Date: September 7, 2017
To: Oregon Energy Facility Siting Council (EFSC or “The Council”)
From: Jason Sierman, Policy Analyst
       Todd Cornett, ODOE Assistant Director / Council Secretary
Subject: Agenda Item D for the September 21-22, 2017 Council Meeting
         Rulemaking: Amendment Processes (Information Item)
         The Council will receive an update on the amendment processes rulemaking.

Council’s Latest Direction to Staff
At its July 27-28, 2017 meeting, the Council held a third rulemaking hearing that functioned as a
work session amongst the Council, staff, and interested persons from the public. With staff acting
as facilitator, the Council considered the key proposed changes written into the “Division 27
Proposed Rules – Rev 2” one by one, in a line item fashion during the hearing. During Council’s
consideration of each line item, the Council heard from interested persons from the public that
wished to provide input. After reviewing each key proposed change and after considering the
input from the public relating to each key proposed change, the hearing closed.

After the hearing, the Council went one by one through each key proposed change again,
deliberated on the key proposed changes, and then gave direction to staff. Direction consisted
of the Council either approving proposed changes as written, or directing staff on how it would
like proposed changes to be revised. In the end, the Council approved many of the proposed
changes and directed staff to make the following revisions:

- Include a third review process for truly expedited situations that may occur during
  construction of the facility (Type C). The third review process would be in addition to
  the standard (default) review process with more steps (Type A) and the expedited
  review process with less steps (Type B) that are currently proposed in the “Division 27
  Proposed Rules – Rev2” that the Council reviewed at its meetings on April 28, May 25,
- Require the certificate holder (CH) to submit an Amendment Determination Request
  (ADR) for any proposed addition of area to the site boundary. Staff would determine if
  a request for amendment is necessary, and the CH may bring staff’s determination to
  the Council if they disagree with it. A CH may directly submit a request for amendment
  for a proposed addition of area, bypassing the need to submit an ADR.
- Eliminate the requirement for the CH to participate in a Pre-Amendment Conference
  with the Department prior to submitting a Preliminary Request for Amendment
  proposing to add area to the site boundary.
- Retain the ability for the CH to submit an ADR to ask staff whether its proposed change
  can be reviewed through a process other than the default process with more steps
(Type A), but give staff the discretion to determine which review process applies. The CH may bring staff’s determination to the Council if they disagree with it.

- Eliminate the factors staff and the Council may consider when determining whether a proposed addition of area to the site boundary requires a request for amendment, and rely on an analysis of the “3 coulds” test under 345-027-0050 to make this determination.
- Refine the factors staff and the Council may consider when determining whether the change proposed by a CH may be reviewed through the process with fewer steps (i.e. the Type B process rather than the Type A process).
- Require the Preliminary RFA and all ADRs to be posted to the EFSC website.

A more detailed explanation of the new names for the (3) types of review processes (Type A, Type B, and Type C) is written below under Staff’s Latest Revisions.

In addition to directing staff as indicated above, the Council also directed staff to meet with interested persons to hear their input related to the Council directed revisions regarding: 1) the new Type C review process, and 2) the factors staff will use to evaluate whether a request for an amendment be allowed to go through the Type B process rather than the Type A process. Finally, in order to give the public an opportunity to provide official comments to the Council on the latest version of revised rules the Council directed staff to develop, “Division 27 Proposed Rules – Rev3,” the Council directed staff to extend the comment period for this rulemaking. The Council directed the extended comment period be open for written comments only, and directed staff not to include a fourth rulemaking hearing.

**Staff’s Latest Revisions**

Staff has completed the latest Council directed revisions from the Council’s July 27-28, 2017 meeting. The latest revisions can be seen in the document, “Division 27 Proposed Rules – Rev3.” This document is posted on the [EFSC rulemaking webpage](#), and the public may submit official written comments on the revised proposed rule language before 5 p.m. PST on September 29, 2017.

Before the staff completed the latest Council directed revisions, it met with several interested persons from the public on August 24, 2017. In that meeting, staff presented its rough outline of the revisions it planned on making to the following two key proposed rules:

1) OAR 345-027-0080: This is a proposed rule detailing a limited type C review process. The type C review process would only be available for a proposed change that relates to the facility, or portion/phase of the facility, not yet in operation, but approved for construction in the site certificate or amended site certificate, and only be available upon request and approval by the Council.

