Item J: 2019 Housekeeping Rulemaking Project
Attachment 2: Draft Proposed Rules
May 2, 2019

DIVISION 1 - GENERAL PROVISIONS 2

345-001-0000: Notice of Permanent Rulemaking 2
345-001-0010: Definitions 2

DIVISION 15 - PROCEDURES GOVERNING COUNCIL AND DEPARTMENT OF ENERGY PROCEEDINGS, INCLUDING SITE CERTIFICATE HEARINGS 12

Procedures for the Conduct of Contested Cases 12
345-015-0014 - Contested Case Notices 12
345-015-0016 - Requests for Party or Limited Party Status in Contested Cases on Applications for a Site Certificate 13
345-015-0080 - Participation by Government Agencies 14

Procedures for Council and Department of Energy Review of an Application for a Site Certificate 15
345-015-0110 - Public Notice of a Notice of Intent 15
345-015-0120 - Memorandum on a Notice of Intent 16
345-015-0180 - Agency Memorandum on a Site Certificate Application 17
345-015-0190 - Determination of Completeness 17
345-015-0200 - Notice to Agencies that the Application is Complete 19
345-015-0220 - Public Hearing on the Draft Proposed Order 20
345-015-0230 - Council Review and the Office of Energy's Proposed Order 22
345-015-0310 - Request for Expedited Review of Special Criteria Facilities 22

DIVISION 20 - NOTICE OF INTENT 29

345-020-0011 - Contents of a Notice of Intent 29
345-020-0016 - Amendment of Notice of Intent 34
345-020-0040 - Distribution of a Notice of Intent 35

DIVISION 21 - APPLICATION FOR SITE CERTIFICATE 36

345-021-0000 - General Requirements 36
345-021-0010 - Contents of an Application 37
345-021-0050 - Distribution of a Preliminary Application 66
345-021-0055 - Distribution of a Complete Application 67
345-021-0090 - Amendment of an Application 68

DIVISION 27 - SITE CERTIFICATE CONDITIONS, AMENDMENT, TRANSFER AND TERMINATION AND DEPARTMENT OF ENERGY APPROVAL OF GAS STORAGE TESTING PIPELINES 69

345-027-0060 - Preliminary Request for Amendment 69
345-027-0071 - Proposed Order, Requests for Contested Case and Council's Final Decision on Requests for Amendment Under Type A Review 70
345-027-0110 - Termination of a Site Certificate 74

Department of Energy Approval of Gas Storage Testing Pipelines 76
345-027-0220 - Request for Approval 76

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DIVISION 1 - GENERAL PROVISIONS

345-001-0000: Notice of Permanent Rulemaking

(1) Before permanently adopting, amending or repealing any rule, the Council ~~shall~~ will give notice of the ~~proposed adoption, amendment or repeal as required by ORS 183.335~~ proposed action:

(a) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days before the effective date ~~of the adoption, amendment or repeal~~ of the rule~~,~~;

(b) ~~As required under ORS 183.335, b~~By ~~mailing~~sending a copy of the notice by mail or email to persons on the Council's mailing list ~~of persons who have requested notice of rulemaking~~established under ORS 183.335(8) at least 28 days before the effective date of the rule;

(c) By sending a copy of the notice by email ~~and~~ to ~~certain~~ the legislators specified in ORS 183.335(15) at least 49 days before the effective date of the rule~~,~~; and

(~~c~~d) By sending ~~mailing or furnishing~~ a copy of the notice by mail, email, or hand delivery to the Associated Press and the Capitol Press Room.

Commented [CC1]: See Issue 1019.1

(2) Notwithstanding the requirements of ORS 183.335, when the Council is required to adopt rules or regulations promulgated by an agency of the federal government and the Council has no authority to alter or amend the content or language of those rules or regulations prior to their adoption, the Council ~~shall~~ will adopt these rules or regulations under the procedures prescribed in ORS 183.337.

(3) The Council may update the mailing list described in subsection (1)(b) of this rule annually by requesting persons to confirm that they wish to remain on the mailing list. If a person does not respond to a request for confirmation within 28 days after the date the Council sends the request, the Council will remove the person from the mailing list. Any person removed from the mailing list will be immediately returned to the mailing list upon request, provided the person provides an address or email address to which notice may be sent.

Commented [CC2]: See issue 1019.2

Stat. Auth.: ORS 183.341, 469.470
Stats. Implemented: ORS ~~469.470 & 469.490~~183.341

345-001-0010: Definitions

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

(1) "Adjusted to ISO conditions" as defined in ORS 469.503(2)(e).

(2) "Analysis area" means the area or areas specifically described in the project order issued under OAR 345-015-0160(1), containing resources that the proposed facility may significantly affect. The analysis area is the area for which the applicant ~~shall~~must describe the proposed facility's impacts in the application for a site certificate. A proposed facility might have different analysis areas for different types of resources. For the purpose of submitting an application for a site certificate in an expedited review granted under OAR 345-015-0300 or 345-015-0310, the analysis areas are the study areas defined in this rule, subject to modification in the project order.

(3) “Applicant” as defined in ORS 469.300 or, if an application has not been submitted, a person who has submitted, or intends to submit, a notice of intent or a request for expedited review.

(4) “Associated transmission lines” as defined in ORS 469.300.

(5) “Average electric generating capacity” as defined in ORS 469.300.

(6) “Background radiation” means the direct radiation (gamma) and concentrations of potential radionuclide contaminants in construction materials and the environment in the vicinity of the plant not associated with the nuclear operation and retirement of the facility. Background ~~shall~~will be determined as follows:

(a) For direct radiation, the results of any background measurements taken prior to operation of the facility ~~shall~~must be provided and 6 to 10 measurements ~~shall~~must be taken in areas in the vicinity of the site with materials and/or geological formations representative of the site that have not been affected by the operation and retirement of the facility. Background ~~shall~~must be calculated at the average and at the 95% confidence level.

(b) Environmental samples ~~shall~~must be taken for soil, sediment, water, and other materials present at the facility site that could have been affected by facility operations and retirement. Measurements for these samples ~~shall~~must be calculated at the average and 95% confidence levels, based on 6 to 10 measurements. Background environmental samples ~~shall~~must be taken at locations on site or in the immediate vicinity of the site which are unaffected by plant operations. Background ~~shall~~must be calculated at the average and 95% confidence levels, based on 6 to 10 measurements at each location.

(c) For construction material such as concrete, asphalt, block, brick and other materials used to construct the buildings and systems at the site, representative samples of materials unaffected by site operations ~~shall~~must be selected and surveyed. Six to ten samples of each material ~~shall~~must be taken to determine the level of naturally occurring and artificially induced concentrations of naturally occurring radioactivity present. Measurements ~~shall~~must include direct radiation (beta-gamma and alpha), wipes and qualitative and quantitative laboratory analyses. Concentrations of fission and activation products from historical fallout ~~shall~~must be characterized as well.

