



## NOTICE OF PROPOSED RULEMAKING

INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 345

**DEPARTMENT OF ENERGY****ENERGY FACILITY SITING COUNCIL****FILED**

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ARCHIVES DIVISION

SECRETARY OF STATE

FILING CAPTION: Modernizing the Siting Process by Updating Siting Application Requirements and Other Changes

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 02/28/2026 5:00 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.*

*A public rulemaking hearing may be requested in writing by 10 or more people, or by a group with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.*

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### NEED FOR THE RULE(S)

The legislature established the Energy Facility Siting Council (EFSC) to oversee a comprehensive program for the siting, monitoring and regulation of energy facilities in Oregon. To this end, the Council must establish rules and standards to ensure that the siting, construction and operation of energy facilities is accomplished in a manner consistent with the protection of public health and safety and in compliance with Oregon's energy, land use, and environmental protection policies.

The draft proposed rules consist of a great many minor corrections, e.g., correction of outlining errors or incorrect references, that would otherwise qualify as "statutory minor corrections." These changes can be done without the normal rulemaking process. However, bundling these minor changes in a single rulemaking creates a much cleaner rulemaking record. Other very minimal changes include a reformatting of OAR 345-022-0050 to make it flow better, a reversion of an inadvertent rule change done in a prior rulemaking (OAR 345-023-0030(2)) and updating the version of other agency rules that are required to be met to a more recent time period. See OAR 345-022-0060(1) and (2).

In addition to these corrections and updates, these draft rules contain the following, more substantive proposed rule changes intended to update and modernize the Council's rules: updating how geospatial data is submitted, formalizing Department of Defense notice, removal of hard copy paper submission requirements, removal of limitations on preconstruction where not all rights have been obtained, and updates to the versions of other rules that are referenced.

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

Staff Report and Supporting Materials for Agenda Item C of the December 19, 2025 Energy Facility Siting Council Meeting, available from: <https://www.oregon.gov/energy/facilities-safety/facilities/Pages/Council-Meetings.aspx>

### STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

The adoption and amendment of the rules herein are intended to update the energy siting process related rules in relatively minor ways. It is not clear that this rulemaking would have a direct impact on racial equity in this state.

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#### FISCAL AND ECONOMIC IMPACT:

The rules are thus not expected to create additional expenditures or revenues for state agencies or units of local government. Efficiencies created by these changes such as the removal of printing requirement for application materials could reduce application costs for some applicants, but these reduced costs are hard to estimate at this time.

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#### 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).*

These rules will apply to persons applying for an energy facility site certificate. Typically, applicants and certificate holders include electric and natural gas utilities, independent power producers, and energy developers. Because the analysis under the proposed rules is substantively the same as that required under the current rules, there is no anticipated cost increase, and indeed there is potentially a cost savings as a result of having rules that are easier to follow.

No direct fiscal impacts or administrative costs to state agencies or units of local government are expected to result from these rules.

We estimate that there may be approximately 12-15 energy developers operating in Oregon that have 50 or fewer employees, although to our understanding, many of these companies utilize parent companies or affiliates as a core part of their business model and thus may not qualify as small businesses. However, assuming they all qualified as small businesses, and assuming all were to apply for a site certificate in the future (which is not expected), our best estimate is that there are potentially 12-15 small businesses that could be affected by the proposed rules.

If a small business were to apply for a site certificate in the future, the impacts would be identical to those experienced by other applicants and certificate holders. Such impacts are not expected to be significant nor disproportionately affect small businesses as compared to other businesses because the impact of the rules is not related to the size of the business proposing a project but to the size and location of the project being proposed.

The expected reporting, recordkeeping and administrative activities and other costs required to comply with the rules would be similar to those required under the current rules. We note that as part of the siting process, applicants must demonstrate that they have the ability to design, construct and operate the proposed facility in compliance with site certificate conditions and in a manner that protects public health and safety as well as the ability to restore the site to a useful, non-hazardous condition. We note that a business that has this ability, or access to the technical expertise needed to demonstrate this ability, should not be disproportionately burdened by this rule regardless of its size. Because the proposed rules would only potentially affect a small number of small businesses, would only result in relatively small changes in costs of compliance, and would affect large and small energy developers equally, we do not expect the proposed rules to have an adverse impact on small businesses.

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

Small businesses were not specifically consulted during the development of these rules.

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WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

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RULES PROPOSED:

345-001-0101, 345-015-0110, 345-015-0220, 345-015-0230, 345-015-0310, 345-020-0006, 345-020-0016, 345-021-0000, 345-021-0010, 345-021-0090, 345-022-0020, 345-022-0022, 345-022-0040, 345-022-0050, 345-022-0060, 345-022-0080, 345-022-0100, 345-023-0030, 345-024-0090, 345-025-0006, 345-027-0220, 345-027-0360, 345-027-0367, 345-027-0400

ADOPT: 345-001-0101

RULE SUMMARY: Creating rule requiring applicants or certificate holders to submit geospatial data in formats acceptable to the Department.

CHANGES TO RULE:

345-001-0101

Information Submission Requirements

(1) Where practicable, any data used to produce maps, or any other geospatial data required under the Council's rules must also be submitted in an acceptable geospatial file format, such as a shapefile, geodatabase file, or other geospatial file format approved by the Department.

(2) The following data must be submitted in an acceptable geospatial file format:

(a) Biologic survey data;

(b) Environmental impact and risk assessment data;

(c) Site boundaries and micrositing corridors and areas;

(d) Locations of all major facility components; and

(e) Any other geospatial data, as directed by the Department, needed to ensure a facility is in compliance with applicable laws, rules, Council standards, and site certificate conditions.

(3) When there is a significant change in the design or location of a facility or component, the applicant or certificate holder must submit updated geospatial data to the Department in an acceptable geospatial file format.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.310, ORS 469.320

RULE SUMMARY: Formalizing notice to the Department of War.

CHANGES TO RULE:

345-015-0110

Public Notice of a Notice of Intent ¶

(1) After receiving a notice of intent (NOI), the Department must issue public notice of the NOI by:  
(a) Sending notice by mail or email to persons on the Council's general mailing list as defined in OAR 345-011-0020 and any special mailing list set up for the proposed project;¶  
(b) Sending notice by mail or email to the Northwest Department of War Regional Coordination Team representative;¶  
(c) Sending notice by mail to the property owners listed in Exhibit F of the NOI;¶  
(d) Sending notice by mail or email to the land management agency or organization with jurisdiction over the protected areas identified in Exhibit L of the NOI;¶  
(e) Except as provided in subsection (e), publishing notice in a newspaper of general circulation available in the vicinity of the proposed facility; and¶  
(f) If the energy facility is a transmission line or a pipeline or has, as a related or supporting facility, a transmission line or pipeline that, by itself, is an energy facility under the definition in ORS 469.300, publishing notice in one or, if possible, two newspapers of general circulation in the vicinity of the proposed facility.¶  
(2) In the public notice of the NOI, the Department must include the following information:¶  
(a) A description of the proposed facility;¶  
(b) The location of the site of the proposed facility;¶  
(c) The date when the applicant expects to submit an application for a site certificate;¶  
(d) A brief description of the Council's review process, including an explanation of the difference between the informational meetings described in OAR 345-015-0130 and the public hearing described in 345-015-0220;¶  
(e) An explanation that the applicant may choose to meet the Council's land use standard, OAR 345-022-0030, by obtaining local land use approval from the affected local government and that, if the applicant chooses to obtain local land use approval, any person interested in land use issues should participate in that affected local government's land use process if it is not yet complete;¶  
(f) The date, time, and location of any informational meeting on the NOI that the Department has scheduled or an explanation of how interested persons may request an informational meeting. If the Department has scheduled an informational meeting, the Department must state in the notice that public comments on the NOI may be given in person at the meeting;¶  
(g) An explanation that written comments on the NOI must be submitted by a specified date and may be submitted by regular mail, email or fax;¶  
(h) The name, address, email address and telephone number of a Department representative to contact for additional information; and¶  
(i) If the applicant has identified one or more proposed corridors in Exhibit D of the NOI, as required by 345-020-0011(1)(d):¶  
(A) An explanation that the corridors proposed by the applicant in the NOI are subject to change and that the applicant may propose adjustments to any proposed corridor in the application;¶  
(B) An explanation that the applicant may present adjustments to any proposed corridors at the informational meeting; and¶  
(C) An explanation that, in selecting one or more corridors for analysis in the application for a site certificate, the applicant must consider public comments on the corridors proposed in the NOI and on any corridor adjustments the applicant presents at the informational meeting.¶  
(3) If the Department learns that an applicant has applied for local land use approval, the Department must post a notice of the local land use proceeding on its website.¶  
(4) The Department must issue public notice in accordance with section (1) through (3) of this rule of any amended notice of intent that:  
(a) Significantly changes the proposed site boundary or location of the proposed energy facility or related or supporting facility;¶  
(b) Significantly increases:¶  
(A) The estimated quantity of fuel that will be used or produced by the proposed facility, or changes the proposed fuel type or source;¶  
(B) The generating capacity of the proposed energy facility;¶  
(C) The voltage of a proposed transmission line;¶

(D) The capacity or operating pressure of a proposed pipeline; or ¶

(E) The estimated gross carbon dioxide emissions that are reasonably likely to result from the operation of the proposed facility, or the proposed means of compliance with any applicable carbon dioxide standard emissions standard; ¶

(c) Increases water consumption or disposal by more than 5 percent; or ¶

(d) Changes the source of water.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.330

RULE SUMMARY: Correcting citations.

