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**TEMPORARY ADMINISTRATIVE ORDER**  
INCLUDING STATEMENT OF NEED & JUSTIFICATION

**EFSC 9-2019**

CHAPTER 345  
DEPARTMENT OF ENERGY  
ENERGY FACILITY SITING COUNCIL

**FILED**  
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FILING CAPTION: Temporary rules governing the process for amending energy facility site certificates.

EFFECTIVE DATE: 08/22/2019 THROUGH 02/17/2020

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**NEED FOR THE RULE(S):**

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.

**JUSTIFICATION OF 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 Because the Council repealed its previous rules for the amendment of site certificates, the invalidation of the October 2017 rules could result in there being no rules in place to allow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. 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 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 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 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 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 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 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 August 13, 2019 letter from Portland General Electric). 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 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.

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#### DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

The following documents were relied upon in development of rules and the Statements of Need and Justification:

August 12, 2019 letter from counsel for the Summit Ridge Wind Farm certificate holder  
August 1, 2019 Friends of the Columbia River Gorge press release  
August 12, 2019 letter from Perennial Power Holdings, Inc.  
August 9, 2019 letter from counsel of Wheatridge Wind Energy LLC  
August 13, 2019 letter from Portland General Electric  
August 13, 2019 letter from Avangrid Renewables  
EFSC 5-2017

All documents are available from the Oregon Department of Energy upon request, and may be accessed at:  
<https://www.oregon.gov/energy/Get-Involved/Pages/Energy-Facility-Siting-Council-Rulemaking.aspx>

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RULES:

345-015-0014, 345-015-0016, 345-015-0080, 345-015-0083, 345-025-0006, 345-025-0010, 345-025-0016, 345-027-0011, 345-027-0013, 345-027-0050, 345-027-0051, 345-027-0053, 345-027-0055, 345-027-0057, 345-027-0059, 345-027-0060, 345-027-0063, 345-027-0065, 345-027-0067, 345-027-0068, 345-027-0071, 345-027-0072, 345-027-0075, 345-027-0080, 345-027-0085, 345-027-0090, 345-027-0100, 345-027-0311, 345-027-0313, 345-027-0350, 345-027-0351, 345-027-0353, 345-027-0355, 345-027-0357, 345-027-0359, 345-027-0360, 345-027-0363, 345-027-0365, 345-027-0367, 345-027-0368, 345-027-0371, 345-027-0372, 345-027-0375, 345-027-0380, 345-027-0385, 345-027-0390, 345-027-0400

AMEND: 345-015-0014

RULE SUMMARY: States how and to whom the Department sends notice of a contested case. Adopts provisions included in Administrative Order EFSC 5-2017.

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.¶¶

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

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

(B) 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.¶¶

(B) 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 345-027-0071 or 345-027-0090, to the certificate holder and to the parties the Council granted contested case party 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

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. Adopts provisions included in Administrative Order EFSC 5-2017.

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

RULE SUMMARY: States the process by which any state or local government agency may request to participate in a contested case. Adopts provisions included in Administrative Order EFSC 5-2017.

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

RULE SUMMARY: States the purpose and requirements of the prehearing conference and prehearing order related to contested cases. Adopts provisions included in Administrative Order EFSC 5-2017.

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: 345-025-0006

RULE SUMMARY: Provides conditions to be included in every site certificate. Adopts provisions included in Administrative Order EFSC 5-2017.

CHANGES TO RULE:

345-025-0006

#### Mandatory Conditions in Site Certificates ¶

The Council shall impose the following conditions in every site certificate. The Council may impose additional conditions.¶

(1) The Council shall not change the conditions of the site certificate except as provided for in OAR chapter 345, division 27.¶

(2) The certificate holder shall submit a legal description of the site to the Department of Energy within 90 days after beginning operation of the facility. The legal description required by this rule means a description of metes and bounds or a description of the site by reference to a map and geographic data that clearly and specifically identify the outer boundaries that contain all parts of the facility.¶

(3) The certificate holder shall design, construct, operate and retire the facility:¶

(a) Substantially as described in the site certificate;¶

(b) In compliance with the requirements of ORS Chapter 469, applicable Council rules, and applicable state and local laws, rules and ordinances in effect at the time the site certificate is issued; and¶

(c) In compliance with all applicable permit requirements of other state agencies.¶

(4) The certificate holder shall begin and complete construction of the facility by the dates specified in the site certificate.¶

(5) Except as necessary for the initial survey or as otherwise allowed for wind energy facilities, transmission lines or pipelines under this section, the certificate holder shall not begin construction, as defined in OAR 345-001-0010, or create a clearing on any part of the site until the certificate holder has construction rights on all parts of the site. For the purpose of this rule, "construction rights" means the legal right to engage in construction activities. For wind energy facilities, transmission lines or pipelines, if the certificate holder does not have construction rights on all parts of the site, the certificate holder may nevertheless begin construction, as defined in OAR 345-001-0010, or create a clearing on a part of the site if the certificate holder has construction rights on that part of the site and:¶