(d) All measurements ~~shall~~must be made using appropriate instruments, properly calibrated, and in sufficient number to determine compliance with requirements.

(7) “Base load gas plant” as defined in ORS 469.503(2)(e).

(8) “Carbon dioxide equivalent” as defined in ORS 469.503(2)(e).

(9) “Certificate holder” means the person to whom a site certificate has been granted by the Council pursuant to this chapter.

(10) “Chair” means the chairman or chairwoman of the Energy Facility Siting Council.

(11) “Committed firm energy and capacity resources” means generating facilities or power purchase contracts that are assured to be available to the energy supplier over a defined time period. Committed

firm energy and capacity resources include existing generating facilities, existing power purchase contracts and planned generating facilities that sponsors have made firm commitments to develop.

(12) “Construction” as defined in ORS 469.300.

(13) “Corridor” means a continuous area of land not more than one-half mile in width and running the entire length of a proposed transmission line or pipeline. “Micrositing corridor” is defined below in this rule.

(14) “Council” means the Energy Facility Siting Council established under ORS 469.450.

(15) “Council Secretary” means the person designated by the Director of the Oregon Department of Energy to serve as secretary to the Council.

(16) “Department” means the ~~Office of Energy or the~~ Department of Energy created under ORS 469.030.

(17) “Direct cost” means the discounted sum of all monetary costs to the ultimate consumer over the lifetime of the facility or resource plan or resource strategy.

(18) “Energy facility” means an energy facility as defined in ORS 469.300, including a small generating plant for which an applicant must have a site certificate according to OAR 345-001-0210.

(19) “Energy supplier” means:

(a) A retail electric utility, a federal power marketing agency, or a local gas distribution company, or

(b) A person or public agency generating electric energy for its own consumption, lawfully purchasing electric energy directly from a generator for its own consumption, or transmitting or distributing natural or synthetic gas from an energy facility for its own consumption.

(20) “Existing corridor,” as used in ORS 469.300 and ORS 469.442, means the right-of-way of an existing transmission line, not to exceed 100 feet on either side of the physical center line of the transmission line or 100 feet from the physical center line of the outside lines if the corridor contains more than one transmission line.

(21) “Facility” as defined in ORS 469.300 or a small generating plant for which an applicant must have a site certificate according to OAR 345-001-0210 together with any related or supporting facilities.

(22) “Facility substantially similar to the proposed facility” means:

(a) A facility that uses the same fuel and substantially similar technology, that has substantially the same in-service date, and that has a direct cost not substantially greater than that of the proposed facility; or

(b) A facility that is demonstrated to provide as good a mix of reliability, compatibility with the power system, strategic flexibility, environmental impact and direct cost as the proposed facility taking into account reasonable trade-offs among such factors.

(23) “Fossil fuel” means natural gas, petroleum, coal and any form of solid, liquid or gaseous fuel derived from such materials that is used to produce useful energy.

(24) “Fossil-fueled power plant” as defined in ORS 469.503(2)(e).

(25) “Fuel chargeable to power heat rate” means the net heat rate of electric power production during the first twelve months of commercial operation. A fuel chargeable to power heat rate is calculated with all factors adjusted to the average temperature, barometric pressure and relative humidity at the site during the times of the year when the facility is intended to operate using the formula, FCP = (FI - FD)/ P, where:

(a) FCP = Fuel chargeable to power heat rate.

(b) FI = Annual fuel input to the facility applicable to the cogeneration process in British thermal units (higher heating value).

(c) FD = Annual fuel displaced in any industrial or commercial process, heating, or cooling application by supplying useful thermal energy from a cogeneration facility instead of from an alternate source, in British thermal units (higher heating value). (d) P = Annual net electric output of the cogeneration facility in kilowatt-hours.

(26) “Generating facility” as defined in ORS 469.503(2)(e).

(27) “Greenhouse gas” as defined in ORS 469.503(2)(e).

(28) “Gross carbon dioxide emissions” as defined in ORS 469.503(2)(e). The Council ~~shall~~will measure the gross carbon dioxide emissions of a fossil-fueled power plant on a new and clean basis. For nongenerating energy facilities that emit carbon dioxide, the Council ~~shall~~will measure the gross carbon dioxide emissions as described in OAR 345-024-0620(1).

(29) “High efficiency cogeneration facility” means an energy facility, except coal and nuclear power plants, that sequentially produces electrical and useful thermal energy from the same fuel source and under average annual operating conditions:

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

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

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

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

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

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

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

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

(31) “Local government” as defined in ORS 469.300.

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

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

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

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

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

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

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

(f) Implementing other measures approved by the Council.

(34) “Natural gas” means gas as defined in ORS 520.005.

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

(36) “Net carbon dioxide emissions” as defined in ORS 469.503(2)(e).

(37) “Net electric power output” means the electric power produced or capacity made available for use. Calculation of net electric power output subtracts losses from on-site transformers and power used for any on-site electrical loads from gross capacity as measured or estimated at the generator terminals for each generating unit.

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

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

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

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

(d) Using a rate of 161 pounds of carbon dioxide per million Btu of distillate fuel (higher heating value), if such fuel use is proposed by the applicant.

(e) Notwithstanding subsection (a) and including subsections (b) through (d), for a facility that employs major power generating equipment that has previously been used, the new and clean basis ~~shall~~ means the average carbon dioxide emissions rate and net electric power output for the first use of the equipment at the site, as determined by historical data from the previous usage or by testing on site.

(39) "Nominal electric generating capacity" as defined in ORS 469.300.

(40) "Non-base load power plant" means a fossil-fueled generating facility that is limited by the site certificate to an average number of hours of operation per year of not more than 6,600 hours. For a non-base load power plant designed to operate at variable loads, the facility's annual hours of operation are determined by dividing the actual annual electric output of the facility in megawatt-hours by the facility's nominal electric generating capacity in megawatts. The Council ~~shall~~will assume a 30-year life for the plants for purposes of determining gross carbon dioxide emissions, unless the applicant requests and the Council approves a shorter operational life in the site certificate. If the Council approves a shorter operational life, the certificate holder ~~shall~~must operate the facility for no longer than the approved operational life or, before the expiration of the approved operational life, ~~shall~~must request an amendment of the site certificate to extend the operational life.

(41) "Nongenerating facility" as defined in ORS 469.503(2)(e).

~~(42) "Office of Energy" and "Office" mean the Oregon Office of Energy and the Oregon Department of Energy.~~

Commented [CC3]: See Issue 1007.

(~~43~~42) "Offset" as defined in ORS 469.503(2)(e).