CHANGES TO RULE:

345-015-0220

Public Hearing and Notice on the Draft Proposed Order ¶

(1) After the issuance of the draft proposed order described in OAR 345-015-0210, the Energy Facility Siting Council or its hearing officer must conduct at least one public hearing on the draft proposed order in the vicinity of the site of the proposed facility. The public hearing is not a contested case hearing. If there is more than one public hearing, the "close of the record of the public hearing" means the close of the record of the final public hearing.¶

(2) The Department must, at least 20 days before the hearing:¶

(a) Submit notice for publication in a newspaper of general circulation available in the vicinity of the proposed facility; and¶

(b) ~~Send notice of the hearing by mail or email to:~~¶

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

(Bc) Persons on any special mailing list set up for the proposed project; and¶

(Cd) The property owners listed in the Background Information Exhibit F of the application (OAR 345-021-0010(3)(c)), as updated by the applicant upon the request of the Department.¶

(De) The land management agency or organization with jurisdiction over the protected areas identified in the application.¶

(3) In the notices described in subsections (2)(a) and (2)(b), the Department must include:¶

(a) The date, time and location of the public hearing;¶

(b) A description of the facility and the facility's general location;¶

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

(d) The addresses of locations where the public may inspect copies of the complete application and the website where the application may be found;¶

(e) The website where the draft proposed order may be found;¶

(f) The deadline for the public to submit written comments to be included in the record of the public hearing and a statement that such comments should be submitted to the presiding officer in care of the Department;¶

(g) A statement that 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 and received by the Department before the deadline;¶

(h) A statement that failure to raise an issue in person or in writing on the record of the public hearing with sufficient specificity to afford the decision maker an opportunity to respond to the issue precludes consideration of the issue in a contested case;¶

(i) A statement that to raise an issue with sufficient specificity, the person must have identified the recommended findings of fact, conclusions of law, or conditions of approval to which they object, specified the Council standard or other applicable state and local requirements on which their objection is based, and presented facts or statements supporting that objection on the record of the draft proposed order; and¶

(j) A statement that the Council will not accept or consider any further public comment on the site certificate application or on the draft proposed order after the close of the record of the public hearing.¶

(4) During the public hearing, the Department must explain the application 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 must state that:¶

(a) A person who intends to raise any issue that may be the basis for a contested case must raise the issue in person at the hearing or in a written comment submitted to the Department before the deadline stated in the notice of the public hearing; and¶

(b) A person who intends to raise any issue that may be the basis for a contested case must raise the issue with sufficient specificity to afford the Council, the Department, and the applicant an adequate opportunity to respond, including a statement of facts that support the person's position on the issue.¶

(6) At the public hearing, any person may present information regarding the pending application without administration of an oath. The presiding officer must record all presentations made during the public hearing. The presentations are part of the decision record for the application and may be rebutted in the contested case proceeding.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.370

RULE SUMMARY: Updating rule reference.

CHANGES TO RULE:

345-015-0230

Council Review and the Department of Energys Proposed Order ¶

(1) Following the close of the record of the public hearing conducted under OAR 345-015-0220, the Energy Facility Siting Council must review the draft proposed order. In accordance with ORS 469.370(3), when the Council meets to review a draft proposed order, the Council may not permit the applicant, reviewing agencies or the public to comment on any issue that may be the basis for a contested case.¶

(2) Following the Council's meeting to review the draft proposed order, the Department must issue a proposed order in accordance with ORS 469.370(4), taking into consideration the comments of the Council, any public comments made at a public hearing, written comments received before the close of the record of the public hearing, and agency consultation. In the proposed order, the Department must recommend either granting a site certificate with conditions or denying a site certificate for the proposed facility.¶

(3) Following issuance of the proposed order, the Department must issue a public notice of the proposed order, subject to the following:¶

(a) The public notice of the proposed order must include:¶

(A) A description of the facility and the facility's general location;¶

(B) A summary of the recommendations included in the Proposed Order;¶

(C) A description of the process and deadline for requests to participate as a party or limited party in the contested case under OAR 345-015-0415;¶

(D) The date of the prehearing conference, if any;¶

(E) The date of the hearing; and¶

(F) The deadline for the Department and the applicant or certificate holder to respond to petitions for party status; and¶

(b) The Department must send the notice by mail or email to:¶

(A) All persons on the Council's general mailing list;¶

(B) All persons on any special mailing list set up for the proposed project;¶

(C) All persons who commented in person or in writing on the record of the public hearing conducted under OAR 345-015-0220; and¶

(D) The property owners listed in the Background Information Exhibit F of the site certificate application (OAR 345-021-0010(3)(c)), as updated by the applicant upon the request of the Department; and¶

(E) The land management agency or organizations with jurisdiction over the protected areas identified in the proposed order.¶

(4) On the same date as notice is issued under section (3) of this rule, the Department must notify the applicant that the applicant must notify the hearing officer and the Department of any issues the applicant intends to raise in the contested case proceeding by the date established in paragraph (3)(a)(C) of this rule.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.370

RULE SUMMARY: Updating rule references and removing default printed copy requirement.

CHANGES TO RULE:

345-015-0310

Request for Expedited Review of Special Criteria Facilities ¶

(1) Any person who proposes to construct and operate a special criteria facility, as defined in section (2), and who chooses to request expedited review of an application for a site certificate must submit to the Department a request for expedited review as described in section (3) with the fee required by the fee schedule established under ORS 469.441, payable to the Oregon Department of Energy.¶

(2) "Special criteria facility" means a facility that meets the criteria stated in ORS 469.373(1).¶

(3) In the request for expedited review, the applicant must provide documentation that the proposed facility is a special criteria facility, as defined in section (2), and:¶

(a) A description of the facility and the proposed site;¶

(b) The applicant's name and address;¶

(c) A schedule stating when the applicant expects to submit an application for a site certificate; and¶

(d) A list of all statutes, rules and ordinances applicable to the facility;¶

(4) Within 14 days after receiving the request for expedited review, the Department must determine, on a preliminary, non-binding basis, whether the proposed facility qualifies for expedited review under this rule and must notify the applicant. The Department may decide, on a preliminary, non-binding basis, that the proposed location of associated transmission lines or new natural gas pipelines outside of existing rights of way imposes no significant impact. The Department must provide to the applicant a mailing list of persons including, but not limited to, the agencies listed in ORS 469.373(4).¶

(5) After the Department has made the determination described in section (4), the applicant may submit a preliminary application for a site certificate, as described in OAR 345-021-0000 and OAR 345, divisions 21 through 24, subject to the following:¶

(a) The applicant must submit, to the Department, ~~two printed copies of the preliminary application~~, and an electronic version of the preliminary application in a non-copy-protected format acceptable to the Department. The applicant must submit ~~additional~~ printed copies of the preliminary application to the Department upon request; and¶

(b) Unless the Department directs otherwise, the applicant must send an electronic copy of the preliminary application to each person on the mailing list described in section (4). The applicant must provide a printed copy of all or part of the preliminary application to any person on the mailing list upon request.¶

(6) Within 30 days after receiving a preliminary application for a site certificate, the Department must issue a project order. In the project order, the Department may make changes to the analysis areas. The project order is not a final order. The Council or the Department may amend the project order at any time.¶

(7) Within 30 days after receiving a preliminary application for a site certificate, the Department must either:¶

(a) Notify the applicant that the application is complete; or¶

(b) Notify the applicant that the application is not complete and describe the information needed to complete the application, to the extent known to the Department at the time of the notification.¶

(8) If additional information is needed to complete the application, the applicant must submit the information to the Department. If follow-up requests for additional information are needed, the Department may specify dates by which the applicant must submit the information. The Department may specify the dates by which the applicant must submit additional information needed to complete the application. At the request of the applicant, the Department may extend the deadline for submission of the information. If the applicant does not submit the information by the deadline specified by the Department, including any allowed extension, the Council may reject the application. The rejection of an application is subject to appeal under ORS 469.403(3).¶

(9) An application is complete when the Department finds that the applicant has submitted information adequate for the Council to make findings or impose conditions on all applicable Council standards. The Department may find that the application is complete without requiring the applicant to submit all information described under OAR 345-021-0000 and OAR 345, divisions 21 through 24. The Department must notify the applicant when the Department finds that the application is complete and, if needed, may request the application supplement described in OAR 345-021-005515-0200.¶

(10) The date of filing is the date the Department receives the application supplement described in OAR 345-021-005515-0200 or, if no supplement is needed, the date the Department notifies the applicant that the application is complete.¶

(11) After a determination that an application is complete, the Department may require additional information

from the applicant if the Department identifies a need for that information during its review of the application. Submission of such information does not constitute an amendment of the application.¶

(12) In the notification to the applicant that the application is complete, as described in section (7)(a) or (9), the Department must instruct the applicant send a copy of the notice described in section (13) and a copy of the application supplement, if any, to specified persons including but not limited to the agencies listed in ORS 469.373(4).¶

(13) The Department must prepare a notice that:¶

- (a) States that the application is complete and specifies the date of filing;¶
- (b) Requests the agency reports as described in OAR 345-015-0200; and¶
- (c) Includes the statements required by ORS 469.373(4)(a) and (b).¶

(14) At the time specified in section (15), the Department must issue a public notice, including but not limited to:¶

- (a) A description of the proposed facility and the general location of the energy facility;¶
- (b) The date, time, and location of a public informational meeting on the application;¶
- (c) A statement that the application has been filed;¶
- (d) Addresses of locations where the public may review copies of the application; and¶
- (e) The name, address, email address, and telephone number of the Department's representative to contact for more information.¶

(15) At least 14 days before the meeting described in section (16), the Department must:¶

- (a) Submit the notice described in section (14) for publication in a newspaper of general circulation available in the vicinity of the proposed facility; and¶
- (b) Send the notice described in section (14) by mail or email to all persons on:¶
  - (A) The Council's general mailing list as defined in OAR 345-011-0020;¶
  - (B) Any special mailing list set up for the proposed project; and¶
  - (C) The list of property owners provided in Exhibit F of the application.¶
- (D) The land management agencies or organizations with jurisdiction over the protected areas identified in the application.¶

(16) The Department must hold a public informational meeting on the application.¶

(17) Within 90 days after the date of filing, the Department must issue a draft proposed order including, but not limited to:¶