(a) The certificate holder would construct and operate part of the facility on that part of the site even if a change in the planned route of a transmission line or pipeline occurs during the certificate holder's negotiations to acquire construction rights on another part of the site; or¶

(b) The certificate holder would construct and operate part of a wind energy facility on that part of the site even if other parts of the facility were modified by amendment of the site certificate or were not built.¶

(6) If the certificate holder becomes aware of a significant environmental change or impact attributable to the facility, the certificate holder shall, as soon as possible, submit a written report to the Department describing the impact on the facility and any affected site certificate conditions.¶

(7) The certificate holder shall prevent the development of any conditions on the site that would preclude restoration of the site to a useful, non-hazardous condition to the extent that prevention of such site conditions is within the control of the certificate holder.¶

(8) Before beginning construction of the facility, the certificate holder shall submit to the State of Oregon, through the Council, a bond or letter of credit in a form and amount satisfactory to the Council to restore the site to a useful, non-hazardous condition. The certificate holder shall maintain a bond or letter of credit in effect at all times until the facility has been retired. The Council may specify different amounts for the bond or letter of credit during construction and during operation of the facility.¶

(9) The certificate holder shall retire the facility if the certificate holder permanently ceases construction or operation of the facility. The certificate holder shall retire the facility according to a final retirement plan

approved by the Council, as described in OAR 345-027-0110. The certificate holder shall pay the actual cost to restore the site to a useful, non-hazardous condition at the time of retirement, notwithstanding the Council's approval in the site certificate of an estimated amount required to restore the site.¶

(10) The Council shall include as conditions in the site certificate all representations in the site certificate application and supporting record the Council deems to be binding commitments made by the applicant.¶

(11) Upon completion of construction, the certificate holder shall restore vegetation to the extent practicable and shall landscape all areas disturbed by construction in a manner compatible with the surroundings and proposed use. Upon completion of construction, the certificate holder shall remove all temporary structures not required for facility operation and dispose of all timber, brush, refuse and flammable or combustible material resulting from clearing of land and construction of the facility.¶

(12) The certificate holder shall design, engineer and construct the facility to avoid dangers to human safety and the environment presented by seismic hazards affecting the site that are expected to result from all maximum probable seismic events. As used in this rule "seismic hazard" includes ground shaking, ground failure, landslide, liquefaction triggering and consequences (including flow failure, settlement buoyancy, and lateral spreading), cyclic softening of clays and silts, fault rupture, directivity effects and soil-structure interaction. For coastal sites, this also includes tsunami hazards and seismically-induced coastal subsidence.¶

(13) The certificate holder shall notify the Department, the State Building Codes Division and the Department of Geology and Mineral Industries promptly if site investigations or trenching reveal that conditions in the foundation rocks differ significantly from those described in the application for a site certificate. After the Department receives the notice, the Council may require the certificate holder to consult with the Department of Geology and Mineral Industries and the Building Codes Division to propose and implement corrective or mitigation actions.¶

(14) The certificate holder shall notify the Department, the State Building Codes Division and the Department of Geology and Mineral Industries promptly if shear zones, artesian aquifers, deformations or clastic dikes are found at or in the vicinity of the site. After the Department receives notice, the Council may require the certificate holder to consult with the Department of Geology and Mineral Industries and the Building Codes Division to propose and implement corrective or mitigation actions.¶

(15) Before any transfer of ownership of the facility or ownership of the site certificate holder, the certificate holder shall inform the Department of the proposed new owners. The requirements of OAR 345-027-0100 apply to any transfer of ownership that requires a transfer of the site certificate.¶

(16) If the Council finds that the certificate holder has permanently ceased construction or operation of the facility without retiring the facility according to a final retirement plan approved by the Council, as described in OAR 345-027-0110, the Council shall notify the certificate holder and request that the certificate holder submit a proposed final retirement plan to the Office within a reasonable time not to exceed 90 days. If the certificate holder does not submit a proposed final retirement plan by the specified date, the Council may direct the Department to prepare a proposed final retirement plan for the Council's approval. Upon the Council's approval of the final retirement plan, the Council may draw on the bond or letter of credit described in section (8) to restore the site to a useful, non-hazardous condition according to the final retirement plan, in addition to any penalties the Council may impose under OAR chapter 345, division 29. If the amount of the bond or letter of credit is insufficient to pay the actual cost of retirement, the certificate holder shall pay any additional cost necessary to restore the site to a useful, non-hazardous condition. After completion of site restoration, the Council shall issue an order to terminate the site certificate if the Council finds that the facility has been retired according to the approved final retirement plan.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.401, 469.501

AMEND: 345-025-0010

RULE SUMMARY: Provides site-specific conditions which may be included in a site certificate. Adopts provisions included in Administrative Order EFSC 5-2017.