(~~44~~43) "Offset funds" means the amount of funds determined by the Council to satisfy the applicable carbon dioxide emissions standard pursuant to OAR 345-024-0560(3), 345-024-0600(3) or 345-024-0630(2) and (4).

(~~45~~44) "Owner" means owner or lessee under a capital lease.

(~~46~~45) "Permit" means any permit, license, certificate or other approval required by federal law, state statute, state administrative rule or local government ordinance.

(~~47~~46) "Person" as defined in ORS 469.300.

(~~48~~47) "Power augmentation" means technologies that increase the capacity and the heat rate of the plant above the capacity and heat rate of the base load gas plant. These include, but are not limited to, duct burning and some forms of steam augmentation.

(~~49~~48) "Project order" as defined in ORS 469.300.

(~~50~~49) "Qualified organization" means an organization that:

(a) Is exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code as amended and in effect on December 31, 1996;

(b) Either is incorporated in the State of Oregon or is a foreign corporation authorized to do business in the State of Oregon;

(c) Has in effect articles of incorporation that:

(A) Require that offset funds received under OAR 345-024-0710(3) are used for offsets;

(B) Require that decisions on the use of the offset funds are made by a decision-making body composed of seven voting members of which three are appointed by the Council, three are Oregon residents appointed by the Bullitt Foundation or an alternative environmental nonprofit organization named by the body, and one is appointed by the applicants for site certificates that are subject to OAR 345-024-0550, 345-024-590, and 345-024-0620 and the holders of such site certificates; and

(C) Require nonvoting membership on the decision-making body for holders of site certificates that have provided funds not yet disbursed under OAR 345-024-0710(3);

(d) Has made available on an annual basis, beginning after the first year of operation, a signed opinion of an independent certified public accountant stating that the qualified organization's use of funds pursuant to ORS 469.503 conforms with generally accepted accounting procedures except that the qualified organization ~~shall~~will have one year to conform with generally accepted accounting principles in the event of a nonconforming audit;

(e) Has to the extent applicable, except for good cause, entered into contracts obligating at least 60 percent of the offset funds to implement offsets within two years after the commencement of construction of the facility; and

(f) Has to the extent applicable, except for good cause, complied with OAR 345-024-0710(3).

(~~51~~50) "Related or supporting facilities" as defined in ORS 469.300. The Council interprets the terms "proposed to be ~~built~~ constructed in connection with" ~~as~~ to mean~~ing~~ that a structure is a related or supporting facility if it would not be built but for construction or operation of the energy facility. "Related or supporting facilities" does not include any structure existing prior to construction of the energy facility, unless such structure must be ~~significantly~~ substantially modified solely to serve the energy facility.

Commented [CC4]: See Issue 1108.

(~~52~~51) "Reviewing agency" means any of the following officers, agencies or tribes:

(a) The Department of Environmental Quality~~.~~;

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

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

(d) The State Geologist~~.~~;

(e) The Department of Forestry.

(f) The Public Utility Commission~~.~~ of Oregon;

(g) The Oregon Department of Agriculture~~.~~;

(h) The Department of Land Conservation and Development~~.~~;

(i) The Oregon Department of Aviation;

(~~i~~j) The Pacific Northwest Electric Power and Conservation Planning Council~~.~~;

(~~j~~k) The Office of State Fire Marshal~~.~~;

(~~k~~l) The Department of State Lands~~.~~;

(~~l~~m) The State Historic Preservation Office.

(~~m~~n) Any other agency identified by the Department of Energy~~.~~;

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

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

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

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

(~~53~~52) "Significant" means having an important consequence, either alone or in combination with other factors, based upon the magnitude and likelihood of the impact on the affected human population or natural resources, or on the importance of the natural resource affected, considering the context of the action or impact, its intensity and the degree to which possible impacts are caused by the proposed action. Nothing in this definition is intended to require a statistical analysis of the magnitude or likelihood of a particular impact.

(~~54~~53) "Site" as defined in ORS 469.300. "Energy facility site" means all land upon which an energy facility is located or proposed to be located. "Related or supporting facilities site" means all land upon which related or supporting facilities for an energy facility are located or proposed to be located.

(~~55~~54) "Site boundary" means the perimeter of the site of a proposed energy facility, its related or supporting facilities, all temporary laydown and staging areas and all corridors and micrositing corridors proposed by the applicant.

(~~56~~55) "Site certificate" as defined in ORS 469.300.

(~~57~~56) "Special nuclear material" means plutonium, uranium-233 or uranium enriched in the isotope 233 or in the isotope 235.

(~~58~~57) "Strategic flexibility" means the value of a resource as part of a strategy to manage variance in costs or risks caused by future uncertainty.

Commented [CC5]: See Issue 1032.

(~~59~~58) “Study area” means an area defined in this rule. Except as specified in subsections (f) and (g), the study area is an area that includes all the area within the site boundary and the area within the following distances from the site boundary:

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

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

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

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

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

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

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

(~~60~~59) “Substantial loss of steam host” means the thermal energy user associated with a high efficiency cogeneration facility has made such long-term changes in its manner and magnitude of operation as to result in the loss of one or more work shifts for at least a year, accompanied by at least a 30 percent resultant reduction in the use of thermal energy.

(~~61~~60) “Substantial loss of fuel use efficiency” means an increase in the fuel chargeable to power heat rate at a high efficiency cogeneration facility to greater than 7000 Btu per kilowatt-hour (higher heating value), or reduction of the fraction of energy output going to the thermal energy user associated with the facility to less than 20 percent, as a result of a substantial loss of steam host. Substantial loss of fuel use efficiency does not include efficiency losses due to equipment wear or condition.

(~~62~~61) “Surface facilities related to an underground gas storage reservoir” means structures or equipment adjacent to and associated with an underground gas storage reservoir that are proposed to be built in connection with an underground gas storage reservoir and include, but are not limited to:

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

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

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

(~~63~~62) “Thermal power plant” as defined in ORS 469.300.

(~~64~~63) “Total energy output” means the sum of useful thermal energy output and useful electrical energy output.

(~~65~~64) “Underground gas storage reservoir” as defined in ORS 469.300.

(~~66~~65) “Useful thermal energy” means the verifiable thermal energy used in any industrial or commercial process, heating or cooling application;

(~~67~~66) “Utility” as defined in ORS 469.300.

(~~68~~67) “Vice-chair” means the vice-chairman or vice-chairwoman of the Energy Facility Siting Council.

(~~69~~68) “Waste disposal facility” as defined in ORS 469.300.