- (a) A description of the proposed facility;¶
- (b) A list of the permits, licenses and certificates that are addressed in the application and that are required for the construction or operation of the proposed facility;¶
- (c) A list of the statutes, rules and local ordinances that are the standards and criteria for approval of any permit, license or certificate addressed in the application and that are required for the construction or operation of the proposed facility; and¶
- (d) Proposed findings regarding compliance with the applicable standards and criteria for approval of a site certificate and specifying conditions that are required for the facility to comply.¶

(18) The Council must review the draft proposed order. In accordance with ORS 469.370(3), when the Council meets to review a draft proposed order, the Council may not permit the applicant, reviewing agencies, or the public to comment on any issue that may be the basis for a contested case.¶

(19) After the Council's review as described in section (18), the Department must issue a proposed order.¶

(20) At the time specified in section (21), the Department must issue a public notice, including but not limited to:¶

- (a) A description of the facility and its general location;¶
- (b) The name, address, email address, and telephone number of the Department's representative to contact for more information;¶
- (c) A statement that the Department has issued a proposed order and that copies of the application and proposed order are available for inspection at no cost and will be provided at reasonable cost;¶
- (d) The date, time and location of a public hearing on the proposed order;¶
- (e) A statement that the record for public comment on the application will close at the conclusion of the hearing and that failure to raise an issue in person or in writing prior to the close of the record with sufficient specificity to afford the decision maker an opportunity to respond to the issue precludes consideration of the issue in a contested case or by a court on judicial review of the Council's decision;¶
- (f) A statement that to raise an issue with sufficient specificity, a person must present facts that support the person's position on the issue; and¶
- (g) A statement that the hearing is the only opportunity for the public to make a factual record for review and that persons having objection to the proposed order must appear at the hearing in person or in writing and present factual evidence, including any expert testimony, and legal argument.¶

(21) At least 20 days before the hearing described in section (22), the Department must:¶

- (a) Submit the notice described in section (20) for publication in a newspaper of general circulation available in the

vicinity of the proposed facility; and¶

(b) Send the notice described in section (20) by mail or email to all persons on:¶

(A) The Council's general mailing list as defined in OAR 345-011-0020; and¶

(B) Any special mailing list set up for the proposed project;¶

(C) The list of property owners provided in Exhibit F of the application; and¶

(D) The land management agencies or organizations with jurisdiction over the protected areas identified in the application.¶

(22) The Council must hold at least one public hearing on the proposed order in the area affected by the proposed facility according to the procedures described in OAR 345-015-0320.¶

(23) Before the conclusion of the hearing described in section (22), the applicant may either:¶

(a) Request an opportunity to present additional written evidence, arguments or testimony regarding the application; or¶

(b) Request a contested case hearing on the application. Not later than 7 days after making a request in the public hearing, the applicant must submit the request to the Council in writing, including evidence sufficient to show good cause for the contested case hearing.¶

(24) Except as described in section (27), following the close of the record of the public hearing, the Department must issue a draft final order for the Council. In preparing the draft final order, the Department must take into account the entire record, including the summary prepared by the hearing officer described in OAR 345-015-0320.¶

(25) Except as described in section (27), within six months after the date of filing, the Council must make its decision on the record and the draft final order. The Council must:¶

(a) Grant the site certificate;¶

(b) Grant the site certificate with conditions;¶

(c) Deny the site certificate; or¶

(d) Determine that the proposed facility is not a special criteria facility as defined in section (2) and is not eligible for expedited review under this rule.¶

(26) The Council must issue a site certificate for the proposed facility if the Council determines that the proposed facility, with any required conditions to the site certificate, will comply with:¶

(a) The requirements for expedited review as specified in this rule;¶

(b) The standards adopted by the Council pursuant to ORS 469.501(1)(a), (c) to (e), (g), (h) and (L) to (o);¶

(c) The requirements of ORS 469.503(3); and¶

(d) The requirements of ORS 469.504(1)(b).¶

(27) If the applicant requests a contested case hearing as described in section (23)(b), the Council, after considering the request in a public meeting, may grant the request if the Council finds that the applicant has shown good cause for a contested case hearing.¶

(28) If the Council grants the request for a contested case hearing, the Department must issue a notice of a contested case on the proposed order as described in OAR 345-015-0014. The Council must then consider the application under the same contested case procedures used for a nonexpedited application for a site certificate.¶

(29) If, as described in section (25), the Council determines that the proposed facility is not a special criteria facility and is not eligible for expedited review under this rule, then the Council must consider the application under the same review procedures used for a nonexpedited application from the point of the applicant's submission of an application. The Department must treat the application before the Council at the time of the determination as a preliminary application for the purpose of review under OAR 345-015-0190, except that within 30 days after the Council's determination, the Department must determine whether the application is complete. The Department must notify the applicant as described in OAR 345-015-0190(1) and the Department must issue an amended project order that includes the Council standards that were not applicable under expedited review. For the purpose of the land use standard, the applicant must obtain a Council determination as described under OAR 345-022-0030(2)(b), and the Council must apply the applicable substantive criteria in effect on the date the application was originally submitted under section (5).¶

(30) The applicant may withdraw its request for expedited review under this rule at any time and request that the Council consider its application under the same review procedures used for a nonexpedited application. After such a request, the Department must treat the application as a preliminary application for the purpose of review under OAR 345-015-0190 as described in section (29). For the purpose of the land use standard, the applicant must obtain a Council determination as described under OAR 345-022-0030(2)(b), and the Council must apply the applicable substantive criteria in effect on the date the application was originally submitted under section (5).

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.373

RULE SUMMARY: Removing default printed copy requirement.

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) The applicant must submit, to the Department, ~~two printed copies of the NOI~~, and an electronic version of the NOI in a non-copy-protected format acceptable to the Department. The applicant must submit ~~additional~~ printed copies of the NOI to the Department upon request. The applicant must prepare and distribute additional copies of the NOI as directed by the Department.¶

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

Statutory/Other Authority: ORS 469.370, ORS 469.470

Statutes/Other Implemented: ORS 469.330

AMEND: 345-020-0016

RULE SUMMARY: Removing the default printed copy requirement.

CHANGES TO RULE:

345-020-0016

Amendment of Notice of Intent ¶

(1) The applicant may amend the notice of intent (NOI). The applicant must submit, to the Department, ~~two printed copies of the amended NOI~~, and an electronic version of the amended NOI in a non-copy-protected format acceptable to the Department. The applicant must provide a printed copy of all or part of the amended NOI to any person on the distribution list as directed by the Department.¶

(2) Submission of an amended NOI does not extend the expiration date of the NOI. The applicant, however, may petition the Council to extend the duration of the NOI as provided in OAR 345-020-0060.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.330

RULE SUMMARY: Clarifying how information pursuant to (7) is submitted to the Department.

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) 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.¶

(3) For an expedited review granted under OAR 345-015-0300 or 345-015-0310, section (2) 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.¶

(4) If the applicant submits a written request for waiver or modification of requirements in OAR 345, divisions 22 through 24 to the Department, the Department may waive or modify those requirements that the Department determines are not applicable to the proposed facility.¶

(5) 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.¶

(6) 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.¶

(7) 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 OAR 345, divisions 21 through 24, the applicant must submit to the Department ~~two copies of~~in an electronic format 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~~ these 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.¶

(8) 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.¶

(9) 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, ORS 469.470

Statutes/Other Implemented: ORS 469.350, ORS 469.370, ORS 469.421

RULE SUMMARY: Clarifying reference and removing default printed copy requirement.

CHANGES TO RULE:

345-021-0010

Contents of an Application ¶

(1) The project order described in OAR 345-015-0160(1) identifies the provisions of this rule and OAR 345, divisions 22 through 24, that are applicable to the application for the proposed facility, including any appropriate modifications to applicable provisions of these rules. The applicant must include in its application for a site certificate information that addresses each provision of the rules identified in the project order. The applicant must designate the information with an appropriate exhibit label that corresponds with the standard in question, e.g., the information provided for the land use standard described in OAR 345-022-0030 should be labeled as "Land Use Exhibit." If the same information is required in each of several exhibits the applicant may provide the required information in one exhibit and include appropriate references in the others. For the purpose of submitting an application for a site certificate in an expedited review granted under OAR 345-015-0300 or 345-015-0310, the applicant must include information that addresses all applicable provisions of this rule and OAR 345, divisions 22 through 24. In such expedited reviews, analysis areas addressed in this rule are the study areas defined in OAR 345-001-0010, subject to later modification in the project order.¶

(2) The Council standards referred to in the project order described in OAR 345-015-0160(1) are detailed in OAR 345, divisions 22 through 24, including all applicable factual support.¶

(3) In addition to the material required in OAR 345, divisions 22 through 24, the applicant must submit in an exhibit called "Background Information Exhibit" the following background information about the project to assist the Council in its review of the application:¶

(a) Information about the proposed facility, construction schedule and temporary disturbances of the site, including:¶

(A) A description of the proposed energy facility, including as applicable:¶

(i) For electric power generating plants, the nominal electric generating capacity and the average electrical generating capacity, as defined in ORS 469.300;¶

(ii) Major components, structures and systems, including a description of the size, type and configuration of equipment used to generate, store, transmit, or transport electricity, useful thermal energy, or fuels;¶

(iii) A site plan and general arrangement of buildings, equipment and structures;¶

(iv) Fuel and chemical storage facilities, including structures and systems for spill containment;¶

(v) Equipment and systems for fire prevention and control;¶

(vi) For thermal power plants, combustion turbine power plants, or other facilities designed to generate electricity from gas, liquid, or solid fuels:¶

(I) A discussion of the source, quantity and availability of all fuels proposed to be used in the facility to generate electricity or useful thermal energy;¶

(II) If the facility will generate electric power from natural gas, petroleum, coal or any form of solid, liquid or gaseous fuel derived from such material, a discussion of methods the facility will use to ensure that the facility does not emit greenhouse gasses into the atmosphere, and a description of any equipment the facility will use to capture, sequester, or store greenhouse gases;¶