CHANGES TO RULE:

345-025-0010

#### Site-Specific Conditions ¶¶

The Council may include the following conditions, as appropriate, in the site certificate:¶¶

- (1) If the facility uses coal, the certificate holder shall take all necessary steps to ensure that surface and groundwater are not contaminated by run off or seepage associated with coal or ash storage, transport or disposal. The certificate holder shall handle coal and ash so as to minimize the likelihood of coal dust and ash being windblown and causing an environmental or public health problem. If the certificate holder permanently disposes of ash on the facility site, the certificate holder shall cover the ash with a layer of topsoil and revegetate the area.¶¶
- (2) If the energy facility or related or supporting facility is a natural gas pipeline, the certificate holder shall submit to the Department copies of all incident reports involving the pipeline required under 49 CFR Sec. 191.15.¶¶
- (3) If the facility includes any pipeline under Council jurisdiction:¶¶
  - (a) The certificate holder shall design, construct and operate the pipeline in accordance with the requirements of the U.S. Department of Transportation as set forth in Title 49, Code of Federal Regulations, Part 192, in effect on August 15, 2011; and¶¶
  - (b) The certificate holder shall develop and implement a program using the best available practicable technology to monitor the proposed pipeline to ensure protection of public health and safety.¶¶
- (4) If the facility includes any transmission line under Council jurisdiction:¶¶
  - (a) The certificate holder shall design, construct and operate the transmission line in accordance with the requirements of the 2012 Edition of the National Electrical Safety Code approved on June 3, 2011, by the American National Standards Institute; and¶¶
  - (b) The certificate holder shall develop and implement a program that provides reasonable assurance that all fences, gates, cattle guards, trailers, or other objects or structures of a permanent nature that could become inadvertently charged with electricity are grounded or bonded throughout the life of the line.¶¶
- (5) If the proposed energy facility is a pipeline or a transmission line or has, as a related or supporting facility, a pipeline or transmission line, the Council shall specify an approved corridor in the site certificate and shall allow the certificate holder to construct the pipeline or transmission line anywhere within the corridor, subject to the conditions of the site certificate. If the applicant has analyzed more than one corridor in its application for a site certificate, the Council may, subject to the Council's standards, approve more than one corridor.¶¶
- (6) If the facility is a surface facility related to an underground gas storage reservoir, the Council shall, in the site certificate, specify the site boundary and total permitted daily throughput of the facility.¶¶
- (7) If the facility is subject to a carbon dioxide emissions standard adopted by the Council or enacted by statute, the Council shall include in the site certificate appropriate conditions as described in OAR 345-024-0550, 345-024-0560, 345-024-0590, 345-024-0600, 345-024-0620, 345-024-0630 and 345-024-0710.¶¶

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

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.401, 469.501, 469.503

AMEND: 345-025-0016

RULE SUMMARY: Provides procedures related to monitoring and mitigation plans. Adopts provisions included in Administrative Order EFSC 5-2017.

CHANGES TO RULE:

345-025-0016

Monitoring and Mitigation Conditions ¶

In the site certificate, the Council shall include conditions that address monitoring and mitigation to ensure compliance with the standards contained in OAR Chapter 345, Division 22 and Division 24. The site certificate applicant, or for an amendment, the certificate holder, shall develop proposed monitoring and mitigation plans in consultation with the Department and, as appropriate, other state agencies, local governments and tribes.

Monitoring and mitigation plans are subject to Council approval. The Council shall incorporate approved monitoring and mitigation plans in applicable site certificate conditions.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.401, 469.501, 469.503, 469.507

SUSPEND: 345-027-0011

RULE SUMMARY: Suspends Div. 27 rules approved through Administrative Order EFSC 5-2017.

CHANGES TO RULE:

~~345-027-0011~~

~~Applicability ¶~~

~~The rules in this division apply to all facilities under the Council's jurisdiction except those facilities described in ORS 469.410(1), including the Trojan energy facility, and except that rules OAR 345-027-0050 through 345-027-0100 that were in effect prior to October 24, 2017 apply to requests for amendments to site certificates and change requests that have been received by the Department prior to October 24, 2017.~~

~~Statutory/Other Authority: ORS 469.470~~

~~Statutes/Other Implemented: ORS 469.501~~

SUSPEND: 345-027-0013

RULE SUMMARY: Suspends Div. 27 rules approved through Administrative Order EFSC 5-2017.

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~~

SUSPEND: 345-027-0050

RULE SUMMARY: Suspends Div. 27 rules approved through Administrative Order EFSC 5-2017.

CHANGES TO RULE:

~~345-027-0050~~

~~Changes Requiring an Amendment ¶¶~~

~~Except for changes allowed under OAR 345-027-0053 of this rule, an amendment to a site certificate is required to:¶¶~~

~~(1) Transfer ownership of the facility or the certificate holder as described in OAR 345-027-0100;¶¶~~

~~(2) Apply later-adopted law(s) as described in OAR 345-027-0090;¶¶~~

~~(3) Extend the construction beginning or completion deadline as described in OAR 345-027-0085;¶¶~~

~~(4) 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 or interest protected by a Council standard; ¶¶~~

~~(b) Could impair the certificate holder's 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~~

SUSPEND: 345-027-0051

RULE SUMMARY: Suspends Div. 27 rules approved through Administrative Order EFSC 5-2017.