Stat. Auth.: ORS 469.373 & 469.470
Stats. Implemented: ORS 469.300-570, 469.590-619 & 469.992

DIVISION 15 - PROCEDURES GOVERNING COUNCIL AND DEPARTMENT OF ENERGY PROCEEDINGS, INCLUDING SITE CERTIFICATE HEARINGS

Procedures for the Conduct of Contested Cases

345-015-0014 - Contested Case Notices

(1) In a Contested Case proceeding conducted by the Council, ~~The~~ the Department ~~shall~~ will issue a contested case notice ~~notices for Council contested case proceedings~~ as provided in OAR 137-003-0001. The notice will include, at a minimum:

(a) A caption with the name of the person or agency to whom the notice is issued;

(b) A short and plain statement of the issues to be considered under OAR 345-015-0016, and a reference to the particular sections of the statute and rules involved;

(c) A statement of the party's right to be represented by counsel and that legal aid organizations may be able to assist a party with limited financial resources;

(d) A statement of the party's rights to participate in the hearing a party or limited party;

(e) A statement of the agency's authority and jurisdiction to hold a hearing on the issues; and

(f) A statement of the time and place of the hearing; and

(g) A statement that active duty servicemembers have a right to stay proceedings under the federal Servicemembers Civil Relief Act as described in ORS 183.415(3)(g); and

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

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

~~(B) The date of the pre-hearing conference.~~

~~(C) The time and place of the hearing.~~

~~(b) Contested case notices regarding proposed orders for site certificate amendments shall include:~~

~~(A) The date of the pre-hearing conference.~~

~~(B) The time and place of the hearing.~~

~~(C) The issues and the parties the Council identified for the contested case as described in OAR 345-027-0071.~~

~~(2) In addition to the requirements of section (1), for a contested case notice on a proposed order as described in OAR 345-015-0230 or following a Council decision to grant a contested case hearing under 345-015-0310, the Department shall include in the notice a statement that participation as a party or limited party in the contested case proceeding and the opportunity to raise any issue are subject to the limitations described in OAR 345-015-0016.~~

(~~3~~2) The Department ~~shall~~will send a contested case notice by registered or certified mail to the applicant and to each party to the contested case. ~~following persons:~~

~~(a) For a contested case notice on a proposed order as described in OAR 345-015-0230, to the applicant and to all persons who commented in person or in writing on the record of the public hearing described in 345-015-0220.~~

~~(b) Following the Council's decision to grant a contested case proceeding on a proposed order on an application for a site certificate for a special criteria facility, to the applicant and to all persons who commented in person or in writing on the record of the public hearing on the proposed order described in OAR 345-015-0320.~~

~~(c) Following a Council decision to grant a contested case proceeding on a proposed site certificate amendment under OAR 345-027-0071 or 345-027-0090, to the certificate holder and to the parties the Council granted contested case party status to.~~

~~(d) For Council contested case proceedings described under OAR 345-029-0070, 345-029-0100 or 345-060-0004, to persons who have an interest or represent a public interest in the outcome of the proceeding.~~

~~(4) The Department shall request that the applicant notify the hearing officer and the Department, by the date described in subsection (1)(a), of any issues the applicant desires to raise in the contested case proceedings described in subsections (3)(a) and (b).~~

Statutory/Other Authority: ORS 469.373 & 469.470
Statutes/Other Implemented: ORS 183.415, 469.085, 469.370, 469.405, 469.440, 469.605, 469.615 & 469.992

Commented [CC6]: See Issue 1103.

345-015-0016 - Requests for Party or Limited Party Status in Contested Cases on Applications for a Site Certificate

(1) Notwithstanding OAR 137-003-0005(2), a person requesting to participate as a party or limited party in a contested case proceeding ~~shall~~must submit a petition to the hearing officer by the date specified in the Department of Energy's ~~contested case~~ notice issued under OAR 345-015-~~0014.~~0230(3).

Commented [CC7]: See Issue 1103.

(2) Persons who have an interest in the outcome of the Council's contested case proceeding or who represent a public interest in such result may request to participate as parties or limited parties.

(3) Except as described in section (4), only those persons who have commented in person or in writing on the record of the public hearing described in OAR 345-015-0220 may request to participate as a party or limited party in a contested case proceeding on an application for a site certificate. To raise an issue in a contested case proceeding, the issue must be within the jurisdiction of the Council, and the person must have raised the issue in person or in writing on the record of the public hearing, unless the Department of Energy did not follow the requirements of ORS 469.370(2) or (3) or unless the action recommended in the proposed order described in OAR 345-015-230, including any recommended conditions of approval, differs materially from the action recommended in the draft proposed order, in which case the person may raise only new issues within the jurisdiction of the Council that are related to such differences. If a person has not raised an issue at the public hearing with sufficient specificity to afford the decision maker an opportunity to respond to the issue, the hearing officer ~~shall~~may not

consider the issue in the contested case proceeding. To have raised an issue with sufficient specificity, the person must have presented facts at the public hearing that support the person's position on the issue.

(4) Following a Council decision to grant a contested case hearing under OAR 345-015-0310, only those persons who have commented in person or in writing on the record of the public hearing described in 345-015-0320 may request to participate as a party or limited party in a contested case proceeding on an application for a site certificate. To raise an issue in a contested case proceeding, the issue must be within the jurisdiction of the Council, and the person must have raised the issue in person or in writing on the record of the public hearing. If a person has not raised an issue at the public hearing with sufficient specificity to afford the decision maker an opportunity to respond to the issue, the hearing officer ~~shall~~may not consider the issue in the contested case proceeding. To have raised an issue with sufficient specificity, the person must have presented facts at the public hearing that support the person's position on the issue.

(5) In a petition to request party or limited party status, the person requesting such status ~~shall~~must include:

(a) The information required under OAR 137-003-0005(3).

(b) A short and plain statement of the issue or issues that the person desires to raise in the contested case proceeding.

(c) A reference to the person's comments at the public hearing showing that the person raised the issue or issues at the public hearing.

(d) A detailed description of the person's interest in the contested case proceeding and how that interest may be affected by the outcome of the proceeding.

(6) The hearing officer's determination on a request to participate as a party or limited party is final unless the requesting person submits an appeal to the Council within seven days after the date of service of the hearing officer's determination.

Statutory/Other Authority: ORS 469.373 & 469.470
Statutes/Other Implemented: ORS 183.415, 469.370, 469.405, 469.440, 469.605, 469.615 & 469.992

345-015-0080 - Participation by Government Agencies

(1) Any state or local government agency other than the Department of Energy may request participation in a contested case as a party, limited party or interested agency, subject to the limitations described in OAR 345-015-0016. ~~For a contested case on a site certificate application, t~~The agency ~~shall~~will submit the request to the hearing officer in writing by the date specified in the Department's ~~of Energy's contested case~~ notice of proposed order issued under OAR 345-015-~~0014~~0230 or 345-027-0071. For a contested case on a site certificate amendment, the agency ~~shall~~will submit the request to the Department by the date specified in the notice of ~~the opportunity to request a contested case~~proposed order issued under OAR 345-027-0071.