(III) A description of energy flows within the facility, including power cycle and steam cycle diagrams, as appropriate;¶

(IV) A description of equipment and systems for disposal of waste heat generated by the facility; and¶

(V) The fuel chargeable to power heat rate of the energy facility.¶

(vii) For surface facilities related to underground gas storage, estimated daily injection and withdrawal rates, horsepower compression required to operate at design injection or withdrawal rates, operating pressure range and fuel type of compressors;¶

(viii) For facilities to store liquefied natural gas, the volume, maximum pressure, liquefaction and gasification capacity in thousand cubic feet per hour;¶

(B) A description of major components, structures and systems of each related or supporting facility;¶

(C) The approximate dimensions of major facility structures and visible features;¶

(D) If the proposed energy facility is a pipeline or a transmission line or has, as a related or supporting facility, a transmission line or pipeline that, by itself, is an energy facility under the definition in ORS 469.300, a corridor selection assessment explaining how the applicant selected the corridors for analysis in the application. In the assessment, the applicant must evaluate the corridor adjustments the Department has described in the project order, if any. The applicant may select any corridor for analysis in the application and may select more than one

corridor. However, if the applicant selects a new corridor, then the applicant must explain why the applicant did not present the new corridor for comment at an informational meeting under OAR 345-015-0130. In the assessment, the applicant must discuss the reasons for selecting the corridors, based upon evaluation of the following factors:¶

- (i) Least disturbance to streams, rivers and wetlands during construction;¶
- (ii) Least percentage of the total length of the pipeline or transmission line that would be located within areas of Habitat Category 1, as described by the Oregon Department of Fish and Wildlife;¶
- (iii) Greatest percentage of the total length of the pipeline or transmission line that would be located within or adjacent to public roads and existing pipeline or transmission line rights-of-way;¶
- (iv) Least percentage of the total length of the pipeline or transmission line that would be located within lands that require zone changes, variances or exceptions;¶
- (v) Least percentage of the total length of the pipeline or transmission line that would be located in a protected area as described in OAR 345-022-0040;¶
- (vi) Least disturbance to areas where historical, cultural or archaeological resources are likely to exist;¶
- (vii) Greatest percentage of the total length of the pipeline or transmission line that would be located to avoid seismic, geological and soils hazards; and¶
- (viii) Least percentage of the total length of the pipeline or transmission line that would be located within lands zoned for exclusive farm use.¶

(E) If the proposed energy facility is a pipeline or transmission line or has, as a related or supporting facility, a transmission line or pipeline of any size:¶

- (i) The length of the pipeline or transmission line;¶
- (ii) The proposed right-of-way width of the pipeline or transmission line, including to what extent new right-of-way will be required or existing right-of-way will be widened;¶
- (iii) If the proposed transmission line or pipeline corridor follows or includes public right-of-way, a description of where the transmission line or pipeline would be located within the public right-of-way, to the extent known. If the applicant proposes to locate all or part of a transmission line or pipeline adjacent to but not within the public right-of-way, describe the reasons for locating the transmission line or pipeline outside the public right-of-way. The applicant must include a set of clear and objective criteria and a description of the type of evidence that would support locating the transmission line or pipeline outside the public right-of-way, based on those criteria;¶
- (iv) For pipelines, the operating pressure and delivery capacity in thousand cubic feet per day and the diameter and location, above or below ground, of each pipeline; and¶
- (v) For transmission lines, the rated voltage, load carrying capacity, type of current, and a description of transmission line structures and their dimensions.¶

(F) A construction schedule including the date by which the applicant proposes to begin construction and the date by which the applicant proposes to complete construction. Construction is defined in OAR 345-001-0010. The applicant must describe in this exhibit all work on the site that the applicant intends to begin before the Council issues a site certificate. The applicant must include an estimate of the cost of that work. For the purpose of this exhibit, "work on the site" means any work within a site or corridor, other than surveying, exploration or other activities to define or characterize the site or corridor, that the applicant anticipates or has performed as of the time of submitting the application.¶

(b) Information about the location of the proposed facility, including:¶

- (A) A map or maps showing the proposed locations of the energy facility site, all related or supporting facility sites and all areas that might be temporarily disturbed during construction of the facility in relation to major roads, water bodies, cities and towns, important landmarks and topographic features, using a scale of 1 inch = 2000 feet or smaller when necessary to show detail;¶
- (B) A description of the location of the proposed energy facility site, the proposed site of each related or supporting facility and areas of temporary disturbance, including the total land area (in acres) within the proposed site boundary, the total area of permanent disturbance, and the total area of temporary disturbance. If a proposed pipeline or transmission line is to follow an existing road, pipeline or transmission line, the applicant must state to which side of the existing road, pipeline or transmission line the proposed facility will run, to the extent this is known; and¶
- (C) For energy generation facilities, a map showing the approximate locations of any other energy generation facilities that are known to the applicant to be permitted at the state or local level within the study area as defined in OAR 345-001-0010 for impacts to public services.¶

(c) A list of the names and mailing addresses of property owners, as described in this subsection:¶

- (A) The list must include all owners of record, as shown on the most recent property tax assessment roll, of property located:¶
- (i) Within 100 feet of property which is the subject of the application, where the subject property is wholly or in part within an urban growth boundary;¶

(ii) Within 250 feet of the property which is the subject of the application, where the subject property is outside an urban growth boundary and not within a farm or forest zone; or¶

(iii) Within 500 feet of the property which is the subject of the application, where the property is within a farm or forest zone.¶

(B) The applicant must submit an updated list of property owners as requested by the Department before the Department issues notice of any public hearing on the application for a site certificate as described in OAR 345-015-0220; and¶

(C) In addition to incorporating the list in the application, the applicant must submit the list to the Department in an electronic format approved by the Department.¶

(d) Identification, by legal citation, of all state statutes and administrative rules and local government ordinances containing standards or criteria that the proposed facility must meet for the Council to issue a site certificate, other than statutes, rules and ordinances identified in Exhibit EOAR 345-022-0010(c), and identification of the agencies administering those statutes, administrative rules and ordinances. The applicant must identify all statutes, administrative rules and ordinances that the applicant knows to be applicable to the proposed facility, whether or even if not identified in the project order. To the extent not addressed by other materials in the application, the applicant must include a discussion of how the proposed facility meets the requirements of the applicable statutes, administrative rules and ordinances.¶

(e) If the proposed facility is a facility for which the Council has adopted specific standards, information about the facility providing evidence to support findings by the Council as required by the following rules:¶

(A) For wind energy facilities, OAR 345-024-0010 and 345-024-0015;¶

(B) For surface facilities related to underground gas storage reservoirs, OAR 345-024-0030, including information required by OAR 345-024-0030(3);¶

(C) For any transmission line under Council jurisdiction, OAR 345-024-0090; and¶

(D) For a fossil-fueled power plant or other facility that emits carbon dioxide, OAR 345-024-0500 to 345-024-0720.¶

(f) Documents prepared in connection with an environmental assessment or environmental impact statement for the proposed facility under the National Environmental Policy Act of 1970, if any, may contain some of the information required under the application information requirements in OAR 345, divisions 021 and 022. The applicant may copy relevant sections of such documents into the appropriate exhibits of the site certificate application. The applicant may otherwise submit full copies of those documents and include, in the appropriate exhibits of the site certificate application, cross-references to the relevant sections of those documents. The applicant may use such documents only to avoid duplication. The applicant must include additional information in the site certificate application as needed to meet the requirements of the application information requirements in OAR 345, divisions 021 and 022.¶

(g) The applicant must include a table of contents in the preliminary application identifying the location of each required exhibit.¶

(h) The applicant must submit, to the Department, ~~an original and a copy of the printed preliminary application, and~~ a non-copy-protected electronic version of the preliminary application in a format acceptable to the Department. The applicant must submit ~~additional~~ printed copies of the preliminary application to the Department upon request. The applicant must prepare and distribute additional copies of the application as required by OAR 345-001-0050.¶

(i) Any other information that the Department requests in the project order or in a notification regarding expedited review.

Statutory/Other Authority: ORS 469.373, 469.470

Statutes/Other Implemented: ORS 469.350, 469.370, 469.413, 469.501, 469.503, 469.504

RULE SUMMARY: Removing default printed copy requirement.

CHANGES TO RULE:

345-021-0090

Amendment of an Application ¶

- (1) When the applicant is preparing to submit an amended application, the applicant must notify the Department.¶
- (2) The applicant may amend a preliminary application at any time.¶
- (3) If the applicant submits an amended application after the date of filing as determined under OAR 345-015-0190 or 345-015-0310, the Department may withdraw the filing of the application until the Department has reviewed the amended application for completeness as described under OAR 345-015-0190 or 345-015-0310.¶
- (4) If the applicant submits an amended application after issuance of a contested case notice under OAR 345-015-0403014, the Department may, by motion, request that the contested case proceeding be terminated and the Council's hearing officer may issue an order terminating the proceeding. Upon issuance of the order, the Department may withdraw the filing of the application until the Department has reviewed the amended application for completeness as described under OAR 345-015-0190 or 345-015-0310.¶
- (5) The applicant must submit, to the Department, ~~two printed copies of the amended application, and an electronic version of the amended application in a non-copy-protected format acceptable to the Department. The applicant must provide additional printed copies of the amended application to the Department upon request. The applicant must prepare and distribute additional copies of the amended application in the manner described in OAR 345-015-0180.~~

Statutory/Other Authority: ORS 469.373, 469.470

Statutes/Other Implemented: ORS 469.350

RULE SUMMARY: Correcting internal rule references.