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 Council's 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 Council's 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 Council's 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 Council's 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~~

SUSPEND: 345-027-0053

RULE SUMMARY: Suspends Div. 27 rules approved through Administrative Order EFSC 5-2017.

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~~

SUSPEND: 345-027-0055

RULE SUMMARY: Suspends Div. 27 rules approved through Administrative Order EFSC 5-2017.

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 holder's 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~~

SUSPEND: 345-027-0057

RULE SUMMARY: Suspends Div. 27 rules approved through Administrative Order EFSC 5-2017.

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 holder's 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 Department's evaluation.~~~~
- ~~(5) After receiving an amendment determination request, the Department shall post an announcement on the Department's 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~~

SUSPEND: 345-027-0059

RULE SUMMARY: Suspends Div. 27 rules approved through Administrative Order EFSC 5-2017.

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~~

SUSPEND: 345-027-0060

RULE SUMMARY: Suspends Div. 27 rules approved through Administrative Order EFSC 5-2017.

CHANGES TO RULE:

~~345-027-0060~~

~~Preliminary Request for Amendment ¶¶~~

~~(1) To request an amendment to the 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 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 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 any updated maps and/or geospatial data layers relevant to the proposed change. ¶¶~~

~~(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 conditions, that the certificate holder proposes to change, add or delete through the amendment. ¶¶~~

~~(e) A list of the Council standards and all other laws—including statutes, rules and ordinances—applicable to the proposed change, and an analysis of whether the facility, with the proposed change, would comply with those applicable laws and Council standards. For the purpose of this rule, a law or Council standard is "applicable" if the Council would apply or consider the law or Council standard under OAR 345-027-0075(2). ¶¶~~

~~(f) 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) After receiving a preliminary request for amendment, 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 preliminary request for amendment. ¶¶~~

~~(3) For any Council standard that requires evaluation of impacts within an analysis area, the analysis area shall be the larger of either the study area(s) as defined in OAR 345-001-0000(59) or the analysis area(s) described in the project order for the application for site certificate, unless otherwise approved in writing by the Department following a pre-amendment conference. ¶¶~~

~~(4) The certificate holder may 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 in the Department's record on the facility.~~

~~Statutory/Other Authority: ORS 469.470~~

~~Statutes/Other Implemented: ORS 469.405~~

SUSPEND: 345-027-0063

RULE SUMMARY: Suspends Div. 27 rules approved through Administrative Order EFSC 5-2017.

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

SUSPEND: 345-027-0065

RULE SUMMARY: Suspends Div. 27 rules approved through Administrative Order EFSC 5-2017.

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 Department's 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 facility's compliance with applicable laws and Council Standards.~~

~~Statutory/Other Authority: ORS 469.470~~

~~Statutes/Other Implemented: ORS 469.405~~

SUSPEND: 345-027-0067

RULE SUMMARY: Suspends Div. 27 rules approved through Administrative Order EFSC 5-2017.

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 Council's 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 facility's 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 person's failure to raise an issue in person or in writing on the record of the public hearing precludes the Council's consideration of whether to grant that person's 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 person's 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 person's 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

SUSPEND: 345-027-0068

RULE SUMMARY: Suspends Div. 27 rules approved through Administrative Order EFSC 5-2017.

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 Council's 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 facility's 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 person's written comments.~~

~~Statutory/Other Authority: ORS 469.470~~

~~Statutes/Other Implemented: ORS 469.405~~

SUSPEND: 345-027-0071

RULE SUMMARY: Suspends Div. 27 rules approved through Administrative Order EFSC 5-2017.

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 Council's 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 facility's 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 person's 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 person's 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 person's interest in the proceeding and how that interest may be affected by the outcome of the proceeding;¶

(f) Name and address of the person's attorney, if any; ¶

(g) A statement of whether the person's 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 person's 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 person's 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 person's 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 Council's 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 Council's 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 person's 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 Council's 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

SUSPEND: 345-027-0072

RULE SUMMARY: Suspends Div. 27 rules approved through Administrative Order EFSC 5-2017.

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

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.405

SUSPEND: 345-027-0075

RULE SUMMARY: Suspends Div. 27 rules approved through Administrative Order EFSC 5-2017.

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 Council's 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~~

SUSPEND: 345-027-0080

RULE SUMMARY: Suspends Div. 27 rules approved through Administrative Order EFSC 5-2017.