2) OAR 345-027-0057: This is a proposed rule detailing the Amendment Determination Request (ADR) process to be used by certificate holders to have the Department determine whether an amendment is required for any type of proposed change (including additions of area to the site boundary), and to have the Department determine whether
review of a request for amendment should be reviewed under the type A review process (formerly named the “standard”, “default”, or “review process with more steps”) or the type B review process (formerly named the “expedited” or “review process with fewer steps”).

At the conclusion of staff’s brief presentation of its thoughts and general structure of each of these proposed rules, the attending interested persons from the public gave their input to staff. While staff listened to input on how it could write revised rule language for these two rules, it directed all attending interested persons from the public that in order for their comments to be official and on the record for this rulemaking, and in order for the Council to consider their comments, that comments must be made in writing and must be received by 5 p.m. on September 29, 2017. An excerpt of the “Division 27 Proposed Rules – Rev3” showing staff’s written language for these two key proposed rules is attached to this staff report (see Attachment A).

A key update in the latest revised proposed rules is the re-naming of the review processes. The review process formally named the “standard”, “default”, or “review process with more steps” is now named the Type A review process. The review process formally named the “expedited” or the “review process with fewer steps” is now named the Type B review process. In addition to these two previously featured review processes (processes that most proposed changes would be expected to be reviewed through under the proposed rules), the latest revised proposed rules also include the Type C review process discussed above. The Type C review process would be limited to proposed changes that relate to the facility, or portion/phase of the facility, not yet in operation, but approved for construction in the site certificate or amended site certificate, and would only be available upon request and approval by the Council.

**Extended Written Comment Period**
As directed by Council, there is no opportunity to provide oral comments during the latest extended comment period for this rulemaking. All official comments during this latest extended comment period must be received in writing before 5 p.m. PST on September 29, 2017. For more information on how to provide written comments on the latest revised rules please see the latest Public Notice that was issued for this rulemaking (see Attachment B).

**Historical Background and Council’s Past Direction to Staff**
More information on the background of this rulemaking, including the purpose and scope, and the Council’s prior direction to staff, please see can the meeting materials for past EFSC meetings. A list of the key EFSC meetings at which the Council addressed this rulemaking prior to its April 28, 2017 meeting, and links to the associated meeting material, is located under the April 21 posting under the current rulemaking titled “Site Certificate Amendment Process” on the EFSC rulemaking webpage. The meeting materials for the EFSC meetings held on April 28, 2017; May 25-26, 2017; July 27-28, 2017; and September 21-22, 2017 are located on the EFSC meetings webpage. The key EFSC meeting dates related to this rulemaking are:

**2012:** May 10-11; Aug. 24; Nov. 2
**2013:** Jan. 25; Mar. 15; May 3; June 21; Sept. 27
2014: May 9; Nov. 21;  
2016: June 17; Aug. 18-19; Nov. 3  
2017: February 23-24; April 28; May 25-26; July 27-28; Sept. 21-22

Other critical information about this rulemaking, including: official public notices, proposed rule language, visual process charts, a crosswalk document comparing existing rules to proposed rules, copies of official filing forms, and more information on the Public Workshops and the Rulemaking Advisory Committee (RAC) meetings that were held to gather public input on this rulemaking, can be found under the current rulemaking titled “Site Certificate Amendment Process” on the EFSC rulemaking webpage under the following posting dates:

2013: Feb. 19; July 2  
2014: Apr. 8; Apr. 16; June 6; June 19; Oct. 7; Nov. 25  
2017: Jan. 19; Mar. 1; April 21; May 8; June 22; Aug. 10

**Next Steps**
At its October 19-20, 2017 meeting, the Council will consider all comments received on the record of this rulemaking. The latest extended comment period is open for written comments only. All written comments must be received before 5 p.m. PST on September 29, 2017. Should the Council need additional time to consider all comments received, it may postpone its decision on adoption of permanent rules to a future Council meeting.

After the Council considers all comments received, the Council could decide to proceed in several different ways. One option would be for the Council to vote on the adoption of the proposed rule language as permanent rules. Another option would be for the Council adopt the proposed rules on the condition that staff make additional Council directed revisions before officially filing the adopted rules with the Secretary of State. All of the Council’s options are not listed here, but staff is prepared to discuss all of the Council’s options with the Council at any time.

