

OFFICE OF THE SECRETARY OF STATE
BEV CLARNO
SECRETARY OF STATE
JEFF MORGAN
INTERIM DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION
STEPHANIE CLARK
DIRECTOR
800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 345
DEPARTMENT OF ENERGY
ENERGY FACILITY SITING COUNCIL

FILED
05/05/2020 11:43 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Rules clarifying application and interpretation of jurisdictional thresholds for solar photovoltaic power generation facilities

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 06/25/2020 5:30 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

CONTACT: Christopher Clark
503-373-1033
EFSC.Rulemaking@oregon.gov

550 Capitol St. NE
Salem, OR 97301

Filed By:
Christopher Clark
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 06/25/2020

TIME: 5:00 PM

OFFICER: Christopher M. Clark

ADDRESS: Virtual Hearing

See Special Instructions

Salem, OR 97301

SPECIAL INSTRUCTIONS:

Join Webinar at:

<https://odoe.webex.com/odoe/onstage/g.php?MTID=ecf51c04620fc5d782053a3a4c77afded>

Or call toll-free: +1-408-418-9388

Access code: 717 948 663

NEED FOR THE RULE(S):

Rules are needed to (1) clarify what the Council considers to be a "solar photovoltaic power generation facility" as that term is used in the definition of "energy facility" under ORS 469.300(11); and (2) implement changes to ORS 469.320 (8) under HB 2329 (2019). **(NOTE: This section has been updated to correct a statutory reference.)**

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Meeting Materials and Minutes for Agenda Item C of the April 24, 2020 Energy Facility Siting Council Meeting.
Rules Advisory Committee Meeting Summaries

FISCAL AND ECONOMIC IMPACT:

Because these rules clarify how the Council will interpret and apply existing law, these rules are not expected to have a significant fiscal impact. No change in the number of energy facility site certificate applications or local renewable energy facility land use applications is expected to result from the proposed rules.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) While some state agencies, local governments, or members of the public have an interest in the interpretation and application of laws providing for state jurisdiction over energy facilities, we do not expect this rule to economically affect those persons. The proposed rules clarify how jurisdiction will be applied in the future, and do not impose any regulation or procedural requirements that does not exist under current law. It is possible that the proposed rules could result in an increase in the number of petitions for declaratory ruling that are submitted to the Council. The costs of staff review and processing of these petitions would likely be covered through existing assessments which fund the programs and activities of the Council and the Department under ORS 469.421(8).

(2) These rules primarily apply to developers and owners of energy facilities. While energy facility owners and developers do not generally qualify as a small business as defined by ORS 183.310(10), it is possible that a small number (e.g. less than five) small businesses could be directly impacted by the rules. The rules are not expected to increase reporting, recordkeeping, or administrative costs for businesses, and are not expected to increase costs of professional services, equipment, or labor needed to comply with the rules.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

A rulemaking advisory committee (RAC) was appointed to assist in the development of the proposed rules. The RAC met five times from 2018 to 2020. While there were no members of the RAC specifically appointed to represent issues of small businesses, the Department did request advice on what options it should consider for permanent amendment rules, including, but not limited to, options that may achieve the rules' substantive goals while reducing the rules' negative economic impact on business.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

345-001-0010, 345-001-0250, 345-020-0006, 345-021-0000

AMEND: 345-001-0010

RULE SUMMARY: Amends definition of "energy facility" to include a facility for which a developer or governing body has elected to defer regulatory authority to the Council under 2019 Oregon Laws, Chapter 650, section 2. Adopts definition of "solar photovoltaic power generation facility" that clarifies what components are included, establishes how acreage is calculated under ORS 469.300(11)(a)(D), and to provide criteria for when Council will review a proposed "solar photovoltaic power generation project" to determine if it is a separate and independent facility, or an expansion or modification of an existing solar photovoltaic power generation facility.