CHANGES TO RULE:

345-022-0020

Structural Standard ¶

(1) Except for facilities described in sections (2) and (3), to issue a site certificate, the Council must find that:¶

- (a) The applicant, through appropriate site-specific study, has adequately characterized the seismic hazard risk of the site.¶
- (b) The applicant can design, engineer, and construct the facility to avoid dangers to human safety and the environment presented by seismic hazards affecting the site, as identified in subsection (1)(a).¶
- (c) The applicant, through appropriate site-specific study, has adequately characterized the potential geological and soils hazards of the site and its vicinity that could, in the absence of a seismic event, adversely affect, or be aggravated by, the construction and operation of the proposed facility; and¶
- (d) The applicant can design, engineer and construct the facility to avoid dangers to human safety and the environment presented by the hazards identified in subsection (c).¶

(2) The Council may not impose the Structural Standard in section (1) to approve or deny an application for an energy facility that would produce power from wind, solar or geothermal energy. However, the Council may, to the extent it determines appropriate, apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.¶

(3) The Council may not impose the Structural Standard in section (1) to deny an application for a special criteria facility under OAR345-015-0310. However, the Council may, to the extent it determines appropriate, apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.¶

(4) To assist the Council in determining whether the standard outlined in (1) through (3) has been met, the Applicant must submit information from reasonably available sources regarding the geological and soil stability within the analysis area, including:¶

- (a) A geologic report meeting the Oregon State Board of Geologist Examiners geologic report guidelines. Current guidelines must be determined based on consultation with the Oregon Department of Geology and Mineral Industries, as described in paragraph (B) of this subsection (b);¶
- (b) A summary of consultation with the Oregon Department of Geology and Mineral Industries regarding the appropriate methodology and scope of the seismic hazards and geology and soil-related hazards assessments, and the appropriate site-specific geotechnical work that must be performed before submitting the application for the Department to determine that the application is complete;¶
- (c) A description and schedule of site-specific geotechnical work that will be performed before construction for inclusion in the site certificate as conditions;¶
- (d) For all transmission lines, and for all pipelines that would carry explosive, flammable or hazardous materials, a description of locations along the proposed route where the applicant proposes to perform site specific geotechnical work, including but not limited to railroad crossings, major road crossings, river crossings, dead ends (for transmission lines), corners (for transmission lines), and portions of the proposed route where geologic reconnaissance and other site specific studies provide evidence of existing landslides, marginally stable slopes or potentially liquefiable soils that could be made unstable by the planned construction or experience impacts during the facility's operation;¶
- (e) An assessment of seismic hazards, in accordance with standard-of-practice methods and best practices, that addresses all issues relating to the consultation with the Oregon Department of Geology and Mineral Industries described in paragraph (B) of this subsection, and an explanation of how the applicant will design, engineer, construct, and operate the facility to avoid dangers to human safety and the environment from these seismic hazards. Furthermore, an explanation of how the applicant will design, engineer, construct and operate the facility to integrate disaster resilience design to ensure recovery of operations after major disasters. The applicant must include proposed design and engineering features, applicable construction codes, and any monitoring and emergency measures for seismic hazards, including tsunami safety measures if the site is located in the DOGAMI-defined tsunami evacuation zone; and¶
- (f) An assessment of geology and soil-related hazards which could, in the absence of a seismic event, adversely affect or be aggravated by the construction or operation of the facility, in accordance with standard-of-practice methods and best practices, that address all issues relating to the consultation with the Oregon Department of Geology and Mineral Industries described in paragraph (B) of this subsection. An explanation of how the applicant will design, engineer, construct and operate the facility to adequately avoid dangers to human safety and the environment presented by these hazards, as well as:¶

(A) An explanation of how the applicant will design, engineer, construct and operate the facility to integrate disaster resilience design to ensure recovery of operations after major disasters; and ¶  
(B) An assessment of future climate conditions for the expected life span of the proposed facility and the potential impacts of those conditions on the proposed facility.

Statutory/Other Authority: ORS 469.470, ORS 469.501

Statutes/Other Implemented: ORS 469.501

RULE SUMMARY: Correcting scrivener error.

CHANGES TO RULE:

345-022-0022

Soil Protection ¶

(1) To issue a site certificate, the Council must find that the design, construction and operation of the facility, taking into account mitigation, are not likely to result in a significant adverse impact to soils including, but not limited to, erosion and chemical factors such as salt deposition from cooling towers, land application of liquid effluent, and chemical spills.¶

(2) To assist the Council in determining whether the standard outlined in (1) has been met, ~~the Applicant must submit~~, the Applicant must submit:¶

(a) A materials analysis, including:¶

(A) An inventory of substantial quantities of industrial materials flowing into and out of the proposed facility during construction and operation;¶

(B) The applicant's plans to manage hazardous substances during construction and operation, including measures to prevent and contain spills; and¶

(C) The applicant's plans to manage non-hazardous waste materials during construction and operation.¶

(b) Information from reasonably available sources regarding soil conditions and uses in the analysis area, providing evidence to support findings by the Council as required by OAR 345-022-0022, including:¶

(A) Identification and description of the major soil types in the analysis area;¶

(B) Identification and description of current land uses in the analysis area, such as growing crops, that require or depend on productive soils;¶

(C) Identification and assessment of significant potential adverse impact to soils from construction, operation and retirement of the facility, including, but not limited to, erosion and chemical factors such as salt deposition from cooling towers, land application of liquid effluent, and chemical spills;¶

(D) A description of any measures the applicant proposes to avoid or mitigate adverse impact to soils; and¶

(E) The applicant's proposed monitoring program, if any, for adverse impact to soils during construction and operation.

Statutory/Other Authority: ORS 469.470, 469.501

Statutes/Other Implemented: ORS 469.501

RULE SUMMARY: Removing language that is no longer applicable.

CHANGES TO RULE:

345-022-0040

Protected Areas ¶

(1) To issue a site certificate, the Council must find:¶

(a) The proposed facility will not be located within the boundaries of a protected area designated on or before the date the application for site certificate or request for amendment was determined to be complete under OAR 345-015-0190 or 345-027-0363;¶

(b) The design, construction and operation of the facility, taking into account mitigation, are not likely to result in significant adverse impact to a protected area designated on or before the date the application for site certificate or request for amendment was determined to be complete under OAR 345-015-0190 or 345-027-0363.¶

(2) Notwithstanding section (1)(a), the Council may issue a site certificate for:¶

(a) A facility that includes a transmission line, natural gas pipeline, or water pipeline located in a protected area, if the Council determines that other reasonable alternative routes or sites have been studied and that the proposed route or site is likely to result in fewer adverse impacts to resources or interests protected by Council standards; or¶

(b) Surface facilities related to an underground gas storage reservoir that have pipelines and injection, withdrawal or monitoring wells and individual wellhead equipment and pumps located in a protected area, if the Council determines that other alternative routes or sites have been studied and are unsuitable.¶

(3) The provisions of section (1) do not apply to:¶

(a) A transmission line routed within 500 feet of an existing utility right-of-way containing at least one transmission line with a voltage rating of 115 kilovolts or higher; or¶

(b) A natural gas pipeline routed within 500 feet of an existing utility right of way containing at least one natural gas pipeline of 8 inches or greater diameter that is operated at a pressure of 125 psig.¶

(4) ~~The Council shall apply the version of this rule adopted under Administrative Order EFSC 1-2007, filed and effective May 15, 2007, to the review of any Application for Site Certificate or Request for Amendment that was determined to be complete under OAR 345-015-0190 or 345-027-0363 before the effective date of this rule. Nothing in this section waives the obligations of the certificate holder and Council to abide by local ordinances, state law, and other rules of the Council for the construction and operation of energy facilities in effect on the date the site certificate or amended site certificate is executed.~~¶

(5) To assist the Council in determining whether the standard outlined in (1) through (43) has been met, the Applicant must submit information about the potential impacts of the proposed facility on protected areas in the analysis area, providing evidence to support a finding by the Council as required by this rule, including:¶

(a) A list of all protected areas within the analysis area identifying:¶

(A) The distance and direction of the protected area from the proposed facility¶

(B) The basis for protection by reference to a specific subsection of OAR 345-001-0010(26); and¶

(C) The name, mailing address, phone number, and email address of the land management agency or organization with jurisdiction over the protected area.¶

(b) A map showing the location of the proposed facility in relation to the protected areas;¶

(c) A description of significant potential impacts of the proposed facility, if any, on the protected areas including, but not limited to, potential impacts such as:¶

(A) Noise resulting from facility construction or operation;¶

(B) Increased traffic resulting from facility construction or operation;¶

(C) Water use during facility construction or operation;¶

(D) Wastewater disposal resulting from facility construction or operation;¶

(E) Visual impacts of facility structures or plumes, including, but not limited to, changes in landscape character or quality; and¶

(F) Visual impacts from air emissions resulting from facility construction or operation, including, but not limited to, impacts on Class 1 Areas as described in OAR 340-204-0050.¶

(d) A materials analysis, including:¶

(A) An inventory of substantial quantities of industrial materials flowing into and out of the proposed facility during construction and operation;¶

(B) The applicant's plans to manage hazardous substances during construction and operation, including measures to prevent and contain spills; and¶

(C) The applicant's plans to manage non-hazardous waste materials during construction and operation.

Statutory/Other Authority: ORS 469.470, 469.501

Statutes/Other Implemented: ORS 469.501

RULE SUMMARY: Clean up flow and remove outline errors.