Subject to Council adoption, staff will ask for signature authorization from the Council Chair to file the permanent rules with the Oregon Secretary of State. Subject to the Council’s adoption of permanent rules, and subject to receiving authorization to file, staff would likely file the permanent rules several weeks after the October 19-20, 2017 meeting. Unless the Council chooses an effective date later than the filing date, the new rule language would become effective upon filing.
**DIVISION 27**

EXPIRATION, AMENDMENT AND TERMINATION OF SITE CERTIFICATES, AND DEPARTMENT OF

ENERGY APPROVAL OF GAS STORAGE TESTING PIPELINES

345-027-0057

Amendment Determination Request

(1) For a proposed change that would add area to the site boundary, the certificate holder must either:
(a) submit a request for amendment to the Department of Energy; or
(b) submit an amendment determination request to the Department for a written determination of whether the proposed change requires an amendment under OAR 345-027-0050 and is not exempt under 345-027-0053.

(2) For a proposed change that would not add area to the site boundary, the certificate holder may submit an amendment determination request to the Department for a written determination of:
(a) whether the proposed change requires an amendment under OAR 345-027-0050(5); or
(b) whether the proposed change is exempt from requiring an amendment under 345-027-0053;
(c) whether a proposed change requires an amendment under OAR 345-027-0050(4); or
(d) whether a request for amendment justifies review under the expedited type B review process described in OAR 345-027-0051(3).

(3) Requests under described in section (1), (2), and (3) must be submitted in writing to the Department of Energy and must include:
(a) A narrative description of the proposed change(s);
(b) Maps and/or geospatial data layers representing the effects and/or location of the proposed change;
(c) The certificate holder’s evaluation of the determination(s) it is requesting under sections (1), (2), and (3); and
(d) Any additional information the certificate holder believes will assist the Department’s evaluation.

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

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

(4) Upon receiving a request for a written determination described in section (1)(c), the Department shall, as promptly as possible, issue a written recommendation indicating whether the proposed addition of area to the site boundary should require an amendment and refer the recommendation to the Council for concurrence, modification or rejection.

(5) In determining whether the proposed addition of area to the site boundary requires an amendment, the Council:

(a) Must find an amendment is required if the addition of area requires an amendment under 345-027-0050(5).

(b) May find an amendment is not required after considering factors including but not limited to, whether the proposed addition of area:

(A) Would not establish new adjacent property owners that were not previously notified;

(B) Would not change the analysis areas;

(C) Would not be temporary in nature;

(D) Would not require any additional mitigation;

(E) Would not cause such undeterminable or significant impacts to prevent the Council from reasonably concluding that the proposed addition of area does not require an amendment under 345-027-0050(5) without the proposed addition of area being reviewed through either the standard or expedited amendment process.

(76) Upon receiving a request for a written determination described in section (3)(1)(d), the Department shall, as promptly as possible, issue a written determination to the certificate holder recommendation indicating whether the request for amendment justifies review under the expedited review process described in 345-027-0051(1) or the standard review process described in 345-027-0051(2), and refer the recommendation to the Council for concurrence, modification or rejection. At the request of the certificate holder, the Department must refer its determination to the Council for concurrence, modification, or rejection.

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

(a) The complexity of the proposed changes;

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

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

(d) The likelihood of significant adverse impact; and

(e) The type and amount of mitigation, if any.
Limited Type C Review Process for Pre-Operational Requests for Amendment

1) A certificate holder may only request the limited type C review for a request for amendment when the change proposed in the request for amendment relates to the facility, or portion/phase of the facility, not yet in operation, but approved for construction in the site certificate or amended site certificate. A certificate holder cannot request type C review of a request for amendment proposing to extend construction deadlines.

2) Requests under section (1) must be submitted in writing to the Department of Energy and must include:
   (a) A complete request for amendment, including the information described in 345-027-0060(1);
   (b) The reasons why the certificate holder needs type C review of its request for amendment;
   (c) An explanation of why the proposed change could not have been reasonably foreseen by the certificate holder;
   (d) An explanation of why the proposed change is unavoidable; and
   (e) Reasons why the type C review is adequate to prevent significant adverse impacts to the resources and interests protected by Council standards.

3) Upon receiving a request under section (1), the Department shall post the request and the request for amendment on the Department’s website.