CHANGES TO RULE:

~~345-027-0080~~

~~Type C Review Process for Pre-Operational Requests for Amendment ¶¶~~

- ~~(1) A certificate holder may 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 construction in the site certificate or amended site certificate. A certificate holder cannot request type C review of a request for amendment proposing to extend construction 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 described in 345-027-0060(1);¶¶~~
- ~~(b) The reasons why the certificate holder needs type C review of its request for amendment;¶¶~~
- ~~(c) An explanation of why the proposed change could not have been reasonably foreseen by the certificate holder;¶¶~~
- ~~(d) An explanation of why the proposed change is unavoidable; and¶¶~~
- ~~(e) Reasons why the type C review is adequate to prevent significant adverse impacts to the resources and interests protected by Council standards.¶¶~~
- ~~(3) Upon receiving a request under sections (1) and (2), the Department shall post the request and the request for amendment on the Department's 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.¶¶~~
- ~~(5) If 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 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 not been deemed complete;¶¶~~
- ~~(b) The request for amendment is complete;¶¶~~
- ~~(c) Type C review is necessary;¶¶~~
- ~~(d) The proposed change could not have been reasonably foreseen by the certificate holder;¶¶~~
- ~~(e) The proposed change is unavoidable; and¶¶~~
- ~~(f) Type C review is adequate to prevent significant adverse impacts to the resources and interests protected by the Council's standards.¶¶~~
- ~~(7) Within 7 days after 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 Council review should be completed through the type A or type B review process; and¶¶~~
- ~~(b) Post the draft temporary order on the Department's website. ¶¶~~
- ~~(8) The Council shall, 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 chair may call a special Council meeting, as described in OAR 345-011-0015, to be held as promptly as possible.¶¶~~
- ~~(9) After considering the draft temporary order and the Department's recommendation on whether review should be completed through the type A or type B review process, the Council shall adopt, modify, or reject the draft temporary order based on the considerations described in OAR 345-027-0075, and the Council shall decide whether review should be completed through the type A or type B review process. In a written temporary order,~~

the Council shall either temporarily grant issuance of an amended site certificate, or deny issuance of an amended site certificate.¶

(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.¶

(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 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 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 final order.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.405

SUSPEND: 345-027-0085

RULE SUMMARY: Suspends Div. 27 rules approved through Administrative Order EFSC 5-2017.

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~~

SUSPEND: 345-027-0090

RULE SUMMARY: Suspends Div. 27 rules approved through Administrative Order EFSC 5-2017.

CHANGES TO RULE:

~~345-027-0090~~

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

~~(1) Any person may request an amendment of a site certificate to apply a law(s), including local government ordinances, statutes, rules or Council 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) To request an amendment to apply later-adopted law(s) under this rule, the person shall submit a preliminary request for amendment to the Department with the information described in 345-027-0060(1)(a),(c),(d) and the following: ¶¶~~

~~(a) Identification of the law(s) that the person seeks to apply to the facility; and ¶¶~~

~~(b) The particular facts that the person believes clearly show a significant threat to the public health, safety or the environment that requires application of the later-adopted law(s).¶¶~~

~~(3) If the Department receives a preliminary request for amendment 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. The transmittal shall include a deadline by which the certificate holder must submit a response 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 shall ask the Council to determine whether the request 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, safety or the environment that requires application of the later-adopted law(s), the Council shall deny the request to apply later-adopted law(s).¶¶~~

~~(B) If the Council determines 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), 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 of the 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: ¶¶~~

~~(a) If the Department recommends approval or modified approval of the requested amendment, the Department shall include in the proposed order described in OAR 345-027-0071 any new or modified site certificate conditions necessary to assure compliance with the law(s) applied to the facility under the proposed order; and~~  
~~(b) If the Department in its proposed order recommends approval or modified 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. 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 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~~  
~~(c) The Council shall include new conditions in a site certificate amended under this rule only if 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

SUSPEND: 345-027-0100

RULE SUMMARY: Suspends Div. 27 rules approved through Administrative Order EFSC 5-2017.

CHANGES TO RULE:

~~345-027-0100~~

~~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 request for amendment to a site certificate to transfer the site certificate is required for a transaction that results in a change in the ownership, possession or control of the 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 the certificate holder has knowledge that a transaction 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 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) A transaction that would require a transfer of the site certificate as described in subsection (1)(a) does not terminate the transferor's 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 the site certificate, the 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 new owner agrees to abide by all terms and conditions of the site certificate currently in effect and, if known, the expected date of the transaction. If applicable, the new owner shall include in the request the information described in OAR 345-021-0010(1)(y)(O)(iv).¶¶~~

~~(5) The Department may require the 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 new owner's 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 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 new owner under section (4). In the notice, the Department shall describe the request for amendment to transfer the site certificate, specify a date by which comments are due and state that the date of the Council's transfer hearing will be announced on the Department's website.¶¶~~

~~(7) Before acting on the request for amendment to transfer the site certificate, the Council shall hold a transfer hearing. The Council shall hold the 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 transfer hearing is not a contested case hearing. During the 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 request for amendment to transfer the site certificate if the Council finds that:¶¶~~

~~(a) The 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 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 OAR 345-027-0051(5), the Council shall not otherwise change the terms and conditions of the site certificate in an order approving the 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 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 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 new owner that includes a showing that the new owner can meet the requirements of section (8), issue a temporary amended site certificate that names the 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 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.~~

~~Statutory/Other Authority: ORS 469.470~~

~~Statutes/Other Implemented: ORS 469.401, 469.405~~

ADOPT: 345-027-0311

RULE SUMMARY: States applicability of temporary rules related to site certificate amendments. Clarifies that the Department and Council will continue to process all requests for amendment and amendment determination requests submitted on or after October 24, 2017 for which Council has not made a final decision prior to the effective date of these rules, without requiring the certificate holder to resubmit the request or to repeat any steps taken as part of the request prior to the effective date of these rules.