CHANGES TO RULE:

Definitions ¶¶

In this chapter, the following definitions apply unless the context requires otherwise or a term is specifically defined within a division or a rule:¶¶

- (1) "Adjusted to ISO conditions" as defined in ORS 469.503(2)(e).¶¶
- (2) "Analysis area" means the area or areas specifically described in the project order issued under OAR 345-015-0160(1), containing resources that the proposed facility may significantly affect. The analysis area is the area for which the applicant must describe the proposed facility's impacts in the application for a site certificate. A proposed facility might have different analysis areas for different types of resources. For the purpose of submitting an application for a site certificate in an expedited review granted under 345-015-0300 or 345-015-0310, the analysis areas are the study areas defined in this rule, subject to modification in the project order.¶¶
- (3) "Applicant" as defined in ORS 469.300 or, if an application has not been submitted, a person who has submitted, or intends to submit, a notice of intent or a request for expedited review.¶¶
- (4) "Associated transmission lines" as defined in ORS 469.300.¶¶
- (5) "Average electric generating capacity" as defined in ORS 469.300.¶¶
- (6) "Background radiation" means the direct radiation (gamma) and concentrations of potential radionuclide contaminants in construction materials and the environment in the vicinity of the plant not associated with the nuclear operation and retirement of the facility. Background must be determined as follows:¶¶
 - (a) For direct radiation, the results of any background measurements taken prior to operation of the facility must be provided and 6 to 10 measurements must be taken in areas in the vicinity of the site with materials and/or geological formations representative of the site that have not been affected by the operation and retirement of the facility. Background must be calculated at the average and at the 95% confidence level.¶¶
 - (b) Environmental samples must be taken for soil, sediment, water, and other materials present at the facility site that could have been affected by facility operations and retirement. Measurements for these samples must be calculated at the average and 95% confidence levels, based on 6 to 10 measurements. Background environmental samples must be taken at locations on site or in the immediate vicinity of the site which are unaffected by plant operations. Background must be calculated at the average and 95% confidence levels, based on 6 to 10 measurements at each location.¶¶
 - (c) For construction material such as concrete, asphalt, block, brick and other materials used to construct the buildings and systems at the site, representative samples of materials unaffected by site operations must be selected and surveyed. Six to ten samples of each material must be taken to determine the level of naturally occurring and artificially induced concentrations of naturally occurring radioactivity present. Measurements must include direct radiation (beta-gamma and alpha), wipes and qualitative and quantitative laboratory analyses. Concentrations of fission and activation products from historical fallout must be characterized as well.¶¶
 - (d) All measurements must be made using appropriate instruments, properly calibrated, and in sufficient number to determine compliance with requirements.¶¶
- (7) "Base load gas plant" as defined in ORS 469.503(2)(e).¶¶
- (8) "Carbon dioxide equivalent" as defined in ORS 469.503(2)(e).¶¶
- (9) "Certificate holder" means the person to whom a site certificate has been granted by the Council pursuant to this chapter.¶¶
- (10) "Chair" means the chairman or chairwoman of the Energy Facility Siting Council.¶¶
- (11) "Committed firm energy and capacity resources" means generating facilities or power purchase contracts that are assured to be available to the energy supplier over a defined time period. Committed firm energy and capacity resources include existing generating facilities, existing power purchase contracts and planned generating facilities that sponsors have made firm commitments to develop.¶¶
- (12) "Construction" as defined in ORS 469.300.¶¶
- (13) "Corridor" means a continuous area of land not more than one-half mile in width and running the entire length of a proposed transmission line or pipeline. "Micrositing corridor" is defined below in this rule.¶¶