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

5) If the Department denies type C review, the certificate holder may request the Department’s determination to be referred to the Council. If requested, the Department must refer its determination to the Council for concurrence, modification or rejection. Upon a Department determination being referred to the Council, the Council chair shall convene a Council meeting as promptly as possible as described in OAR 345-011-0015.

6) To grant a request under section (1), the Department or the Council must find:
   (a) Construction of the certificated energy facility, or portion of the certificated energy facility, has not been deemed complete;
   (b) The request for amendment is complete;
   (c) Type C review is necessary;
   (d) The proposed change could not have been reasonably foreseen by the certificate holder;
   (e) The proposed change is unavoidable; and
   (f) Type C review is adequate to prevent significant adverse impacts to the resources and interests protected by the Council’s standards.

7) Within 7 days after a request under section (1) is granted, the Department shall:
   (a) Issue a draft temporary order approving or denying the request for amendment, including a recommendation to the Council on whether Council review should be completed through the type A or type B review process; and
(b) Post the draft temporary order on the Department’s website.

8) The Council shall, at its first meeting following the Department’s issuance of a draft
temporary order, consider the draft temporary order and consider whether review should
be completed through the type A or type B review process. Upon issuance of a draft
temporary order, the Council chair may call a special Council meeting, as described in OAR
345-011-0015, to be held as promptly as possible.

9) After considering the draft temporary order and the Department’s recommendation on
whether review should be completed through the type A or type B review process, the
Council shall adopt, modify, or reject the draft temporary order based on the considerations
described in OAR 345-027-0071, and the Council shall decide whether review should be
completed through the type A or type B review process. In a written temporary order, the
Council shall either temporarily grant issuance of an amended site certificate, or deny
issuance of an amended site certificate.

10) Before implementing any change approved by the Council’s temporary order, the certificate
holder must submit an authorized acknowledgement that the certificate holder accepts all
terms and conditions of the temporary order.

11) If review is to be completed through the type A review process, review proceeds as
described in 345-027-0067, -0069, and -0071, where the temporary order replaces all
references to the draft proposed order.

12) If review is to be completed through the type B review process, review proceeds as
described in 345-027-0068, -0070, and -0071, where the temporary order replaces all
references to the draft proposed order.

13) Any deviation between the language and conditions of a temporary order issued under this
rule and a final order issued under this rule must be remedied by the certificate holder.
PUBLIC NOTICE
Extended Written Comment Period
Reorganization of Division 27 and rewrite of rules governing requests for amendments to site certificates.

Summary
Date Issued: August 10, 2017

Proposal: Reorganization of Division 27 and rewrite of rules governing requests for amendments to site certificates.

Extended Written Comment Period:
There is no opportunity to provide oral comments during the extended written comment period. All comments must be received in writing before 5 p.m. PST on September 29, 2017.

Availability of Revised Rules:
Revised Division 27 rules ("Division 27 Proposed Rules – Rev3") are not complete and are not available for review at this time. Complete revised rules will be posted to the EFSC rulemaking webpage on September 8, 2017. Please go to:

Council Direction from its July Meeting
At its July 27-28, 2017 meeting, the Council directed its staff to extend the comment period on this rulemaking to receive written comments only, and to make the following revisions to the proposed rules:

- Include a third review process for truly expedited situations. The third review process would be in addition to the standard (default) review process with more steps and the expedited review process with less steps that are currently proposed in the "Division 27 Proposed Rules – Rev2" that the Council reviewed at its meetings on April 28, May 25, and July 27-28.
- Require the certificate holder (CH) to submit an Amendment Determination Request (ADR) for any proposed addition of area to the site boundary. Staff would determine if a request for amendment is necessary, and the CH may appeal staff's determination to the Council. A CH may directly submit a request for amendment for a proposed addition of area, bypassing the need to submit an ADR.
- The CH may submit an ADR to ask staff whether its proposed change(s) can be reviewed through a process other than the default process with more steps. Staff would determine which review process applies, and the CH may appeal staff's determination to the Council.
- Refine the factors staff and the Council may consider when determining whether a proposed addition of area to the site boundary requires a request for amendment.
- Refine the factors staff and the Council may consider when determining whether the change(s) proposed by a CH may be reviewed through a process other than the default review process with more steps.
- Require the Preliminary RFA to be posted to the EFSC website.