CHANGES TO RULE:

345-027-0311

Applicability

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

(2) Notwithstanding section (1) of this rule, these rules do not apply to facilities described in ORS 469.410(1).

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.501

ADOPT: 345-027-0313

RULE SUMMARY: Provides that site certificates expire when deadlines to begin construction are not met. Adopts provisions included in Administrative Order EFSC 5-2017.

CHANGES TO RULE:

345-027-0313

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 345-027-0385(2).

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.370, 469.501

ADOPT: 345-027-0350

RULE SUMMARY: States what types of changes require a certificate holder to submit a request for amendment to the Department. Adopts provisions included in Administrative Order EFSC 5-2017.

CHANGES TO RULE:

345-027-0350

Changes Requiring an Amendment

Except for changes allowed under OAR 345-027-0353 of this rule, an amendment to a site certificate is required to:

(1) Transfer ownership of the facility or the certificate holder as described in OAR 345-027-0400;

(2) Apply later-adopted law(s) as described in OAR 345-027-0390;

(3) Extend the construction beginning or completion deadline as described in OAR 345-027-0385;

(4) 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 or interest protected by a Council standard;

(b) Could impair the certificate holder's 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: 345-027-0351

RULE SUMMARY: States the different review processes for different types of requests for amendments. Adopts provisions included in Administrative Order EFSC 5-2017.

CHANGES TO RULE:

345-027-0351

Review Processes for Requests for Amendment

- (1) The transfer review process, described in 345-027-0400, shall apply to the Council's review of a request for amendment to a site certificate to transfer a site certificate.¶
- (2) The type A review process, consisting of rules 345-027-0359, -0360, -0363, -0365, -0367, -0371 and -0375, is the default review process and shall apply to the Council's review of a request for amendment proposing a change described in 345-027-0350(2),(3), and (4).¶
- (3) The type B review process, consisting of rules 345-027-0359, -0360, -0363, -0365, -0368, -0372, and -0375, shall apply to the Council's review of a request for amendment that the Department or the Council approves for type B review under 345-027-0357.¶
- (4) The type C review process, described in 345-027-0380, shall apply to the Council's review of a request for amendment that the Department or the Council approves for type C review under 345-027-0380.¶
- (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: 345-027-0353

RULE SUMMARY: States what types of changes are exempt from requiring an amendment to the site certificate. Adopts provisions included in Administrative Order EFSC 5-2017.

CHANGES TO RULE:

### 345-027-0353

#### 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: 345-027-0355

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. Adopts provisions included in Administrative Order EFSC 5-2017.

CHANGES TO RULE:

345-027-0355

Written Evaluations for Changes Not Requiring Amendment

(1) For a proposed change that would add area to the site boundary, see OAR 345-027-0357(1). For a proposed change to the facility that does not include adding area to the site boundary, the certificate holder may evaluate OAR 345-027-0350 and 345-027-0353 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 345-027-0350; or

(b) Is exempt from requiring an amendment under 345-027-0353.

(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 holder's 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: 345-027-0357

RULE SUMMARY: States the process a certificate holder must go through when submitting an Amendment Determination Request to the Department. Adopts provisions included in Administrative Order EFSC 5-2017.

CHANGES TO RULE:

345-027-0357

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 345-027-0350 and is not exempt under 345-027-0353.

(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 345-027-0350; or

(b) whether the proposed change is exempt from requiring an amendment under 345-027-0353.

(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 345-027-0351(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 holder's 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 Department's evaluation.

(5) After receiving an amendment determination request, the Department shall post an announcement on the Department's 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 345-027-0351(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: 345-027-0359

RULE SUMMARY: States that a certificate holder may elect to participate in a pre-amendment conference with the Department. Adopts provisions included in Administrative Order EFSC 5-2017.

CHANGES TO RULE:

345-027-0359

Pre-Amendment Conference

(1) Prior to submitting a preliminary request for amendment to the site certificate as described in OAR 345-027-0360, 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

ADOPT: 345-027-0360

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. Adopts provisions included in Administrative Order EFSC 5-2017.