- (14) "Council" means the Energy Facility Siting Council established under ORS 469.450.¶
- (15) "Council Secretary" means the person designated by the Director of the Oregon Department of Energy to serve as secretary to the Council.¶
- (16) "Department" means the Oregon Department of Energy created under ORS 469.030.¶
- (17) "Direct cost" means the discounted sum of all monetary costs to the ultimate consumer over the lifetime of the facility or resource plan or resource strategy.¶
- (18) "Energy facility" ~~means~~ includes:¶
- (a) An energy facility as defined in ORS 469.300, including a: ¶
- (b) A small generating plant for which an applicant must have a site certificate according to OAR 345-001-0210; and ¶
- (c) A facility for which a developer or governing body has elected to defer regulatory authority to the Council under ORS 469.320(8). ¶
- (19) "Energy supplier" means:¶
- (a) A retail electric utility, a federal power marketing agency, or a local gas distribution company, or¶
- (b) A person or public agency generating electric energy for its own consumption, lawfully purchasing electric energy directly from a generator for its own consumption, or transmitting or distributing natural or synthetic gas from an energy facility for its own consumption.¶
- (20) "Existing corridor," as used in ORS 469.300 and 469.442, means the right-of-way of an existing transmission line, not to exceed 100 feet on either side of the physical center line of the transmission line or 100 feet from the physical center line of the outside lines if the corridor contains more than one transmission line.¶
- (21) "Facility" as defined in ORS 469.300 or a small generating plant for which an applicant must have a site certificate according to OAR 345-001-0210 together with any related or supporting facilities.¶
- (22) "Facility substantially similar to the proposed facility" means:¶
- (a) A facility that uses the same fuel and substantially similar technology, that has substantially the same in-service date, and that has a direct cost not substantially greater than that of the proposed facility; or¶
- (b) A facility that is demonstrated to provide as good a mix of reliability, compatibility with the power system, strategic flexibility, environmental impact and direct cost as the proposed facility taking into account reasonable trade-offs among such factors.¶
- (23) "Fossil fuel" means natural gas, petroleum, coal and any form of solid, liquid or gaseous fuel derived from such materials that is used to produce useful energy.¶
- (24) "Fossil-fueled power plant" as defined in ORS 469.503(2)(e).¶
- (25) "Fuel chargeable to power heat rate" means the net heat rate of electric power production during the first twelve months of commercial operation. A fuel chargeable to power heat rate is calculated with all factors adjusted to the average temperature, barometric pressure and relative humidity at the site during the times of the year when the facility is intended to operate using the formula, $FCP = (FI - FD) / P$, where:¶
- (a) FCP = Fuel chargeable to power heat rate.¶
- (b) FI = Annual fuel input to the facility applicable to the cogeneration process in British thermal units (higher heating value).¶
- (c) FD = Annual fuel displaced in any industrial or commercial process, heating, or cooling application by supplying useful thermal energy from a cogeneration facility instead of from an alternate source, in British thermal units (higher heating value). (d) P = Annual net electric output of the cogeneration facility in kilowatt-hours.¶
- (26) "Generating facility" as defined in ORS 469.503(2)(e).¶
- (27) "Greenhouse gas" as defined in ORS 469.503(2)(e).¶
- (28) "Gross carbon dioxide emissions" as defined in ORS 469.503(2)(e). The Council must measure the gross carbon dioxide emissions of a fossil-fueled power plant on a new and clean basis. For nongenerating energy facilities that emit carbon dioxide, the Council must measure the gross carbon dioxide emissions as described in OAR 345-024-0620(1).¶
- (29) "High efficiency cogeneration facility" means an energy facility, except coal and nuclear power plants, that sequentially produces electrical and useful thermal energy from the same fuel source and under average annual

operating conditions:¶¶

(a) Has a nominal electric generating capacity of less than 50 megawatts and the fuel chargeable to power heat rate value is not greater than 5550 Btu per kilowatt-hour (higher heating value); or¶¶

(b) Has a nominal electric generating capacity of 50 megawatts or more and the fuel chargeable to power heat rate value is not greater than 6000 Btu per kilowatt-hour (higher heating value).¶¶

(30) "Land use approval" means a final quasi-judicial decision or determination made by a local government that:¶¶

(a) Applies existing comprehensive plan provisions or land use regulations to a proposed facility;¶¶

(b) Amends a comprehensive plan map or zoning map to accommodate a proposed facility;¶¶

(c) Amends comprehensive plan text or land use regulations to accommodate a proposed facility;¶¶

(d) Applies the statewide planning goals to a proposed facility; or¶¶

(e) Takes an exception to the statewide planning goals adopted by the Land Conservation and Development Commission for a proposed facility.¶¶

(31) "Local government" as defined in ORS 469.300.¶¶

(32) "Micrositing corridor" means a continuous area of land within which construction of facility components may occur, subject to site certificate conditions.¶¶

(33) "Mitigation" means taking one or more of the following actions listed in order of priority:¶¶

(a) Avoiding the impact altogether by not taking a certain action or parts of an action;¶¶