CHANGES TO RULE:

345-022-0050

Retirement and Financial Assurance ¶

(1) To issue a site certificate, the Council must find that:¶

(4a) The site, taking into account mitigation, can be restored adequately to a useful, non-hazardous condition following permanent cessation of construction or operation of the facility.¶

(b) The applicant has a reasonable likelihood of obtaining 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.¶

(2) To assist the Council in determining whether the standard outlined in (1)(a) has been met, the Applicant must submit information about site restoration, providing evidence to support a finding by the Council as required by this rule. The applicant must include:¶

(a) The estimated useful life of the proposed facility;¶

(b) Specific actions and tasks to restore the site to a useful, non-hazardous condition;¶

(c) An estimate, in current dollars, of the total and unit costs of restoring the site to a useful, non-hazardous condition;¶

(d) A discussion and justification of the methods and assumptions used to estimate site restoration costs; and¶

(e) For facilities that might produce site contamination by hazardous materials, a proposed monitoring plan, such as periodic environmental site assessment and reporting, or an explanation why a monitoring plan is unnecessary.¶

(3) The applicant has a reasonable likelihood of obtaining 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.¶

(4) To assist the Council in determining whether the standard outlined in (3)(b) has been met, the Applicant must submit:¶

(a) Information:¶

~~(a) about the applicant's financial capability, providing evidence to support a finding by the Council as required by OAR 345-022-0050(2). Nothing in this section rule requires the disclosure of information or records protected from public disclosure by any provision of state or federal law.~~ The applicant must include:¶

(A) An opinion or opinions from legal counsel stating that, to counsel's best knowledge, the applicant has the legal authority to construct and operate the facility without violating its bond indenture provisions, articles of incorporation, common stock covenants, or similar agreements;¶

(B) The type and amount of the applicant's proposed bond or letter of credit to ~~meet the requirements of OAR 345-022-0050~~ restore the site to a useful, non-hazardous condition; and¶

(C) Evidence that the applicant has a reasonable likelihood of obtaining the proposed bond or letter of credit in the amount proposed in paragraph (B), before beginning construction of the facility.¶

(b) A materials analysis, including:¶

(A) An inventory of substantial quantities of industrial materials flowing into and out of the proposed facility during construction and operation;¶

(B) The applicant's plans to manage hazardous substances during construction and operation, including measures to prevent and contain spills; and¶

(C) The applicant's plans to manage non-hazardous waste materials during construction and operation.

Statutory/Other Authority: ORS 469.470, 469.501

Statutes/Other Implemented: ORS 469.501

RULE SUMMARY: Updating dates.

CHANGES TO RULE:

345-022-0060

Fish and Wildlife Habitat ¶

To issue a site certificate, the Council must find that the design, construction and operation of the facility, taking into account mitigation, are consistent with:¶

(1) The general fish and wildlife habitat mitigation goals and standards of OAR 635-415-0025(1) through (6) in effect as of February 24~~September 1, 2017~~25; and¶

(2) For energy facilities that impact sage-grouse habitat, the sage-grouse specific habitat mitigation requirements of the Greater Sage-Grouse Conservation Strategy for Oregon at OAR 635-415-0025(7) and OAR 635-140-0000 through -0025 in effect as of February 24~~September 1, 2017~~25.¶

(3) To assist the Council in determining whether the standard outlined in (1) through (2) has been met, the Applicant must submit information about the fish and wildlife habitat and the fish and wildlife species, other than the species addressed in OAR-022-0070(3) (the Threatened and Endangered Species Exhibit) that could be affected by the proposed facility, providing evidence to support a finding by the Council as required by this rule. The applicant must include:¶

(a) A description of biological and botanical surveys performed that support the information in this exhibit, including a discussion of the timing and scope of each survey;¶

(b) Identification of all fish and wildlife habitat in the analysis area, classified by the general fish and wildlife habitat categories as set forth in OAR 635-415-0025 and the sage-grouse specific habitats described in the Greater Sage-Grouse Conservation Strategy for Oregon at OAR 635-140-0000 through 635-140-0025 (core, low density, and general habitats), and a description of the characteristics and condition of that habitat in the analysis area, including a table of the areas of permanent disturbance and temporary disturbance (in acres) in each habitat category and subtype;¶

(c) A map showing the locations of the habitat identified in (b);¶

(d) Based on consultation with the Oregon Department of Fish and Wildlife (ODFW) and appropriate field study and literature review, identification of all State Sensitive Species that might be present in the analysis area and a discussion of any site-specific issues of concern to ODFW;¶

(e) A baseline survey of the use of habitat in the analysis area by species identified in (d) performed according to a protocol approved by the Department and ODFW;¶

(f) A description of the nature, extent and duration of potential adverse impacts on the habitat identified in (b) and species identified in (d) that could result from construction, operation and retirement of the proposed facility;¶

(g) A description of any measures proposed by the applicant to avoid, reduce, or mitigate the potential adverse impacts described in (f) in accordance with the general fish and wildlife habitat mitigation goals and standards described in OAR 635-415-0025 and a description of any measures proposed by the applicant to avoid, minimize, and provide compensatory mitigation for the potential adverse impacts described in (f) in accordance with the sage-grouse specific habitat mitigation requirements described in the Greater Sage-Grouse Conservation Strategy for Oregon at OAR 635-140-0000 through 635-140-0025, and a discussion of how the proposed measures would achieve those goals and requirements; and¶

(h) A description of the applicant's proposed monitoring plans to evaluate the success of the measures described in (g).

Statutory/Other Authority: ORS 469.470, ORS 469.501

Statutes/Other Implemented: ORS 469.501

RULE SUMMARY: Removing no longer applicable language.

CHANGES TO RULE:

345-022-0080

Scenic Resources ¶

(1) To issue a site certificate, the Council must find that the design, construction and operation of the facility, taking into account mitigation, are not likely to result in significant adverse visual impacts to significant or important scenic resources.¶

(2) The Council may issue a site certificate for a special criteria facility under OAR 345-015-0310 without making the findings described in section (1). In issuing such a site certificate, the Council may impose conditions of approval to minimize the potential significant adverse visual impacts from the design, construction, and operation of the facility on significant or important scenic resources.¶

(3) A scenic resource is considered to be significant or important if it is identified as significant or important in a current land use management plan adopted by one or more local, tribal, state, regional, or federal government or agency.¶

(4) ~~The Council shall apply the version of this rule adopted under Administrative Order EFSC 1-2007, filed and effective May 15, 2007, to the review of any Application for Site Certificate or Request for Amendment that was determined to be complete under OAR 345-015-0190 or 345-027-0363 before the effective date of this rule. Nothing in this section waives the obligations of the certificate holder and Council to abide by local ordinances, state law, and other rules of the Council for the construction and operation of energy facilities in effect on the date the site certificate or amended site certificate is executed.~~¶

(5) To assist the Council in determining whether the standard outlined in (1) through (43) has been met, the Applicant must submit an analysis of potential visual impacts of the proposed facility, if any, on significant or important scenic resources within the analysis area, providing evidence to support a finding by the Council under OAR 345-022-0080, including:

(a) An inventory of scenic resources identified as significant or important in a land use management plan adopted by one or more local, tribal, state, regional, or federal government or agency applicable to lands within the analysis area for scenic resources. The applicant must provide a list of the land management plans reviewed in developing the inventory and a copy of the relevant portion of the plans;¶

(b) A map or maps showing the location of the scenic resources described under subsection (a), in relation to the site of the proposed facility;¶

(c) A description of the methodology the applicant used to identify and assess potential visual impacts to the scenic resources identified in subsection (a);¶

(d) Identification of potential visual impacts to the scenic resources identified in subsection (a), including, but not limited to:¶

(A) Loss of vegetation or alteration of the landscape as a result of construction or operation;¶

(B) Visual impacts of facility structures or plumes, including but not limited to, changes in landscape character or quality; and¶

(C) Loss of visibility due to air emissions or other pollution resulting from the construction or operation of the proposed facility;¶

(e) An assessment of the significance of the visual impacts described under subsection (d);¶

(f) A description of the measures the applicant proposes to avoid, reduce or otherwise mitigate any potential significant adverse visual impacts; and¶

(g) The applicant's proposed monitoring program, if any, for impacts to scenic resources.

Statutory/Other Authority: ORS 469.470, 469.501

Statutes/Other Implemented: ORS 469.501

RULE SUMMARY: Removing no longer applicable language.

CHANGES TO RULE:

345-022-0100

Recreation ¶

(1) To issue a site certificate, the Council must find that the design, construction and operation of a facility, taking into account mitigation, are not likely to result in a significant adverse impact to important recreational opportunities.¶

(2) The Council must consider the following factors in judging the importance of a recreational opportunity:¶

(a) Any special designation or management of the location;¶

(b) The degree of demand;¶

(c) Any outstanding or unusual qualities;¶

(d) The availability or rareness; and¶

(e) The irreplaceability or irretrievability of the opportunity.¶

(3) The Council may issue a site certificate for a special criteria facility under OAR 345-015-0310 without making the findings described in section (1). In issuing such a site certificate, the Council may impose conditions of approval to minimize the potential significant adverse impacts from the design, construction, and operation of the facility on important recreational opportunities.¶

(4) ~~The Council must apply the version of this rule adopted under Administrative Order EFSC 1-2002, filed and effective April 3, 2002, to the review of any Application for Site Certificate or Request for Amendment that was determined to be complete under OAR 345-015-0190 or 345-027-0363 before the effective date of this rule. Nothing in this section waives the obligations of the certificate holder and Council to abide by local ordinances, state law, and other rules of the Council for the construction and operation of energy facilities in effect on the date the site certificate or amended site certificate is executed.~~¶

(5) To assist the Council in determining whether the standard outlined in (1) through (4) has been met, the Applicant must submit information about the impacts the proposed facility would have on important recreational opportunities in the analysis area, providing evidence to support a finding by the Council as required by OAR 345-022-0100, including:¶

(a) A description of the recreational opportunities in the analysis area that includes information on the factors listed in OAR 345-022-0100(1) as a basis for identifying important recreational opportunities;¶

(b) A description of any potential adverse impacts to the important opportunities identified in subsection (a) including, but not limited to:¶

(A) Direct or indirect loss of a recreational opportunity as a result of facility construction or operation;¶

(B) Noise resulting from facility construction or operation;¶

(C) Increased traffic resulting from facility construction or operation; and¶

(D) Visual impacts of facility structures or plumes, including but not limited to, changes in landscape character or quality.¶

(c) An evaluation of the significance of the potential adverse impacts identified under subsection (b);¶

(d) A description of any measures the applicant proposes to avoid, reduce or otherwise mitigate any significant adverse impacts identified in subsection (b);¶

(e) A map of the analysis area showing the locations of important recreational opportunities identified in subsection (a); and¶

(f) The applicant's proposed monitoring program, if any, for impacts to important recreational opportunities.