CHANGES TO RULE:

345-027-0360

Preliminary Request for Amendment

(1) To request an amendment to the site certificate required by OAR 345-027-0350(3) and (4), the certificate holder shall submit a written preliminary request for amendment to the Department of Energy that includes the 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 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 any updated maps and/or geospatial data layers relevant to the proposed change.¶

(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 conditions, that the certificate holder proposes to change, add or delete through the amendment.¶

(e) A list of the Council standards and all other laws - including statutes, rules and ordinances - applicable to the proposed change, and an analysis of whether the facility, with the proposed change, would comply with those applicable laws and Council standards. For the purpose of this rule, a law or Council standard is "applicable" if the Council would apply or consider the law or Council standard under OAR 345-027-0375(2).¶

(f) 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) After receiving a preliminary request for amendment, 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 preliminary request for amendment.¶

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

(4) The certificate holder may 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 in the Department's record on the facility.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.405

ADOPT: 345-027-0363

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. Adopts provisions included in Administrative Order EFSC 5-2017.

CHANGES TO RULE:

345-027-0363

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: 345-027-0365

RULE SUMMARY: States the process by which the Department issues a Draft Proposed Order. Adopts provisions included in Administrative Order EFSC 5-2017.

CHANGES TO RULE:

345-027-0365

Draft Proposed Order for a Request for Amendment

(1) Within 7 days after a request for amendment to the site certificate described in OAR 345-027-0350(3) and(4), or a request for amendment to apply later-adopted laws described in OAR 345-027-0390, 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 Department's 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 facility's compliance with applicable laws and Council Standards.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.405

ADOPT: 345-027-0367

RULE SUMMARY: States the process by which Public Notice and Comment occurs on Draft Proposed Orders for Request for Amendment under Type A Review. Adopts provisions included in Administrative Order EFSC 5-2017.

CHANGES TO RULE:

345-027-0367

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 345-027-0365, 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 345-027-0365, 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 Council's 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 facility's 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 person's failure to raise an issue in person or in writing on the record of the public hearing precludes the Council's consideration of whether to grant that person's 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.

(E) To raise an issue with sufficient specificity, a person must present facts, on the record of the public hearing, that support the person's 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 person's 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: 345-027-0368

RULE SUMMARY: States the process by which Public Notice and Comment occurs on Draft Proposed Orders for Request for Amendment under Type B Review. Adopts provisions included in Administrative Order EFSC 5-2017. Provides that judicial review of the Council's final order either granting or denying an amended site certificate shall be as provided in ORS 469.403.

CHANGES TO RULE:

345-027-0368

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

(1) After issuance of the draft proposed order as described in OAR 345-027-0365, 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 345-027-0365, the Department shall:¶

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

(A) Persons on the Council's 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 written comment deadline on the Department website, and¶

(c) 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 facility's 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) Judicial review of the Council's 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: 345-027-0371

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. Adopts provisions included in Administrative Order EFSC 5-2017.

CHANGES TO RULE:

345-027-0371

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 345-027-0367, 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 Council's 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 facility's 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 345-027-0367. 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 345-027-0367 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 345-027-0367, 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 person's 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 person's 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 person's interest in the proceeding and how that interest may be affected by the outcome of the proceeding;¶
- (f) Name and address of the person's attorney, if any;¶
- (g) A statement of whether the person's 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 person's 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 person's 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:¶
- (a) The person making the contested case request raised the issue on the record of the public hearing described in OAR 345-027-0367 with sufficient specificity to afford the Council, the Department and the certificate holder an adequate opportunity to respond to the issue;¶
- (b) The Department did not follow the requirements of OAR 345-027-0367; or¶
- (c) 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 person's 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 Council's 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 Council's 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 person's 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-345-027-0375. 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 345-027-0375. 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 Council's 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: 345-027-0372

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. Adopts provisions included in Administrative Order EFSC 5-2017. Provides that judicial review of the Council's final order either granting or denying an amended site certificate shall be as provided in ORS 469.403.

CHANGES TO RULE:

345-027-0372

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 Council's 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 facility's 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 judicial review of the Council's final order either granting or denying an amended site certificate shall be as provided in ORS 469.403.

(4) The Council, may adopt, modify or reject the proposed order based on the considerations described in OAR 345-027-0375. 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 Council's 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: 345-027-0375

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. Adopts provisions included in Administrative Order EFSC 5-2017.

CHANGES TO RULE:

345-027-0375

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 Council's 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

ADOPT: 345-027-0380

RULE SUMMARY: States when and how the Type C review process could be approved, and the procedural steps of the Type C review process. Adopts provisions included in Administrative Order EFSC 5-2017.