Commented [CC8]: See Issue 1103.

(2) The Department of Energy ~~shall~~will participate in all contested case proceedings conducted by the Council and ~~shall~~will have all the rights of a party.

Stat. Authority: ORS 469.470
Stat. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615, ORS 469.992

Procedures for Council and Department of Energy Review of an Application for a Site Certificate

345-015-0110 - Public Notice of a Notice of Intent

(1) After receiving a notice of intent (NOI), the Department of Energy ~~shall~~will issue a 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 to the property owners ~~of property whose names and addresses the applicant has supplied as required by OAR 345-020-0011~~ listed in Exhibit F of the NOI~~.~~;

(c) Except as provided in subsection (d), publishing notice in a newspaper of general circulation available in the vicinity of the proposed facility; and

(d) 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 ~~shall~~will 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 OAR 345-015-0190(10) and the public hearing described in OAR 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 ~~shall~~will 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 ~~the~~ a Department~~'s project officer~~ 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 OAR 345-020-0011(1)(d):

(A) An explanation that the corridor proposed by the applicant in the NOI is subject to change and that the applicant may propose adjustments to the proposed corridor(s) in the application;

(B) An explanation that the applicant may present adjustments to the proposed corridor(s) 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 ~~shall~~must consider public comments on the corridor(s) 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 ~~shall~~will post a notice of the local land use proceeding on its website.

Stat. Authority: ORS 469.470
Stat. Implemented: ORS 469.330

345-015-0120 - Memorandum on a Notice of Intent

After receiving a notice of intent (NOI), ~~The~~ the Department ~~of Energy shall~~will prepare a memorandum ~~to accompany the copies of the notice of intent (NOI) distributed as described in~~for distribution under OAR 345-020-0040. In the memorandum, the Department ~~shall~~will:

(1) Request comments from the reviewing agency by a specified date.

(2) Request the following information:

(a) The name, address and telephone number of the agency contact person assigned to review the application.

(b) Comments on aspects of the proposed facility that are within the particular responsibility or expertise of the reviewing agency.

(c) Recommendations regarding the size and location of analysis area(s).

(d) A list of studies that should be conducted to identify potential impacts of the proposed facility and mitigation measures.

(e) If the applicant has identified one or more proposed corridors in Exhibit D of the NOI as required by OAR 345-020-0011(1)(d), a discussion of the relative merits of the corridors described in the NOI and recommendations, if any, on the selection of a corridor.

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(f) A list of statutes, administrative rules and local government ordinances administered by the agency that might apply to construction or operation of the proposed facility and a description of any information needed for determining compliance.

(g) A list of any permits administered by the agency that might apply to construction or operation of the proposed facility and a description of any information needed for reviewing a permit application.

(h) For tribes affected by the proposed facility, a list of tribal codes that the tribe recommends to the Council for its review of the application and specific information regarding the proposed facility or study areas described in the NOI that is necessary for determining compliance with those tribal codes.

(3) State the date, location, agenda and purpose of any informational meeting that the Department has scheduled on the NOI and encourage the recipient to attend and participate in the informational meeting.

Statutory/Other Authority: ORS 469.470
Statutes/Other Implemented: ORS 469.330

345-015-0180 - Agency Memorandum on a Site Certificate Application

After receiving a preliminary application, ~~The~~the Department of Energy ~~shall~~ will prepare a memorandum ~~to accompany the copies of the preliminary application distributed as described in~~for distribution under OAR 345-021-0050. In the memorandum, the Department ~~shall~~will:

Commented [CC11]: See Issue 1106.

(1) Request the recipient to return comments or recommendations described in OAR 345-021-0050(2) to the Department by a specified date;

(2) Describe the matters to be covered in the comments or recommendations as set forth in OAR 345-021-0050(2) and (4);

(3) Explain that the recipient's written comments, recommendations and reports are part of the decision record for the application for a site certificate;

(4) State that the reviewing agency must comment in person or in writing on the record of the public hearing described in OAR 345-015-0220 to preserve the right to participate in the contested case proceeding as a party, limited party or interested agency and the right to appeal the Council's final decision; and

(5) For any special advisory group designated by the Council under ORS 469.480, request that the special advisory group recommend to the Council the applicable substantive criteria and explain that, as required by ORS 469.504(5), if the special advisory group does not recommend applicable substantive criteria by the specified date, the Council may either determine and apply the applicable substantive criteria or determine compliance with the statewide planning goals under ORS 469.504(1)(b)(B) or (C).

Statutory/Other Authority: ORS 469.470
Statutes/Other Implemented: ORS 469.350 & 469.504

345-015-0190 - Determination of Completeness

(1) Until the Department of Energy determines the application to be complete, it is a preliminary application. Within 60 days after receipt of a preliminary application for a site certificate, the Department ~~shall~~will notify the applicant whether the application is complete. In the notification, the Department ~~shall~~will:

(a) State that the application is complete and state the date of filing;

(b) State that the application is incomplete, describe any information needed to complete the application to the extent known to the Department at the time of the notification, ask the applicant to submit the needed information by the deadline described in section (4) and estimate the additional time the Department will need to make a determination of completeness; or

(c) Explain the reasons why the Department cannot determine completeness and estimate the additional time the Department will need to make a determination of completeness.

(2) If the Department does not notify the applicant as described in section (1), the application is deemed complete and filed 60 days after receipt of the preliminary application. Otherwise, the application is complete as determined under section (5) and the date of filing is the date determined under section (6).

(3) If the Department finds that the applicant did not give adequate consideration to public concerns about the corridors the applicant identified in Exhibit D of the notice of intent or corridor adjustments presented at the informational hearing described in OAR 345-015-0130, the Department may find the application incomplete and notify the applicant as described under section (1)(b).

(4) The Department may specify a date by which the applicant must submit additional information needed to complete the application. If follow-up requests for additional information are needed, the Department may specify dates by which the applicant must submit the information. At the request of the applicant, the Department may allow additional time 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).

(5) 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 345-021-0010. The Department ~~shall~~will notify the applicant when the Department finds that the application is complete and, if needed, ~~shall~~will request the application supplement described in OAR 345-021-0055.

(6) The date of filing is the date the Department receives the application supplement described in OAR 345-021-0055 or, if no supplement is needed, the date the Department notifies the applicant that the application is complete.

(7) The Department ~~shall~~will inform the public that the application is complete by publishing notice in a newspaper of general circulation available in the vicinity of the proposed facility. In addition, the Department ~~shall~~will send 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 facility and to the property owners listed in Exhibit F of the application.