Statutory/Other Authority: ORS 469.470, 469.501

Statutes/Other Implemented: ORS 469.501

RULE SUMMARY: Reverting inadvertent rule change and removing date reference.

CHANGES TO RULE:

345-023-0030

System Reliability Rule for Electric Transmission Lines ¶

The Council shall find that the applicant has demonstrated need for an electric transmission line that is an energy facility under the definition in ORS 469.300 if the Council finds that:¶

(1) The facility is needed to enable the transmission system of which it is to be a part to meet firm capacity demands for electricity or firm annual electricity sales that are reasonably expected to occur within five years of the facility's proposed in-service date based on weather conditions that have at least a 5 percent chance of occurrence in any year in the area to be served by the facility;¶

(2) The facility is consistent with the ~~minimum operating reliability criteria contained in the Western System Coordinating Council Bulk Power Supply Program 1997-2007, dated April 1, 1998, as it applicable mandatory and enforceable North American Electric Reliability Corporation (NERC) Reliability Standards as they applies~~ either internally or externally to a utility system; and¶

(3) Construction and operation of the facility is an economically reasonable method of meeting the requirements of sections (1) and (2) compared to the alternatives evaluated in the application for a site certificate.¶

(4) If the applicant chooses to demonstrate need for a proposed electric transmission line under OAR 345-023-0030, they must submit the following additional information:¶

(a) Load-resource balance tables for the area to be served by the proposed facility. In the tables, the applicant must include firm capacity demands and existing and committed firm resources for each of the years from the date of submission of the application to at least five years after the expected in-service date of the facility;¶

(b) Within the tables described in (a), a forecast of firm capacity demands for electricity and firm annual electricity sales for the area to be served by the proposed facility. The applicant must separate firm capacity demands and firm annual electricity sales into loads of retail customers, system losses, reserve margins and each wholesale contract for firm sale. In the forecast, the applicant must include a discussion of how the forecast incorporates reductions in firm capacity demand and firm annual electricity sales resulting from:¶

(A) Existing federal, state or local building codes, and equipment standards and conservation programs required by law for the area to be served by the proposed facility;¶

(B) Conservation programs provided by the energy supplier, as defined in OAR 345-001-0010;¶

(C) Conservation that results from responses to price; and¶

(D) Retail customer fuel choice;¶

(c) Within the tables described in (a), a forecast of existing and committed firm resources used to meet the demands described in (b). The applicant must include, as existing and committed firm resources, existing generation and transmission facilities, firm contract resources and committed new resources minus expected resource retirements or displacement. In the forecast, the applicant must list each resource separately;¶

(d) A discussion of the reasons each resource is being retired or displaced if the forecast described in (c) includes expected retirements or displacements;¶

(e) A discussion of the annual capacity factors assumed for any generating facilities listed in the forecast described in (c);¶

(f) A discussion of the reliability criteria the applicant uses to demonstrate the proposed facility is needed, considering the load carrying capability of existing transmission system facilities supporting the area to be served by the proposed facility;¶

(g) A discussion of reasons why the proposed facility is economically reasonable compared to the alternatives described below. In the discussion, the applicant must include a table showing the amounts of firm capacity and firm annual electricity available from the proposed facility and each alternative and the estimated direct cost, as defined in OAR 345-001-0010, of the proposed facility and each alternative. The applicant must include documentation of assumptions and calculations supporting the table. The applicant must evaluate alternatives to construction and operation of the proposed facility that include, but are not limited to:¶

(A) Implementation of cost-effective conservation, peak load management and voluntary customer interruption as a substitute for the proposed facility;¶

(B) Construction and operation of electric generating facilities as a substitute for the proposed facility;¶

(C) Direct use of natural gas, solar or geothermal resources at retail loads as a substitute for use of electricity transmitted by the proposed facility;¶

(D) Adding standard sized smaller or larger transmission line capacity;¶

(h) The earliest and latest expected in-service dates of the facility and a discussion of the circumstances of the

energy supplier, as defined in OAR 345-001-0010, that determine these dates.

Statutory/Other Authority: ORS 469.470, 469.501

Statutes/Other Implemented: ORS 469.501

RULE SUMMARY: Correcting minor error.

CHANGES TO RULE:

345-024-0090

**Siting Standards for Transmission Lines ¶**

To issue a site certificate for a facility that includes any transmission line under Council jurisdiction, the Council must find that the applicant:¶

- (1) Can design, construct and operate the proposed transmission line so that alternating current electric fields do not exceed 9 kV per meter at one meter above the ground surface in areas accessible to the public;¶
- (2) Can design, construct and operate the proposed transmission line so that induced currents resulting from the transmission line and related or supporting facilities will be as low as reasonably achievable.¶
- (3) If the proposed energy facility is a transmission line or has, as a related or supporting facility, a transmission line of any size, the applicant must submit the following:¶
  - (a) Information about the expected electric and magnetic fields, including:¶
    - (A) The distance in feet from the proposed center line of each proposed transmission line to the edge of the right-of-way;¶
    - (B) The type of each occupied structure, including but not limited to residences, commercial establishments, industrial facilities, schools, daycare centers and hospitals, within 200 feet on each side of the proposed center line of each proposed transmission line;¶
    - (C) The approximate distance in feet from the proposed center line to each structure identified in (3);¶
    - (D) At representative locations along each proposed transmission line, a graph of the predicted electric and magnetic fields levels from the proposed center line to 200 feet on each side of the proposed center line;¶
    - (E) Any measures the applicant proposes to reduce electric or magnetic field levels;¶
    - (F) The assumptions and methods used in the electric and magnetic field analysis, including the current in amperes on each proposed transmission line; and¶
    - (G) The applicant's proposed monitoring program, if any, for actual electric and magnetic field levels; and¶
      - (b) An evaluation of alternate methods and costs of reducing radio interference likely to be caused by the transmission line in the primary reception area near interstate, U.S. and state highways.

Statutory/Other Authority: ORS 469.470, 469.501

Statutes/Other Implemented: ORS 469.501

RULE SUMMARY: Providing that all energy facilities – not just wind facilities -- can begin preconstruction even if they lack the construction rights to all parts of the site. Clarifying what construction rights are. Adding retroactive applicability provision.

CHANGES TO RULE:

345-025-0006

Mandatory Conditions in Site Certificates ¶

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

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

(2) The certificate holder must submit a legal description of the site to the Department 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 must 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 must 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 may not begin construction for the purpose of this rule, "construction rights" means the legal right to engage in construction, as defined in OAR 345-001-0010, or create a clearing on any part of the site until activities (i.e., 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 authority to construct in the area, e.g., in the form of a deed, lease or court-approved condemnation right). 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, is in compliance with the site certificate conditions applicable to 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) ~~The rule in section (5) applies retroactively to all site certificate and site certificate amendments previously approved by Council and, notwithstanding OAR 345-025-0006(1), takes precedence over any conditions contained in site certificate and site certificate amendments that state or suggest a certificate holder must have construction rights on all parts of the site before creating a clearing or beginning construction on any part of the site.~~¶

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

(78) The certificate holder must 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.¶

(89) Before beginning construction of the facility, the certificate holder must 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 must 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.¶

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

approved by the Council, as described in OAR 345-027-0410. The certificate holder must 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.¶

(101) The Council must 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.¶

(142) Upon completion of construction, the certificate holder must restore vegetation to the extent practicable and must landscape all areas disturbed by construction in a manner compatible with the surroundings and proposed use. Upon completion of construction, the certificate holder must 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.¶

(123) The certificate holder must 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.¶

(134) The certificate holder must 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.¶

(145) The certificate holder must 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.¶

(156) Before any transfer of ownership of the facility or ownership of the site certificate holder, the certificate holder must inform the Department of the proposed new owners. The requirements of OAR 345-027-0400 apply to any transfer of ownership that requires a transfer of the site certificate.¶

(167) 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 345-027-0410, the Council must notify the certificate holder and request that the certificate holder submit a proposed final retirement plan to the Department 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 (89) of this rule 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 must pay any additional cost necessary to restore the site to a useful, non-hazardous condition. After completion of site restoration, the Council must 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, ORS 469.501

RULE SUMMARY: Removing default printed copy requirement.

CHANGES TO RULE:

345-027-0220

Request for Approval ¶

(1) Before submitting a request for approval to construct, operate and retire a gas storage testing pipeline, the certificate holder must:  
(a) Inform the Department of the proposed pipeline, including its diameter, length, location, capacity and maximum operating pressure; and ¶  
(b) Provide to the Department a map showing the location of the proposed pipeline. ¶

(2) After receiving the information described in section (1) of this rule, the Department must confer with the certificate holder about the Council substantive standards and information requirements that might apply to the proposed pipeline and any extraordinary circumstances that might affect the time requirements for completing the approval process. Within 7 days after conferring with the certificate holder, the Department must send a letter to the certificate holder that includes the following:  
(a) Identification of the Council substantive standards that are applicable to the request for approval of the proposed pipeline; ¶  
(b) Identification of the information requirements that are applicable to the request for approval of the proposed pipeline; ¶  
(c) The time requirements for the approval process, if different from the time requirements described in OAR 345-027-0530. ¶

(3) The certificate holder must submit to the Department a written request for approval to construct, operate and retire a gas storage testing pipeline with the fee required by the fee schedule established under ORS 469.441. The certificate holder must submit ~~two printed copies of the request, and~~ an electronic version of the full request in a non-copy-protected electronic format acceptable to the Department. The certificate holder must provide ~~additional~~ printed copies to the Department upon request and copies or access to copies to any person requesting copies. ¶

(4) In a request for approval, the certificate holder must include:  
(a) 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 description of the purpose and operation of the proposed pipeline and a discussion of whether the use of the gas storage testing pipeline for reservoir testing or maintenance will require an increase in the compression available in the Council certified facility to which the proposed pipeline would connect in addition to the compression that is permitted under the site certificate; ¶  
(c) Identification of the Council certified facility to which the proposed pipeline would connect; ¶  
(d) A description of the proposed pipeline, including its diameter, length, location, capacity and maximum operating pressure; ¶  
(e) A map showing the location of the proposed pipeline; ¶  
(f) A list of the names and mailing addresses of all owners of record, as shown on the most recent property tax assessment role, of property where the proposed pipeline is located and within 500 feet of that property; ¶  
(g) The information that the Department has identified in the letter described in section (2) of this rule; and ¶  
(h) Any other information that the Department requests as needed to make the findings described in the applicable standards.