Introduction
The ultimate goals of the proposed rules are to enhance the opportunity for public participation while minimizing increases in review time. This rulemaking is not intended to alter the substantive aspects of how the Council's rules and standards apply to the Council's review of a request for an amendment to a site certificate. The scope of this rulemaking is intended to be strictly procedural in nature and effect.

Description of Rulemaking Activity
The proposed rules would provide a standard, generally applicable, one-size-fits-most process that the Council would use to review most types of changes proposed by energy facility site certificate holders in a request for amendment (RFA). The idea of having most types of
proposed changes reviewed through a standard process is not new and is consistent with existing rules. Existing rules provide three Council review processes: a standard, one-size-fits-most process; a transfer process; and an expedited process. The proposed rules provide for two processes: a standard, one-size-fits-most process and a transfer process. Ultimately, the proposed rules amount to a wholesale re-write of the existing rules governing the Council’s processes for reviewing RFAs.

The procedural steps of the proposed rules would provide a new standard amendment process that would function quite differently than the steps of the existing standard amendment process. This new standard amendment process borrows some steps from the existing review process for site certificate applications, including adding steps for completeness determination, a draft proposed order, and a public hearing on the draft proposed order.

The new standard process would be applicable to the same types of changes that are proposed by site certificate holders under the existing rules. In other words, all types of proposed changes that require an RFA under existing rules would also require an RFA under the proposed rules, and transfers of site certificate holders or transfers in ownership of site certificate holders would continue to be reviewed through the transfer review rules of 345-027-0100.

In addition to the new steps being proposed, the proposed rules also require an amendment to the site certificate for changes proposing to add any quantity of area to the site boundary. This differs from the existing amendment process, where existing rules only require an amendment for a proposed change that adds area to the site boundary in a preliminary request for amendment to add area, triggers any of the thresholds under existing rule 345-027-0050(1). Staff’s rationale for requiring an amendment to the site certificate for changes proposing to add area to the site boundary is that adding new area carries a relatively high likelihood of impacts to the resources the Council’s rules and standards are designed to protect. Also, compared to other types of proposed changes, adding area to the site boundary increases the likelihood that new neighboring property owners could be affected by the proposed change.

During the public comment period for this rulemaking, EFSC staff anticipates it may receive comments that raise questions and ideas about how the proposed rules could possibly be revised to allow certificate holders to add area to site boundaries without going through the standard review process. EFSC staff also anticipates it may receive comments that raise questions and ideas about how the proposed rules could possibly be revised to allow EFSC to review, under special circumstances, an RFA in an expedited and/or emergency manner rather than the standard review process being proposed. Because EFSC staff considers these two issues (how rules allow for area to be added to site boundaries and how RFA’s can receive expedited/emergency reviews) to be within the scope of this rulemaking notice, EFSC could revise the proposed rules and/or adopt new rules to address these issues as part of this rulemaking.

The major steps of the new standard amendment process being proposed in this rulemaking are summarized briefly in the following paragraphs:

**Pre-Amendment Conference (PAC)**

Proposed rules codify how a voluntary PAC is available to certificate holders for most types of proposed changes. Council staff has always been available for consultation to assist a certificate holder before submission of a request for amendment, but people may not have been aware of this option due to it not being written in rule. One exception to the voluntary nature of the PAC is that the proposed rules would require the certificate holder to participate in a mandatory PAC with staff before submitting an RFA for a change proposing to add area to the site boundary. For all other types of proposed changes, the PAC is voluntary.

**Preliminary Amendment Request (pRFA)**

Proposed rules require all RFAs be deemed a preliminary request for amendment (pRFA) until staff determines that the certificate holder has submitted all the information necessary for staff to complete its review of the RFA.

**Determination of Completeness (DOC)**

Proposed rules add an explicit stage in the amendment review process for staff to determine whether the pRFA contains adequate information for the Council to make findings or impose conditions on all applicable Council standards. This step is consistent with how staff
currently processes RFAs, but officially codifying staff’s practice in rule would ensure staff has a sufficient period of time to determine whether it needs additional information from the certificate holder in order to prepare a draft proposed order (DPO) (see next paragraph for more discussion on the DPO).