(8) In notices described in section (7), the Department ~~shall~~will include the following information:

(a) A description of the proposed facility~~.~~;

(b) The location of the site of the proposed facility;

(c) The date of filing~~.~~;

(d) A description of the procedure for review of the application, including the date, time and location of any informational meeting that has been scheduled on the application and an explanation of the difference between the informational meeting and the public hearing described in OAR 345-015-0220~~.~~;

(e) Addresses of locations where the public may review copies of the application~~.~~;

(f) The name, address, email address, and telephone number of the Department representative ~~of Energy project officer~~ to contact for more information~~.~~;

(g) If the applicant has elected to seek local land use approvals pursuant to ORS 469.503(2)(a), a statement of the status of the land use approvals, and the name, address and telephone number of the local governments(s) making or having made the land use determination~~.~~; and

(h) If the proposed facility is an energy facility that must comply with a carbon dioxide emissions standard adopted by the Council, a statement of the applicant's proposed means of compliance with the applicable carbon dioxide emissions standard.

(9) After a determination that an application is complete, the applicant ~~shall~~must submit additional information to the Department 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.

Stat. Authority: ORS 469.470
Stat. Implemented: ORS 469.350

345-015-0200 - Notice to Agencies that the Application is Complete

After the date of filing, the Department ~~of Energy shall provide to the applicant the~~will a prepare notice ~~described in this rule and a mailing list of persons, including but not limited to those agencies listed in ORS 469.350, to whom the applicant shall send the notice and the application supplement described in~~ for distribution under OAR 345-021-0055. In the notice, the Department shall:

(1) State the date of filing.

(2) Explain that if a person intends to raise an issue in the contested case, the person must raise the issue in the manner described in OAR 345-015-0016.

(3) State a date by which the Department and the applicant must receive the reports described in sections (4) through (6) below.

Commented [CC12]: See Issue 1014.

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(4) Request an agency report containing the following information:

(a) The agency's recommendations regarding any applications for permits administered by the agency that are applicable to construction or operation of the proposed facility.

(b) Issues significant to the agency.

(c) The agency's conclusions concerning the proposed facility's compliance with state statutes, administrative rules or ordinances administered by the agency.

(d) A list of site certificate conditions recommended by the agency.

(e) Any other information that the reviewing agency believes will be useful to the Council in reviewing the site certificate application.

(5) Request a report from the affected local government regarding the proposed facility's compliance with the applicable substantive criteria for a land use decision under ORS 469.504(1)(b).

(6) Request a report from the affected local government that describes any land use decisions made under ORS 469.504(1)(a).

(7) Explain that the reports described in sections (4) through (6) above are part of the decision record for the application for a site certificate.

Statutory/Other Authority: ORS 469.470
Statutes/Other Implemented: ORS 469.350

345-015-0220 - Public Hearing on the Draft Proposed Order

(1) After the issuance of the draft proposed order described in OAR 345-015-0210, the Council or its hearing officer ~~shall~~will 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 of Energy ~~shall~~will, 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 by mail or email to persons on the Council's general mailing list as defined in OAR 345-011-0020 and to any special mailing list set up for the proposed project, including a mailing list made up of ~~those persons~~the property owners listed in Exhibit F of the site certificate application as updated by the applicant upon the request of the Department.

(3) In the notices described in subsections (2)(a) and (2)(b), the Department ~~shall~~will include:

(a) The date, time and location of the public hearing(s)~~.~~;

(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 project officer~~representative to contact for additional information~~.~~;

(d) The addresses of locations where the public may inspect copies of the complete application and~~, if the application is available online~~, the website where the application ~~can~~ may be found~~.~~;

(e) The website where the draft proposed order ~~can~~ 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~~'s project officer.~~;

(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, a person must present facts that support the person's position on the issue~~.~~; 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 ~~shall~~will 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 ~~shall~~will 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 of Energy 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 of Energy 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 ~~shall~~will 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.

Stat. Authority: ORS 469.470
Stat. Implemented: ORS 469.370

Commented [CC14]: See Issue 1014.

Commented [CC15]: See Issue 1012.

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345-015-0230 - Council Review and the Office of Energy's Proposed Order

(1) Following the close of the record of the public hearing conducted under OAR 345-015-0220, the Council ~~shall~~will review the draft proposed order. In accordance with ORS 469.370(3), when the Council meets to review a draft proposed order, the Council does 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 of Energy ~~shall~~will 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 ~~shall~~will 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 ~~shall~~ will issue ~~a contested case notice, as described in OAR 345-015-0014. In addition, as required under ORS 469.370(4), the Department shall issue~~ a public notice of the proposed order, subject to the following:

(a) The notice will 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; and

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

(b) The Department ~~and shall~~ will send the notice by mail or email to:

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

(B) ~~and to~~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 described in 345-015-0220~~,~~; and

(D) ~~including a mailing list made up of those persons~~The property owners listed in Exhibit F of the site certificate application as updated by the applicant upon the request of the Department.

(4) Following the deadline under paragraph (3)(a)(D) of this rule, the Department will issue a contested case notice as described in OAR 345-015-0014.

Commented [CC17]: See Issue 1103.1

(~~4~~5) After the conclusion of the contested case proceeding, the Council will take final action on the site certificate application, as described in OAR 345-015-0085.

Statutory/Other Authority: ORS 469.470
Statutes/Other Implemented: ORS 469.370

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 ~~shall~~ must submit to the Department of Energy 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 ~~shall~~ 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 ~~shall~~ will determine, on a preliminary, non-binding basis, whether the proposed facility qualifies for expedited review under this rule and ~~shall~~ will 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 ~~shall~~ will 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 345-021-0010~~.~~, subject to the following:

(a) The applicant ~~shall~~ must submit, to the Department, an original and ~~two printed copies~~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. ~~Upon a request by the Department, t~~The applicant must submit additional printed copies of the preliminary application to the Department upon request ~~for members of the Council. In addition to the printed copies, the applicant shall submit the full preliminary application in a non-copy-protected electronic format acceptable to the Department.~~; and

(b) Unless the Department directs otherwise, ~~The~~ the applicant ~~shall~~ must send an electronic copy of the application to each person~~s~~ 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.

~~The applicant shall provide additional copies of the application to the Department upon request and copies or access to copies to any person requesting copies.~~

Commented [CC18]: See Issue 1091.

(6) Within 30 days after receiving a preliminary application for a site certificate, the Department ~~shall~~ will 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 ~~shall~~ will 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 ~~shall~~ 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 345-021-0010. The Department ~~shall~~ will notify the applicant when the Department finds that the application is complete and, if needed, ~~shall~~ will request the application supplement described in OAR 345-021-0055.

(10) The date of filing is the date the Department receives the application supplement described in OAR 345-021-0055 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 ~~shall~~ will 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 ~~shall~~ will 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 ~~shall~~ will 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 ~~a~~ the Department ~~of Energy~~ representative to contact ~~and the telephone number at which people may obtain additional~~for more information.