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation;¶¶

(c) Partially or completely rectifying the impact by repairing, rehabilitating or restoring the affected environment;¶¶

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate corrective measures;¶¶

(e) Partially or completely compensating for the impact by replacing or providing comparable substitute resources or environments; or¶¶

(f) Implementing other measures approved by the Council.¶¶

(34) "Natural gas" means gas as defined in ORS 520.005.¶¶

(35) "Natural gas-fired facility" means an energy facility that is intended to be fueled by natural gas except for infrequent periods when the natural gas supply is interrupted, during which an alternate fuel may be used. Such alternate fuel use may not exceed 10 percent of expected fuel use in British thermal units, higher heating value on an annual basis.¶¶

(36) "Net carbon dioxide emissions" as defined in ORS 469.503(2)(e).¶¶

(37) "Net electric power output" means the electric power produced or capacity made available for use.

Calculation of net electric power output subtracts losses from on-site transformers and power used for any on-site electrical loads from gross capacity as measured or estimated at the generator terminals for each generating unit.¶¶

(38) "New and clean basis" means the average carbon dioxide emissions rate per hour and net electric power output of the energy facility, without degradation. The site certificate holder must determine the new and clean basis:¶¶

(a) By a 100-hour test at full power that the site certificate holder completes during the first 12 months of commercial operation of the energy facility, unless the Council specifies a different testing period for a non-base load power plant (or power augmentation) or a nongenerating energy facility. A 100-hour test performed for purposes of the certificate holder's commercial acceptance of the facility may suffice in lieu of testing after beginning commercial operation;¶¶

(b) With the results adjusted for the average annual site condition for temperature, barometric pressure and relative humidity and use of alternative fuels unless the Council specifies that the results for a non-base load power plant (or power augmentation) or a nongenerating energy facility be adjusted for the average temperature, barometric pressure and relative humidity at the site during the times of the year when the facility is intended to operate;¶¶

(c) Using a rate of 117 pounds of carbon dioxide per million Btu of natural gas fuel (higher heating value); and,¶¶

- (d) Using a rate of 161 pounds of carbon dioxide per million Btu of distillate fuel (higher heating value), if such fuel use is proposed by the applicant.¶
- (e) Notwithstanding subsection (a) and including subsections (b) through (d), for a facility that employs major power generating equipment that has previously been used, the new and clean basis means the average carbon dioxide emissions rate and net electric power output for the first use of the equipment at the site, as determined by historical data from the previous usage or by testing on site.¶
- (39) "Nominal electric generating capacity" as defined in ORS 469.300.¶
- (40) "Non-base load power plant" means a fossil-fueled generating facility that is limited by the site certificate to an average number of hours of operation per year of not more than 6,600 hours. For a non-base load power plant designed to operate at variable loads, the facility's annual hours of operation are determined by dividing the actual annual electric output of the facility in megawatt-hours by the facility's nominal electric generating capacity in megawatts. The Council will assume a 30-year life for the plants for purposes of determining gross carbon dioxide emissions, unless the applicant requests and the Council approves a shorter operational life in the site certificate. If the Council approves a shorter operational life, the certificate holder must operate the facility for no longer than the approved operational life or, before the expiration of the approved operational life, must request an amendment of the site certificate to extend the operational life.¶
- (41) "Nongenerating facility" as defined in ORS 469.503(2)(e).¶
- (42) "Offset" as defined in ORS 469.503(2)(e).¶
- (43) "Offset funds" means the amount of funds determined by the Council to satisfy the applicable carbon dioxide emissions standard pursuant to OAR 345-024-0560(3), 345-024-0600(3) or 345-024-0630(2) and (4).¶
- (44) "Owner" means owner or lessee under a capital lease.¶
- (45) "Permit" means any permit, license, certificate or other approval required by federal law, state statute, state administrative rule or local government ordinance.¶
- (46) "Person" as defined in ORS 469.300.¶
- (47) "Power augmentation" means technologies that increase the capacity and the heat rate of the plant above the capacity and heat rate of the base load gas plant. These include, but are not limited to, duct burning and some forms of steam augmentation.¶
- (48) "Project order" as defined in ORS 469.300.¶
- (49) "Qualified organization" means an organization that:¶
- (a) Is exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code as amended and in effect on September 18, 2015;¶
- (b) Either is incorporated in the State of Oregon or is a foreign corporation authorized to do business in the State of Oregon;¶
- (c) Has in effect articles of incorporation that:¶
- (A) Require that offset funds received under OAR 345-024-0710(3) are used for offsets;¶
- (B) Require that decisions on the use of the offset funds are made by a decision-making body composed of seven voting members of which three are appointed by the Council, three are Oregon residents appointed by the Bullitt Foundation or an alternative environmental nonprofit organization named by the body, and one is appointed by the applicants for site certificates that are subject to OAR 345-024-0550, 345-024-590, and 345-024-0620 and the holders of such site certificates; and¶
- (C) Require nonvoting membership on the decision-making body for holders of site certificates that have provided funds not yet disbursed under OAR 345-024-0710(3);¶
- (d) Has made available on an annual basis, beginning after the first year of operation, a signed opinion of an independent certified public accountant stating that the qualified organization's use of funds pursuant to ORS 469.503 conforms with generally accepted accounting procedures except that the qualified organization will have one year to conform with generally accepted accounting principles in the event of a nonconforming audit;¶
- (e) Has to the extent applicable, except for good cause, entered into contracts obligating at least 60 percent of the offset funds to implement offsets within two years after the commencement of construction of the facility; and¶
- (f) Has to the extent applicable, except for good cause, complied with OAR 345-024-0710(3).¶

