request request for amendment to transfer the site certificate. ¶~~

~~(10) Upon issuing the order described in section (8), the Council shall issue an amended site certificate that names the transferee as the new new owner as the new certificate holder or as the new owner of the certificate holder. The amended site certificate is effective upon execution by the Council chair and the transferee new owner. The Council shall issue the amended site certificate in duplicate counterpart originals and each counterpart, upon signing, will have the same effect. ¶~~

~~(11) If the Council chair determines that special circumstances justify emergency action, the Council chair may, upon a written request from the transferee new owner that includes a showing that the transferee new owner can meet the requirements of section (8), issue a temporary amended site certificate that names the transferee as the new new owner as the new certificate holder or as the new owner of the certificate holder. The temporary amended site certificate is effective upon execution by the Council chair and the transferee new owner. The temporary amended site certificate expires when an amended site certificate as described in section (10) becomes effective or as the Council otherwise orders. ¶~~

~~(12) The Council may act concurrently on a request to transfer a site certificate and any other amendment request subject to the procedures described in this rule for the transfer request and: ¶~~

~~(a) The procedures described in OAR 345-027-0030 for an amendment to extend construction beginning and completion deadlines. ¶~~

~~(b) The procedures described in OAR 345-027-0090 for an amendment to apply subsequent laws or rules. ¶~~

~~(c) The procedures described in OAR 345-027-0060 and 345-027-0070 for any amendment request not described in (a) or (b).~~

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.401, 469.405