(15) At least 14 days before the meeting described in section (16), the Department ~~shall~~will:

(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 persons on the Council's general mailing list as defined in OAR 345-011-0020 and to any special mailing list set up for the proposed project, including a mailing list made up of those persons listed in Exhibit F of the site certificate application.

(16) The Department ~~shall~~ will hold a public informational meeting on the application.

(17) Within 90 days after the date of filing, the Department ~~shall~~ will 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 ~~shall~~ will review the draft proposed order. In accordance with ORS 469.370(3), when the Council meets to review a draft proposed order, the Council ~~does~~ 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 ~~shall~~ will issue a proposed order.

(20) At the time specified in section (21), the Department ~~shall~~ will 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 a Department ~~of Energy~~ representative to contact ~~and the telephone number at which people may obtain additional~~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 ~~shall~~will:

(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:

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

(B) ~~and to~~Persons on any special mailing list set up for the proposed project~~,~~; and

(C) ~~including a mailing list made up of those persons~~The property owners listed in Exhibit F of the site certificate application.

(22) The Council ~~shall~~ will 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 ~~shall~~ 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 ~~shall~~ will issue a draft final order for the Council. In preparing the draft final order, the

Department ~~shall~~ will 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 ~~shall~~ will make its decision on the record and the draft final order. The Council ~~shall~~will:

(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 ~~shall~~ will 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 ~~shall~~ will issue a notice of a contested case on the proposed order as described in OAR 345-015-0014. The Council shall 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 ~~shall~~ will 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 ~~shall~~ will 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 ~~shall~~ will determine whether the application is complete. The Department ~~shall~~ will notify the applicant as described in OAR 345-015-0190(1) and the Department ~~shall~~ will 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 shall 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 ~~shall~~ will 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 ~~shall~~ will apply the applicable substantive criteria in effect on the date the application was originally submitted under section (5).

~~[ED. NOTE: Exhibits referenced are available from the agency.]~~

Statutory/Other Authority: ORS 469.373 & 469.470
Statutes/Other Implemented: ORS 469.370

DIVISION 20 - NOTICE OF INTENT

345-020-0011 - Contents of a Notice of Intent

(1) The applicant ~~shall~~must, to the extent reasonably practicable, include in the notice of intent (NOI) the information described in the following subsections. If the applicant proposes alternative sites, the applicant ~~shall~~ must describe each alternative separately. The applicant ~~shall~~ must designate the information with the appropriate exhibit label identified in the following subsections.

(a) Exhibit A. Information about the applicant and participating persons, including:

(A) The name and address of the applicant including all co-owners of the proposed facility, the name, mailing address, email address and telephone number of the contact person for the NOI, and if there is a contact person other than the applicant, the name, title, mailing address, email address and telephone number of that person~~.~~;

(B) The contact name, mailing address, email address and telephone number of all participating persons, other than individuals, including but not limited to any parent corporation of the applicant, persons upon whom the applicant will rely for third-party permits or approvals related to the facility, and persons upon whom the applicant will rely in meeting any facility standard adopted by the Council~~.~~;

(C) If the applicant is a corporation~~, it shall give~~:

(i) The full name, official designation, mailing address, email address and telephone number of the officer responsible for submitting the NOI;

(ii) The date and place of its incorporation;

(iii) A copy of its articles of incorporation and its authorization for submitting the NOI; and

(iv) In the case of a corporation not incorporated in Oregon, the name and address of the resident attorney-in-fact in this state and proof of registration to do business in Oregon.

(D) If the applicant is a wholly owned subsidiary of a company, corporation or other business entity, in addition to the information required by paragraph (C), ~~it shall give~~ the full name and business address of each of the applicant's full or partial owners~~.~~;

(E) If the person submitting the NOI is an association of citizens, a joint venture or a partnership~~, it shall give~~:

(i) The full name, official designation, mailing address, email address and telephone number of the person responsible for submitting the NOI;

(ii) The name, business address and telephone number of each person participating in the association, joint venture or partnership and the percentage interest held by each;

(iii) Proof of registration to do business in Oregon;

(iv) A copy of its articles of association, joint venture agreement or partnership agreement and a list of its members and their cities of residence; and

(v) If there are no articles of association, joint venture agreement or partnership agreement, the applicant ~~shall~~ must state that fact over the signature of each member~~.~~;

(F) If the applicant is a public or governmental entity~~, it shall give~~:

(i) The full name, official designation, mailing address, email address and telephone number of the person responsible for submitting the NOI; and

(ii) Written authorization from the entity's governing body to submit an NOI~~.~~;

(G) If the applicant is an individual, the individual's ~~shall give his or her~~ mailing address, email address and telephone number~~.~~; and

(H) If the applicant is a limited liability company~~, it shall give~~:

(i) The full name, official designation, mailing address, email address and telephone number of the officer responsible for submitting the NOI;

(ii) The date and place of its formation;

(iii) A copy of its articles of organization and its authorization for submitting the NOI; and

(iv) In the case of a limited liability company not registered in Oregon, the name and address of the resident attorney-in-fact in this state and proof of registration to do business in Oregon.

(b) Exhibit B. Information about the proposed facility, including:

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

(i) 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 electricity and useful thermal energy~~.~~;

(iii) Methods for waste management and waste disposal, including, to the extent known, the amount of wastewater the applicant anticipates, the applicant's plans for disposal of wastewater and storm water, and the location of disposal~~.~~;

(iv) For thermal power plants:

(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) Methods for disposal of waste heat~~.~~;

(v) For transmission lines, approximate transmission line voltage, load carrying capacity and type of current~~.~~;

(vi) For pipelines, approximate operating pressure and delivery capacity in thousand cubic feet per day~~.~~;

(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 approximate volume, maximum pressure, liquefication and gasification capacity in thousand cubic feet per hour~~.~~;

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

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

(c) Exhibit C. A description of the location of the proposed energy facility site and the proposed site of each related or supporting facility and all areas that might be temporarily disturbed during construction of the facility, including the approximate land area of each.

(d) Exhibit 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, identification of at least two proposed corridors, as defined in OAR 345-001-0010, or identification of a single proposed corridor with an explanation of why alternate corridors are unlikely to better meet the applicant's needs and satisfy the Council's standards. The applicant ~~shall~~ must include an explanation of the basis for selecting the proposed corridor(s) and, for each proposed corridor, the information described in subsections (e), (g), (i), (j), (k), (n) and (p) that is available from existing maps, aerial photographs, and a search of readily available literature.

(e) Exhibit E. Identification of all federal, state and local government permits related to the siting of the proposed facility, a legal citation of the statute, rule or ordinance governing each permit, and the name, address, email address and telephone number of the agency or office responsible for each permit. For each permit, the applicant ~~shall~~ must provide a preliminary analysis of whether the permit should or should not be included in and governed by the site certificate.