CHANGES TO RULE:

### 345-027-0380

#### Type C Review Process for Pre-Operational Requests for Amendment

- (1) A certificate holder may 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 construction in the site certificate or amended site certificate. A certificate holder cannot request type C review of a request for amendment proposing to extend construction 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 described in 345-027-0360(1);¶
  - (b) The reasons why the certificate holder needs type C review of its request for amendment;¶
  - (c) An explanation of why the proposed change could not have been reasonably foreseen by the certificate holder;¶
  - (d) An explanation of why the proposed change is unavoidable; and¶
  - (e) Reasons why the type C review is adequate to prevent significant adverse impacts to the resources and interests protected by Council standards.¶
- (3) Upon receiving a request under sections (1) and (2), the Department shall post the request and the request for amendment on the Department's 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.¶
- (5) If 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 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 not been deemed complete;¶
  - (b) The request for amendment is complete;¶
  - (c) Type C review is necessary;¶
  - (d) The proposed change could not have been reasonably foreseen by the certificate holder;¶
  - (e) The proposed change is unavoidable; and¶
  - (f) Type C review is adequate to prevent significant adverse impacts to the resources and interests protected by the Council's standards.¶
- (7) Within 7 days after 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 Council review should be completed through the type A or type B review process; and¶
  - (b) Post the draft temporary order on the Department's website.¶
- (8) The Council shall, 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 chair may call a special Council meeting, as described in OAR 345-011-0015, to be held as promptly as possible.¶
- (9) After considering the draft temporary order and the Department's recommendation on whether review should be completed through the type A or type B review process, the Council shall adopt, modify, or reject the draft temporary order based on the considerations described in OAR 345-027-0375, and the Council shall decide whether review should be completed through the type A or type B review process. In a written temporary order,

the Council shall either temporarily grant issuance of an amended site certificate, or deny issuance of an amended site certificate.

(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.

(11) If review is to be completed through the type A review process, review proceeds as described in 345-027-0367, -0371, and -0375, where the temporary order replaces all references to the draft proposed order.

(12) If review is to be completed through the type B review process, review proceeds as described in 345-027-0368, -0372, and -0375, where the temporary order replaces all references to the draft proposed 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 final order.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.405

ADOPT: 345-027-0385

RULE SUMMARY: States the process by which certificate holders can make a request for amendment to extend construction deadlines. Adopts provisions included in Administrative Order EFSC 5-2017.

CHANGES TO RULE:

345-027-0385

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 345-027-0360. 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 345-027-0371, 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

ADOPT: 345-027-0390

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. Adopts provisions included in Administrative Order EFSC 5-2017.

CHANGES TO RULE:

345-027-0390

Request by Any Person for Amendment to Apply Later-Adopted Laws

(1) Any person may request an amendment of a site certificate to apply a law(s), including local government ordinances, statutes, rules or Council 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) To request an amendment to apply later-adopted law(s) under this rule, the person shall submit a preliminary request for amendment to the Department with the information described in 345-027-0360(1)(a),(c),(d) and the following:¶

(a) Identification of the law(s) that the person seeks to apply to the facility; and¶

(b) The particular facts that the person believes clearly show a significant threat to the public health, safety or the environment that requires application of the later adopted law(s).¶

(3) If the Department receives a preliminary request for amendment 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. The transmittal shall include a deadline by which the certificate holder must submit a response 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 shall ask the Council to determine whether the request 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, safety or the environment that requires application of the later adopted law(s), the Council shall deny the request to apply later-adopted law(s).¶

(B) If the Council determines 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), 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 345-027-0363 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 of the 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 345-027-0365, 345-027-0367, 345-027-0371 and 345-027-0375,

except that:

(a) If the Department recommends approval or modified approval of the requested amendment, the Department shall include in the proposed order described in OAR 345-027-0371 any new or modified site certificate conditions necessary to assure compliance with the law(s) applied to the facility under the proposed order;

(b) If the Department in its proposed order recommends approval or modified 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. 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 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

(c) The Council shall include new conditions in a site certificate amended under this rule only if 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

ADOPT: 345-027-0400

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. Adopts provisions included in Administrative Order EFSC 5-2017.

CHANGES TO RULE:

345-027-0400

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 request for amendment to a site certificate to transfer the site certificate is required for a transaction that results in a change in the ownership, possession or control of the 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 the certificate holder has knowledge that a transaction 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 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) A transaction that would require a transfer of the site certificate as described in subsection (1)(a) does not terminate the transferor's 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 the site certificate, the 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 new owner agrees to abide by all terms and conditions of the site certificate currently in effect and, if known, the expected date of the transaction. If applicable, the new owner shall include in the request the information described in OAR 345-021-0010(1)(y)(O)(iv).¶

(5) The Department may require the 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 new owner's 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 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 new owner under section (4). In the notice, the Department shall describe the request for amendment to transfer the site certificate, specify a date by which comments are due and state that the date of the Council's transfer hearing will be announced on the Department's website.¶

(7) Before acting on the request for amendment to transfer the site certificate, the Council shall hold a transfer hearing. The Council shall hold the 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 transfer hearing is not a contested case hearing. During the 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 request for amendment to transfer the site certificate if the Council finds that:¶

(a) The 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 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 OAR 345-027-0351(5), the Council shall not otherwise change the terms and conditions of the site certificate in an order approving the 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 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 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 new owner that includes a showing that the new owner can meet the requirements of section (8), issue a temporary amended site certificate that names the 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 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.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.401, 469.405