(50) "Related or supporting facilities" as defined in ORS 469.300. The Council interprets the terms "proposed to be constructed in connection with" to mean that a structure is a related or supporting facility if it would not be built but for construction or operation of the energy facility. "Related or supporting facilities" does not include any structure existing prior to construction of the energy facility, unless such structure must be substantially modified solely to serve the energy facility.¶¶

(51) "Reviewing agency" means any of the following officers, agencies or tribes:¶¶

(a) The Department of Environmental Quality;¶¶

(b) The Water Resources Commission and the Water Resources Director through the Water Resources Department;¶¶

(c) The Fish and Wildlife Commission through the Oregon Department of Fish and Wildlife;¶¶

(d) The State Geologist;¶¶

(e) The Department of Forestry;¶¶

(f) The Public Utility Commission of Oregon;¶¶

(g) The Oregon Department of Agriculture;¶¶

(h) The Department of Land Conservation and Development;¶¶

(i) The Oregon Department of Aviation;¶¶

(j) The Pacific Northwest Electric Power and Conservation Planning Council;¶¶

(k) The Office of State Fire Marshal;¶¶

(l) The Department of State Lands;¶¶

(m) The State Historic Preservation Office;¶¶

(n) Any other agency identified by the Department;¶¶

(o) Any tribe identified by the Legislative Commission on Indian Services as affected by the proposed facility;¶¶

(p) The governing body of any incorporated city or county in Oregon within the study area as defined in OAR 345-001-0010 for impacts to public services;¶¶

(q) Any special advisory group designated by the Council under ORS 469.480; and¶¶

(r) The federal land management agency with jurisdiction if any part of the proposed site is on federal land.¶¶

(52) "Significant" means having an important consequence, either alone or in combination with other factors, based upon the magnitude and likelihood of the impact on the affected human population or natural resources, or on the importance of the natural resource affected, considering the context of the action or impact, its intensity and the degree to which possible impacts are caused by the proposed action. Nothing in this definition is intended to require a statistical analysis of the magnitude or likelihood of a particular impact.¶¶

(53) "Site" as defined in ORS 469.300. "Energy facility site" means all land upon which an energy facility is located or proposed to be located. "Related or supporting facilities site" means all land upon which related or supporting facilities for an energy facility are located or proposed to be located.¶¶

(54) "Site boundary" means the perimeter of the site of a proposed energy facility, its related or supporting facilities, all temporary laydown and staging areas and all corridors and micro-siting corridors proposed by the applicant.¶¶