Statutory/Other Authority: ORS 469.405

Statutes/Other Implemented: ORS 469.405, 469.421, 469.441

RULE SUMMARY: Fixing citation.

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) or (4), the certificate holder must submit a written preliminary request for amendment to the Department 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) The request for amendment analysis areas ("RFA analysis areas"), which are based on the following:
  - (A) If a Project Order was issued for the facility, the area within the distances for analysis areas specified in the Project Order; or
  - (B) If a Project Order was not issued for the facility, the area within the distances for study areas specified in OAR 345-001-0010.
- (d) If applicable, a modified site boundary, which reflects that:
  - (i) A proposed amendment is not contained by the existing site boundary. In this case, the RFA analysis areas would extend from the portions of the site boundary that are the subject of the amendment request; or
  - (ii) A proposed amendment is a subset of the existing site boundary.
- (e) Any specific information that may be required for the Department to make its findings;
- (f) The specific language of the site certificate, including conditions, that the certificate holder proposes to change, add, or delete through the amendment;
- (g) A list of all Council standards and other laws, including statutes, rules and ordinances, applicable to the proposed change, identification of any changes in facts or law relevant to the proposed change since the date the current site certificate was executed, and an analysis supported by evidence 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); and
- (h) A list of the names and mailing addresses of property owners, as described in this rule:
  - (A) The list must include all owners of record, as shown on the most recent property tax assessment roll, of property located:
    - (i) Within 100 feet of property which is the subject of the request for amendment, where the subject property is wholly or in part within an urban growth boundary;
    - (ii) Within 250 feet of property which is the subject of the request for amendment, where the subject property is outside an urban growth boundary and not within a farm or forest zone; or
    - (iii) Within 500 feet of property which is the subject of the request for amendment, where the subject property is within a farm or forest zone.
  - (B) In addition to incorporating the list in the request for amendment, the applicant must submit the list to the Department in an electronic format acceptable to the Department.
- (2) Within 14 days of receiving a preliminary request for amendment, the Department must notify the public that a preliminary request for amendment has been received by:
  - (a) Sending notice by mail or email to:
    - (A) All persons on the Council's general mailing list as defined in OAR 345-011-0020;
    - (B) All persons on any special mailing list established for the facility;
    - (C) The reviewing agencies for the facility, as defined in OAR 345-001-0010(5128); and
    - (D) The property owners on the list provided under subsection (1)(f) of this rule; and
  - (b) Posting an announcement on the Department's website to notify the public that a preliminary request for amendment has been received. The announcement must include a copy of the preliminary request for amendment.
  - (3) The certificate holder may rely upon evidence previously submitted to the Department in the application for site certificate and/or previous request for amendment, or evidence that is otherwise included in the Department's record on the facility if.

- (a) The certificate holder explains how the evidence is relevant to and remains accurate for purposes of the requested amendment;¶
- (b) The certificate holder updates the evidence and related analysis regarding any data, facts or additional information obtained or learned since the evidence was last submitted to the Department; and¶
- (c) The certificate holder submits the previously relied upon evidence and any updates to the Department with its preliminary request for amendment.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.405

RULE SUMMARY: Fixing citation.

CHANGES TO RULE:

345-027-0367

**Public Comment and Hearing on the Proposed Order for Requests for Amendment**

(1) After issuance of the proposed order as described in OAR 345-027-0365, the Council must conduct a public hearing on the request for amendment to the site certificate. The public hearing is not a contested case hearing.¶

(2) The public hearing should take place in the vicinity of the facility, unless the Council or Council Chair determines that doing so is unnecessary given the limited scope of the amendment or a lack of public interest or that an in-person hearing would result in a heightened risk to public health and safety.¶

(3) The public hearing must be held at least 20 days after the proposed order is issued and no less than 7 days before the end of the public comment period.¶

(4) Concurrent with the issuance of the proposed order as described in OAR 345-027-0365, the Department must:¶

- (a) Send the notice described in section (5) of this rule by mail or email to:¶
  - (A) All persons on the Council's general mailing list as defined in OAR 345-011-0020;¶
  - (B) All persons on any special mailing list established for the facility;¶
  - (C) The reviewing agencies for the facility, as defined in OAR 345-001-0010(528); and¶
  - (D) The property owners on the list provided under OAR 345-027-0360(1)(f);¶
- (b) Post the complete request for amendment, proposed order, and the notice of the proposed order and public hearing on the Department website; and¶
- (c) Upon request, make physical copies of the proposed order available to the public for inspection.¶

(5) The notice of the complete request for amendment, proposed order and public hearing must 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 locations and the website where the public may review copies of the complete request for amendment and proposed order;¶
- (d) The length of the public comment period, during which the public may provide written comments, if not made orally at the public hearing;¶
- (e) A statement that:¶
  - (A) A complete request for amendment has been received and reviewed by the Department;¶
  - (B) The Department has issued a proposed order;¶
- (f) A description of the scope and nature of public participation in a review on an amendment as outlined in sections (6), (7), and (8) of this rule, including all applicable deadlines.¶

(6) To timely raise an issue regarding the request for amendment or proposed order on the record, a person must raise the issue in person at the public hearing or in a written comment submitted before the conclusion of the public comment period.¶

- (a) The Council will not accept or consider any further public comment on the request for amendment or on the proposed order after the close of the public comment period on the proposed order.¶
- (b) Notwithstanding (a), the Council will consider and include in the decision record for the request for amendment all timely responses, replies, and sur-replies relating to public comments as outlined in section (8) of this rule.¶

(7) Comments - both written and oral - submitted during the public comment period must be made with sufficient specificity to afford the Council, the Department, and the certificate holder an opportunity to respond to the issue(s) raised in the comment.¶

- (a) To raise an issue with sufficient specificity, a person must in their comment:¶
  - (A) Identify the recommended findings of fact, conclusions of law or conditions of approval identified in the proposed order to which they object;¶
  - (B) Specify the Council standard or other applicable state and local requirements on which their objection is based; and¶
  - (C) Present facts or statements supporting that objection.¶
- (b) If a comment is not made with sufficient specificity, the Department will not make any revisions to the draft of the final order based on that comment.¶

(8) All timely comments submitted during the public comment period will be subject to the following process:¶

- (a) The certificate holder must provide a written response to written and verbal comments on the request for amendment or the proposed order;¶

(b) The Department can choose, but is not required to respond to written or verbal comments on the request for amendment or the proposed order;¶

(c) The response(s) in (a) can be limited to a statement that the public comment in question does not allow the certificate holder to substantively respond, as the comment fails to meet the sufficient specificity standard as described in (7);¶

(d) Reviewing agencies and members of the public may submit written replies to the responses to their own respective comments in (c);¶

(e) The certificate holder and Department may submit a sur-reply to the replies described in (d); and¶

(f) Participants to the public comment process may request more time to submit their response, reply, and sur-reply to the Council or Council Chair, who shall grant the extension on a showing of good cause.¶

(9) During the public hearing, the Department must explain the amendment process, including the means and opportunities for the public to participate in the process. The Department may provide this explanation via a written handout.¶

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

(a) A person who contends Council should reject a request to amend a site certificate or that Council in its final order should reject or revise certain aspects of a Department proposed order for a site certificate amendment must:¶

(A) Comment in person or in writing prior to the close of the public comment period;¶

(B) Raise their issue(s) with sufficient specificity to afford the Council, the Department, and the certificate holder an adequate opportunity to respond to the issue(s). To raise an issue with sufficient specificity, a person must, in their comment, identify the recommended findings of fact, conclusions of law or conditions of approval identified in the proposed order to which they object, specify the Council standard or other applicable state and local requirements on which their objection is based, and present facts or statements supporting that objection; and¶

(b) If a comment is not made with sufficient specificity, the Council will not make any changes in its final order based on that comment.¶

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

(12) At the public hearing, the Council may pose questions to the certificate holder, reviewing agencies, the Department, or members of the public who submitted comments.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.405

RULE SUMMARY: Fixing citation.

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) of this rule is or may be pending, the certificate holder must notify the Department. In the notice, the certificate holder must include the name and contact information of the new owner, and the date of the transfer of ownership. If possible, the certificate holder must 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) of this rule 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 may not construct or operate the facility until an amended site certificate as described in section (10) of this rule or a temporary amended site certificate as described in section (11) of this rule becomes effective.¶

(4) To request an amendment to transfer the site certificate, the new owner must submit a written request to the Department that includes the information described in OAR 345-022-0010 and OAR 345-022-0050, 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 must include in the request the information described in 345-024-0500(4)(b)(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 must send a notice of the request that describes the request for amendment to transfer the site certificate, specifies a date by which comments are due, and states that the date of the Council's transfer hearing will be announced on the Department's website, by mail or email to:¶

(a) All persons on the Council's general mailing list; as defined in OAR 345-011-0020; ¶

(b) All persons on any special list established for the facility;¶

(c) The reviewing agencies for the facility, as defined in OAR 345-001-0010(528); and¶

(d) The property owners on the updated list submitted under section (4) of this rule.¶

(7) Before acting on the request for amendment to transfer the site certificate, the Council must hold a transfer hearing. The Council must hold the transfer hearing during a Council meeting and must 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) of this rule.¶

(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 may 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) of this rule, the Council must 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 must 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) of this rule, 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) of this rule becomes effective or as the Council otherwise orders.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.401, 469.405