Draft Proposed Order (DPO)

The proposed rules require staff to issue a DPO containing staff’s written analysis of how the certificate holder’s RFA demonstrated compliance with all applicable laws and Council standards. The DPO would be the first written document reflecting staff’s analysis and draft recommendations issued to the public. In contrast, under the existing process, the first written document reflecting staff’s analysis and recommendations issued to the public is a proposed order (PO). Adding this step would allow the Council more flexibility to make changes in response to comments received during the public comment period.

Public Comment and Hearing on the DPO

In the existing amendment process, upon receipt of an RFA, staff solicits comments on the RFA from the public and reviewing agencies. After receiving comments on the RFA, staff reviews all the timely comments it receives, completes its analysis of how the RFA complies with all applicable laws and Council standards, and then issues its analysis and recommendations in a PO. Once a PO is issued, staff solicits a second round of comments and solicits requests for contested case on the PO.

The proposed rules consolidate the two existing comment periods into a single round of comments after the issuance of the DPO. Rather than taking comments on a potentially incomplete RFA and in the absence of staff’s analysis and recommendations, taking comments after a DPO allows for comments to be based on a complete RFA and staff’s initial analysis and conclusions of facts and law as to whether the certificate holder has demonstrated compliance with all applicable laws and Council standards.

The proposed rules also provide for a mandatory public hearing on the DPO. The hearing would increase the public’s opportunity to participate in the review of an RFA by instituting an automatic time and place for people to provide oral comments. To ensure the Council hears all testimony directly, the DPO hearing for an RFA would always be conducted by the Council itself rather than by an appointed hearing’s officer.

A feature of the proposed DPO hearing and comment period is for it to function as a “raise it or waive it” opportunity for people to engage in the amendment review process. As such, any person who does not properly raise an issue in a comment on the record of the DPO would not be eligible to raise new issues later in the process and would not be able to participate in a contested case on any issues. In the existing amendment review process, after the PO is issued, anyone can provide comment on any issue and anyone can request a contested case on any issue.

Proposed Order (PO)

Before issuing a Proposed Order (PO), staff would consider all oral and written comments received on the record of the DPO. Because the recommendations in the DPO may change in response to comments received on the DPO, the PO may or may not include the same recommendations to the Council that were made in the DPO.

As discussed above, the proposed rules would not include a comment period on the PO. However, with the addition of the DPO and the mandatory public hearing on the DPO, the public and the certificate holder would have more opportunity for participation than what the existing amendment review process provides.

Requests for Contested Case (CC)

Proposed rules require requests for CC on the PO be limited to those who previously commented on the record of the DPO hearing and limited to only those issues a prior commenter previously raised on the record of the DPO hearing. The public comment period and the public hearing on the DPO, therefore, would function as a “raise it or waive it” opportunity for the public and the certificate holder to raise issues and preserve their ability to participate further in the review process.

Council Considers CC Requests

Proposed rules would not make any changes to how the Council considers and evaluates CC requests to determine whether to grant a CC for a RFA. The existing amendment process does not include an automatic CC. Instead, any person may request a CC proceeding on the PO for an RFA. Requests for CC are then considered
by the Council to determine if any requests meet the threshold criteria necessary for the Council to grant a CC. To grant a request for a CC, the Council must find that the request raises a significant issue of fact or law that may affect the Council’s determination that the facility, with the change proposed by the amendment, meets the applicable laws or Council standards. Proposed rules clarify the language describing this Council’s CC determination process, but proposed rules make no substantive changes to how this process functions in existing rules.

Under proposed rules, if the Council finds that the CC request was properly raised on the record of the DPO hearing, and the CC request meets the threshold determination described above, a CC would be conducted as described in the existing Council rules. Proposed rules would not make any substantive changes to how the CC would be conducted. If the Council finds that the CC request was not properly raised on the record of the DPO hearing, or if the CC request does not meet the threshold determination described above, the Council would review the proposed order and make a final decision on the amendment request. Proposed rules would not make any substantive changes to how the Council makes its final decision when there is not a CC.

Council’s Final Decision and Scope of Review
Proposed rules clarify the existing rules stating how the Council makes its final decision and what the Council’s scope of review is for the various types of amendments (i.e. under existing rules, the Council’s scope of review for RFA’s proposing to add new area to a site boundary differs from the scope of review for an RFA proposing to extend construction deadlines). These changes are necessary to clarify existing rule language, and to ensure consistency and compatibility with the other rule changes being proposed.