(55) "Site certificate" as defined in ORS 469.300.¶¶

(56) "Solar photovoltaic power generation facility" includes, but is not limited to, an assembly of equipment that converts sunlight into electricity and then stores or transfers that electricity. This includes photovoltaic modules, mounting and tracking equipment, posts, electrical cabling, inverters, transformers, collection systems, fencing, and other components.¶¶

(a) For the purposes of applying the acreage standards of ORS 469.300(11)(a)(D), the land used by a solar photovoltaic power generation facility includes the land occupied by its related or supporting facilities. Related or supporting facilities are not otherwise considered to be components of the solar photovoltaic power generation facility;¶¶

(b) A proposed solar photovoltaic power generation project may be determined to be an expansion of any existing or proposed solar photovoltaic power generation facility that is:¶¶

(A) Within one mile of the proposed project; and¶¶

(B) Determined to be under common ownership with the proposed project. Projects connected to the same parent company or individuals will be considered to be in common ownership, regardless of the operating business structure.

(c) As used in this rule and OAR 345-001-0250, a "proposed solar photovoltaic power generation project" means:

(A) The proposed development of a separate and independent solar photovoltaic power generation facility; or

(B) The proposed expansion or modification of a proposed or existing solar photovoltaic power generation facility.

(57) "Special nuclear material" means plutonium, uranium-233 or uranium enriched in the isotope 233 or in the isotope 235.

(578) "Strategic flexibility" means the value of a resource as part of a strategy to manage variance in costs or risks caused by future uncertainty.

(589) "Study area" means an area defined in this rule. Except as specified in subsections (f) and (g), the study area is an area that includes all the area within the site boundary and the area within the following distances from the site boundary:

(a) For impacts to threatened and endangered plant and animal species, 5 miles.

(b) For impacts to scenic resources and to public services, 10 miles.

(c) For land use impacts and impacts to fish and wildlife habitat, one-half mile.

(d) For impacts to recreational opportunities, 5 miles.

(e) For impacts to protected areas described in OAR 345-022-0040, 20 miles.

(f) The distance stated in subsection (a) above does not apply to surface facilities related to an underground gas storage reservoir.

(g) The distances stated in subsections (a) and (d) above do not apply to pipelines or transmission lines.

(5960) "Substantial loss of steam host" means the thermal energy user associated with a high efficiency cogeneration facility has made such long-term changes in its manner and magnitude of operation as to result in the loss of one or more work shifts for at least a year, accompanied by at least a 30 percent resultant reduction in the use of thermal energy.

(601) "Substantial loss of fuel use efficiency" means an increase in the fuel chargeable to power heat rate at a high efficiency cogeneration facility to greater than 7000 Btu per kilowatt-hour (higher heating value), or reduction of the fraction of energy output going to the thermal energy user associated with the facility to less than 20 percent, as a result of a substantial loss of steam host. Substantial loss of fuel use efficiency does not include efficiency losses due to equipment wear or condition.

(612) "Surface facilities related to an underground gas storage reservoir" means structures or equipment adjacent to and associated with an underground gas storage reservoir that are proposed to be built in connection with an underground gas storage reservoir and include, but are not limited to:

(a) Facilities such as stripping plants, main line dehydration stations, offices, warehouses, equipment shops, odorant storage and injection equipment and compressors;

(b) Pipelines, such as gathering lines and liquid collection lines; and

(c) Roads and road maintenance equipment housing at the reservoir site.

(623) "Thermal power plant" as defined in ORS 469.300.

(634) "Total energy output" means the sum of useful thermal energy output and useful electrical energy output.

(645) "Underground gas storage reservoir" as defined in ORS 469.300.

(656) "Useful thermal energy" means the verifiable thermal energy used in any industrial or commercial process, heating or cooling application;

(667) "Utility" as defined in ORS 469.300.

(678) "Vice-chair" means the vice-chairman or vice-chairwoman of the Energy Facility Siting Council.

(689) "Waste disposal facility" as defined in ORS 469.300.

Statutory/Other Authority: ORS 469.470, 469.503

Statutes/Other Implemented: ORS 469.300-570, 469.590-619, 469.992

ADOPT: 345-001-0250

RULE SUMMARY: Adopts findings and procedures required to make a determination that a solar photovoltaic power generation project is a separate and independent facility, or an expansion or modification of an existing facility, as described in amended OAR 345-001-0010(56).

