



Oregon

Kate Brown, Governor



Date: June 15, 2018

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 C (Action Item): Rulemaking - Compliance - For the June 29, 2018 EFSC Meeting

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Summary of Agenda Item & Request

- 1) Define the purpose and scope for a rulemaking to evaluate the Council's rules related to compliance;
- 2) Define the purpose and scope for the Rulemaking Advisory Committee (RAC) for this rulemaking project;
- 3) Appoint a RAC for this rulemaking project.

Overview

At its December 14-15, 2017 Council meeting, the Council approved its rulemaking schedule for 2018 (see **Attachment A**). Staff has completed preliminary work on the Council's second scheduled rulemaking project for 2018, the project that may adopt, amend, repeal, and renumber rules related to the Council's compliance activities.

Purpose and Scope of Rulemaking Project

The purpose of this rulemaking project is to: (1) evaluate, in terms of effectiveness and efficiency, the Council's rules that relate to how the Council ensures compliance with all applicable rules, all applicable laws, and the terms, requirements, and conditions written into site certificates and final orders; and (2) potentially draft proposed rule changes to increase the effectiveness and efficiency of the Council's compliance activities. Staff's preliminary analysis has identified possible improvements to the Council's rules relating to compliance, and the Council has previously directed staff to solicit early input from EFSC stakeholders on this project. Therefore, staff is now requesting Council approval to solicit input from a RAC on the topics the Council identifies to be within the scope of this project. To assist the Council in defining the scope of this rulemaking project, staff proposes several general categories of topics that could be addressed through rulemaking (see **next section below**). The Council may choose to limit the scope of this project to the categories of topics proposed, expand the scope beyond the categories proposed, reduce the scope to some subset of the categories proposed, or define the scope in any other manner it wishes.

As in past rulemaking projects, the Council may also chose to accomplish this rulemaking project through multiple phases (i.e. Phase 1 could address certain issues, Phase 2 could address other

issues). A phased approach could be useful if the Council feels there is value in addressing certain issues in a sequential manner (i.e. if there are certain issues that must be resolved before others), or if there is value in some issues being addressed in a more timely manner than others.

Staff’s Proposed Categories of Topics

Staff proposes the following categories of topics for the Council to consider when defining the scope of this rulemaking project:

- 1) Reporting Requirements;
- 2) Facility Retirement;
- 3) Inspections;
- 4) Violations;
- 5) Organization of Rules;
- 6) Timing Elements in Rules;
- 7) Other Topics or Issues Identified by Site Certificate Holders and Applicants;
- 8) Other Topics or Issues Identified by the Public; and
- 9) Other Topics/Issues Identified by Staff.

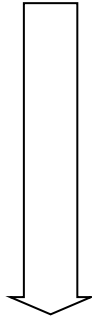
Recommended Rulemaking Process

At its December 14-15, 2017 Council meeting, the Council approved a rulemaking process with early public participation for this rulemaking project. The rulemaking process the Council approved is outlined below:

EARLY PUBLIC PARTICIPATION

* = EFSC Meeting

bold = optional

	Start	Council Approves Pub. Part. Process*	<input type="checkbox"/>
		Rulemaking Advisory Committee (RAC)	<input type="checkbox"/>
		Staff Draft of Proposed Language	<input type="checkbox"/>
		Council Authorization to File Notice*	<input type="checkbox"/>
		Staff Issues Official Public Notice	<input type="checkbox"/>
		Public Comment Period	<input type="checkbox"/>
		Rulemaking Hearing*	<input type="checkbox"/>
		Hearing Officer Report	<input type="checkbox"/>
		Council Adopts Final Rule Language*	<input type="checkbox"/>
	Finish	Staff Files Final Rule Language	<input type="checkbox"/>

Estimated time 4 – 6 months

Because the changes proposed for this rulemaking require staff to complete a complex evaluation of how to draft proposed rule language, the Council identified a need for early public participation in the form of a Rulemaking Advisory Committee (RAC).

Purpose & Scope of a Rulemaking Advisory Committee (RAC)

The purpose and scope of the RAC shall be defined by the Council. Staff recommends the purpose of the RAC be to offer a group of entities/people with diverse interests the opportunity to provide input to help inform staff's evaluation of the issues within the categories of topics identified by the Council, and to provide input on the drafting of any proposed rule language.

Staff recommends the purpose of the RAC is not for it to be a forum for diverse interests to come together and provide unified input by way of agreement or consensus, but rather, for it to be a forum for staff to hear a variety of individual input from diverse interests, regardless of any agreement or consensus.

Staff recommends the scope of the RAC's input be limited to issues within the categories of topics identified by the Council.

Staff proposes to hold at least two RAC meetings, with the possibility of additional meetings as deemed necessary by staff after gauging input from RAC members, with the locations and times yet to be determined. Staff proposes to engage with the RAC and seek its input before, during, and after the drafting of any proposed language.

Composition of a RAC

Staff recommends the Council appoint a RAC to provide input to staff commensurate with the RAC's purpose and scope as defined by the Council.

Staff recommends that any RAC appointed by the Council for this rulemaking project be composed of diverse stakeholders representing some or all of the following interest groups: NGOs and Non-Profits; Private Industry and Investor Owned Utilities; and Tribal, Local, State, and Regional Government.

Staff has compiled a recommended list of entities that have expressed an interest to staff in participating on a RAC for this rulemaking (*see Attachment B*). Staff recommends the Council consider appointing approximately 10-15 entities from this list to potentially serve on a RAC for this rulemaking project. When appointing members to the RAC, the Council could consider appointing either entities or persons.

In making its appointments, the Council may add or subtract entities or persons from the attached list of staff's recommendations. When appointing entities or persons to potentially serve on the RAC, staff also requests that the Council appoint one or two Council members to serve on the RAC.

Next Steps

Staff will reach out to the entities and persons the Council appoints as potential RAC members to confirm their interest and availability to participate in at least two RAC meetings. Staff will then schedule the RAC meetings. Staff expects the first meeting could take place as early as the

end of July or early August. The purpose and scope of the RAC will be commensurate with the Council's direction.

After concluding its meetings with the RAC and considering all input received, staff would report the results of its evaluation back to the Council, results that could include proposed rule language for the Council to review. After the Council reviews any proposed rule language, the Council could deliberate and decide on whether to authorize staff to issue official public notice of this rulemaking project. If authorized to issue official public notice, staff would issue official public notice and schedule a rulemaking hearing to take place at a future Council meeting. The public would then have the opportunity to provide comments on this rulemaking, both in writing and orally at the rulemaking hearing.