EFSC Decision Process
EFSC relies upon its authority under ORS 469.470 and ORS 469.501 to conduct rulemaking. EFSC will make all decisions on the proposed rule amendments at a public meeting and will provide public notice of the date, time, and location of all EFSC meetings.

The Council received written comments and heard oral comments on the proposed rules during the first rulemaking hearing at its February 23-24, 2017 meeting.

In response to the Council’s direction to staff at that meeting, staff revised the originally proposed rules to include: a second, more expedited, review process; an option for the certificate holder to ask the Council whether a proposed change to add area to the site boundary requires an amendment; and to include an option for the certificate holder to ask the Council whether a proposed change can be reviewed under the proposed new standard process or the proposed new expedited process. Staff presented the second, more expedited, review process to the Council at its April 28, 2017 meeting.

A second rulemaking hearing was held with two comment sessions at the Council’s May 25-26, 2017 meeting. After considering all oral and written comments received before the close of that rulemaking hearing, the Council directed its staff to extend the comment period and hold a third rulemaking hearing at the July 27-28, 2017 Council meeting that would function as a work session amongst the Council, staff, and any interested persons from the public.

At the July 27-28, 2017 Council meeting, the Council held a third rulemaking hearing and heard extensive public comment. After considering all oral and written comments received before the close of that rulemaking hearing, the Council directed its staff to extend the comment period to receive written comments only and to revise the proposed rules as indicated on page 1 of this notice. To comment on the record of the extended comment period, comments must be in writing and must be received by staff before 5 p.m. PST on September 29, 2017. After considering all comments received on the record of this rulemaking, the Council could consider the revised proposed rules and could take action to approve the revised proposed rules at its October 19-20, 2017 meeting (exact dates and times of an October meeting are not finalized).

Comment Period
EFSC requests public comment on these proposed rules. EFSC also requests public comment on whether other options should be considered for achieving the substantive goals of the proposed rules while reducing the negative economic impact of the proposed rules on business.
The Oregon Department of Energy (ODOE) will accept written comments on the proposed rules until 5 p.m. PST on September 29, 2017.

Any person or agency may send written comments by email to EFSC.rulemaking@oregon.gov, or by mail, hand-delivery or fax to:

EFSC Rules Coordinator
Oregon Department of Energy
550 Capitol St. NE
Salem, OR 97301
Fax: 503-373-7806

More Information
Please contact Jason Sierman at 503-373-2127, by email to jason.sierman@oregon.gov, or at the mailing address listed above with any questions regarding this rulemaking.

Additional information about the proposed rulemaking and updates on the rulemaking review process are available using any of the following options:

1) Oregon Department of Energy’s Webpage
Details about this rulemaking, including: proposed rule language; a crosswalk document comparing existing Division 27 rules to proposed rules; process charts showing how EFSC reviews RFAs under existing rules and how RFAs would be reviewed under proposed rules; documents relied upon in preparing the rule; required rulemaking forms that have been filed with the Oregon Secretary of State; and links to EFSC webpages containing prior information relating to this rulemaking are available online at: https://services.oregon.gov/energy/Get-Involved/Pages/Energy-Facility-Siting-Council-Rulemaking.aspx

2) Updates by Email/Mail
In order to receive future updates related to this rulemaking project or other rulemaking projects you must be signed up on either or both of the two lists below. You will not automatically receive future updates simply by providing comments on the rulemaking.

Email
Subscribe to GovDelivery for email updates on EFSC rulemaking activities and other activities related to energy facilities under EFSC jurisdiction. GovDelivery is an automated email system that allows the public to manage subscriptions to receive information on ODOE’s projects and events. For more information, please visit: http://tinyurl.com/EFSC-email.

Mail
To receive notices of rulemaking activities in paper via U.S. postal mail, please contact Jason Sierman and request to be added to the paper notice list. His contact information is contained in this notice.

3) In Hardcopy
Copies of the proposed rules, and all the information related to this rulemaking that is posted to the EFSC webpage, are available in hardcopy for public inspection at:

Oregon Department of Energy
550 Capitol St. NE
Salem, OR 97301

Accessibility Information
The Oregon Department of Energy is committed to accommodating people with disabilities. If you require any special physical or language accommodations, or need information in an alternate format, please contact Megan Boardman at 503-378-3895, toll-free in Oregon at 800-221-8035, or by email to: Megan.Boardman@oregon.gov.