CHANGES TO RULE:

345-001-0250

Solar Photovoltaic Power Generation Facilities

(1) To determine that a proposed solar photovoltaic power generation project is an expansion of an existing or proposed solar photovoltaic power generation facility as described under OAR 345-001-0010(56)(b), the Council must find that the preponderance of the evidence on the record of a declaratory ruling issued under this rule, or other proceeding before the council, supports such a conclusion. In making findings under this section, the Council may consider factors including, but not limited to:¶

(a) The permitting or operational status of the existing or proposed solar photovoltaic power generation facility;¶

(b) Whether or not operational and financing decisions for the proposed project would be made independently from the existing or proposed solar photovoltaic power generation facility;¶

(c) Whether or not the output of the proposed project and the proposed or existing solar photovoltaic power generation facility would be sold under separate power purchase agreements; and¶

(d) Whether or not the output of the project and the proposed or existing solar photovoltaic power generation facility would be transmitted under separate interconnection agreements.¶

(2) Any person, including the Department, may petition the Council to issue a declaratory ruling with respect to the applicability of ORS 469.300(11)(a)(D) and section (1) of this rule to a proposed solar photovoltaic power generation project. The Council will review such a petition under the procedures described in OAR 137-002-0010 to 137-002-0060, subject to the following:¶

(a) A petition under this rule must be submitted to the Department in writing and must include all information required under OAR 137-002-0010, including:¶

(A) The name of the developer or owner of the proposed solar photovoltaic power generation project;¶

(B) A specific request for findings that a proposed solar photovoltaic power generation project is either:¶

(i) An expansion or modification of a proposed or existing solar photovoltaic power generation facility; or¶

(ii) A separate and independent solar photovoltaic power generation facility;¶

(C) A detailed statement of facts relevant to the factors described under section (1) of this rule, including sufficient facts to show the petitioner's interest in the outcome of the requested declaratory ruling; and¶

(D) The name and address of petitioner and of any other person known by petitioner to be interested in the requested declaratory ruling.¶

(b) Within seven days after a petition is filed under this section, the Department will post an announcement of the petition to the Department's website.¶

(c) If the Council decides to issue a ruling, the petitioner, the owner or developer of the proposed solar photovoltaic power generation project, and the Department will be parties to the proceeding. Other persons may petition the Council for permission to participate in the proceedings as described in OAR 137-002-0025; and¶

(d) The Council will not issue a ruling on the petition if the owner or developer of the solar photovoltaic power generation project indicates that it intends to submit a notice of intent to file an application for a site certificate for a facility containing the proposed solar photovoltaic power generation project within 60 days after the petition is filed with the agency. If the NOI is not submitted by the date indicated, the Council will immediately serve notice on the parties under OAR 137-002-0020.¶

(3) The Council will not make a ruling on the applicability of ORS 469.300(11)(a)(D) or section (1) of this rule to any solar photovoltaic power generation facility with a land use permit approved by a local government on or before the effective date of this rule unless a solar photovoltaic power generation project is proposed on lands within one mile of the solar photovoltaic power generation facility.¶

(4) The developer or owner of a solar photovoltaic power generation facility is not subject to fees under ORS

469.421(1) for the expenses incurred by the Council and Department related to proceedings under section (2) of this rule.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.300

AMEND: 345-020-0006

RULE SUMMARY: Removes provisions implementing the version of ORS 469.320(8) that was superseded by 2019 Oregon Laws chapter 650, section 2.

CHANGES TO RULE:

345-020-0006

Submission of a Notice of Intent ¶

(1) The purpose of the notice of intent (NOI) is to notify the Department of Energy and the Council of a proposed facility and to provide information about the site and the characteristics of the facility sufficient for the preparation of the project order described in OAR 345-015-0160. Any person who intends to apply for a site certificate for a facility shall submit an NOI to the Department with the fee required by the fee schedule established under ORS 469.441, payable to the Oregon Department of Energy.¶

(2) Notwithstanding section (1), an applicant granted expedited review under OAR 345-015-0300 or 345-015-0310 need not submit an NOI.¶

~~(3) Notwithstanding the definition of "energy facility," a person may elect to apply for a site certificate for an electric power generating plant with an average electric generating capacity of less than 35 megawatts from wind energy. If such person chooses not to request expedited review under OAR 345-015-0300 or if expedited review is not granted, the person shall submit an NOI to the Department with the fee required by the fee schedule established under ORS 469.441, payable to the Oregon Department of Energy. An election to obtain a site certificate is final upon submission of the application.~~

Statutory/Other Authority: ORS 469.370, 469.470

Statutes/Other Implemented: ORS 469.330

AMEND: 345-021-0000

RULE SUMMARY: Removes provisions implementing the version of ORS 469.320(8) that was superseded by 2019 Oregon Laws chapter 650, section 2.

CHANGES TO RULE:

345-021-0000

General Requirements ¶¶

(1) Except for facilities that the Council has determined exempt as described in OAR 345-015-0350 to 345-015-0370 or for which a separate site certificate is not required according to ORS 469.320(5), a person may not construct or expand a facility unless the Council has granted a site certificate or an amendment to an existing site certificate.¶¶

~~(2) As used in this division, "energy facility" includes an electric power generating plant with an average electric generating capacity of less than 35 megawatts produced from wind energy for which a person has elected to apply for a site certificate under ORS 469.320(8).¶¶~~

~~(3) An applicant may not submit an application for a site certificate before the Department has issued a project order for the proposed facility as described in OAR 345-015-0160. The applicant may submit a draft application before the issuance of a project order. The applicant must submit the application before the expiration of the notice of intent.¶¶~~

~~(4) For an expedited review granted under OAR 345-015-0300 or 345-015-0310, section (3) does not apply and the applicant may submit an application for a site certificate any time after the Department determines the request for expedited review satisfies the requirements for expedited review as described in those rules.¶¶~~

~~(5) If the applicant submits a written request for waiver or modification of requirements in OAR 345-021-0010 to the Department, the Department may waive or modify those requirements that the Department determines are not applicable to the proposed facility.¶¶~~

~~(6) For any state or local government agency permits, licenses or certificates proposed by the applicant to be included in and governed by the site certificate, the applicant must include within the site certificate application all information that would otherwise be required by the state or local government agency in an application for such permit, license or certificate.¶¶~~

~~(7) For any federally-delegated permits that are needed for construction or operation of the proposed facility, the applicant must submit to the Department one copy of each federally-delegated permit application. The applicant may submit the site certificate application before submitting a copy of a federally-delegated permit application if the applicant submits a schedule of the date by which the applicant intends to submit the federally-delegated permit application. The Department may not find the site certificate application to be complete before receiving copies of all federally-delegated permit applications and a letter or other indication from each agency responsible for issuing a federally-delegated permit stating that the agency has received the permit application, identifying any additional information the agency is likely to need from the applicant and estimating the date when the agency will complete its review and issue a permit decision.¶¶~~

~~(8) If the proposed facility is a non-generating facility for which the applicant must demonstrate need under OAR 345-023-0005, in addition to the application for a site certificate described in 345-021-0010, the applicant must submit, to the Department, two copies of each energy resource plan or combination of plans on which the applicant relies to demonstrate need under OAR 345-023-0020, unless the applicant chooses to incorporate copies of the plans as part of the application for a site certificate. The applicant must submit the plans to the Department with the site certificate application. The Department may not find the site certificate application to be complete before receiving copies of the plans. The plans described in this section are part of the decision record for the Department's proposed order, described in OAR 345-015-0230.¶¶~~

~~(9) The applicant must submit an application for a site certificate to the Department with 25 percent of the fee the Department determines necessary for review of the application under ORS 469.421(3), payable to the Oregon Department of Energy. The applicant must pay the balance of the fee periodically, as specified by the~~

Department.¶

(109) Until the Department determines the application to be complete as described in OAR 345-015-0190 or 345-015-0310, it is a preliminary application. For the purpose of determining the applicable substantive criteria under ORS 469.504(1)(b)(A), the date the preliminary application is received by the Department is the date the application is submitted.

Statutory/Other Authority: ORS 469.373, 469.470

Statutes/Other Implemented: ORS 469.350, 469.370, 469.421