(f) Exhibit F. A list of the names and mailing addresses of all owners of record, as shown on the most recent property tax assessment roll, of property ~~located within or adjacent to the site boundary as defined in OAR 345-001-0010~~ upon which the facility is proposed to be located and any adjacent property. In addition to incorporating the list in the NOI, the applicant ~~shall~~ must submit the list to the Department of Energy in an electronic format acceptable to the Department. ~~for the production of mailing labels.~~ For the purpose of this rule, ~~Property~~ "adjacent property" ~~to the site boundary~~ means~~-~~ property that is:

(A) Within 100 feet of the ~~site boundary~~property upon which the facility is proposed to be located, where the ~~site, corridor or micrositing corridor is~~ property is wholly or in part within an urban growth boundary;

(B) Within 250 feet of ~~the site boundary~~ property upon which the facility is proposed to be located, where the ~~site, corridor or micrositing corridor is~~ property is outside an urban growth boundary and not within a farm or forest zone; ~~and~~ or

(C) Within 500 feet of ~~the site boundary~~ property upon which the facility is proposed to be located, where the ~~site, corridor or micrositing corridor is~~ property is within a farm or forest zone.

Commented [CC19]: See Issue 1062.

(g) Exhibit G. A map or maps showing:

(A) 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~~.~~;

(B) The proposed locations of the corridors the applicant has identified under subsection (d) in relation to major roads, water bodies, cities and towns, important landmarks and topographic features~~.~~;

(C) The study area(s) for the proposed facility as defined in OAR 345-001-0010~~.~~;

(D) The topography of the study area(s) including streams, rivers, lakes, major roads and contour lines~~.~~;

(E) All protected areas in the study area as defined in OAR 345-001-0010 for impacts to protected areas~~.~~;

(F) The location of any potential waters of the state or waters of the United States that are on or adjacent to the site~~.~~; and

(G) For energy generation facilities, 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.

(h) Exhibit H. If the proposed facility is a non-generating energy facility for which the applicant must demonstrate need under OAR 345-023-0005, identification of the rule in Division 23 of this chapter under which the applicant intends to demonstrate need and a summary statement of the need and justification for the proposed facility.

(i) Exhibit I. A statement indicating whether the applicant intends to satisfy the Council's land use standard, OAR 345-022-0030, by obtaining local land use approval under ORS 469.504(1)(a) or by seeking a Council determination under ORS 469.504(1)(b).

(j) Exhibit J. Identification of significant potential environmental impacts of construction and operation of the proposed facility on the study areas, including those impacts affecting air quality, surface and ground water quality and availability, wildlife and wildlife habitat, threatened and endangered plant and animal species, historic, cultural and archaeological resources, scenic and aesthetic areas, recreation, and land use.

(k) Exhibit K. Information about significant potential adverse impacts of construction and operation of the proposed facility on the ability of communities in the study area to provide the services listed in OAR 345-022-0110.

(l) Exhibit L. Information about anticipated water use during construction and operation of the proposed facility, including:

(A) A description of each source of water and the applicant's estimate of the amount of water the facility will need from each source~~.~~;

(B) If a new water right is required, the approximate location of the points of diversion and the estimated quantity of water to be taken at each point~~.~~; and

(C) For operation, the source of cooling water and the estimated consumptive use of cooling water, based on annual average conditions.

(m) Exhibit M. If the proposed facility would emit carbon dioxide, an estimate of the gross rate of carbon dioxide emissions, a table listing all the factors that form the basis for calculating the estimate, and a statement of the means by which the applicant intends to comply with the applicable carbon dioxide emissions standard under OAR 345-024-560, 345-024-600, or 345-024-630.

(n) Exhibit N. 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 E, and identification of the agencies administering those statutes, administrative rules and ordinances. The applicant ~~shall~~ must analyze and describe any problems the applicant foresees in satisfying the requirements of any such statute, rule or ordinance.

(o) Exhibit O. A schedule stating when the applicant expects to submit a preliminary application for a site certificate.

(p) Exhibit P. Evidence of consultation with the Legislative Commission on Indian Services to identify each appropriate tribe to consult with regarding the proposed facility's possible effects on Indian historic and cultural resources.

(2) 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 by section (1) of this rule. The applicant may copy relevant sections of such documents into the appropriate exhibits of the NOI. The applicant may otherwise submit full copies of those documents and include, in the appropriate exhibits of the NOI, cross-references to the relevant sections of those documents. The applicant may use such documents only to avoid duplication. The applicant ~~shall~~must include additional information in the NOI as needed to meet the requirements of section (1) of this rule.

(3) The applicant ~~shall~~must include a table of contents in the NOI identifying the location of each exhibit required by this rule.

(4) The applicant ~~shall~~must submit, to the Department, an original and ~~two~~ a copy ~~printed copies~~ of the printed NOI, and a non-copy-protected electronic version of the NOI in a format acceptable to the Department. The applicant must submit additional printed copies of the NOI to the Department upon request. ~~and~~ The applicant must ~~shall~~ prepare and distribute additional copies of the NOI as required by OAR 345-020-0040. ~~Upon a request by the Department, the applicant must submit printed copies of the~~

~~NOI for members of the Council. In addition to the printed copies, the applicant shall submit the full NOI in a non-copy-protected electronic format acceptable to the Department.~~

(~~4~~5) The applicant or the applicant's representative ~~shall~~must attend all public informational meetings on the NOI as described in OAR 345-015-0130 to discuss the proposed facility and to answer questions from the public. If the applicant has identified one or more proposed corridors in Exhibit D of the NOI as required by section (1)(d), the applicant may present adjustments to the proposed corridor(s) at any public informational meeting. An adjustment is any change that is outside the boundaries of the corridors proposed in the NOI and may include an entirely new corridor.

~~[ED. NOTE: Exhibits referenced are available from the agency.]~~

Stat. Auth.: ORS 469.470
Stats. Implemented: ORS 469.330

345-020-0016~~-~~ - Amendment of Notice of Intent

(1) The applicant may amend the notice of intent (NOI). The applicant ~~shall~~ must submit, to the Department, an ~~the~~ original and ~~two printed copies~~a copy of the printed amended NOI, and a non-copy-protected electronic version of the amended NOI in a format acceptable to the Department~~ of Energy~~. The applicant must prepare and distribute additional copies of the amended NOI as required by OAR 345-020-0040~~Upon a request by the Department, the applicant must submit printed copies of the amended NOI for members of the Council. In addition to the printed copies, the applicant shall submit the full amended NOI in a non-copy-protected electronic format acceptable to the Department~~.

(2) The Department ~~shall~~ will inform the public, in the manner described in OAR 345-015-0110, of any amendment that:

(a) Significantly changes the proposed site boundary or location of the proposed energy facility or related or supporting facility;

(b) Changes the proposed fuel type, significantly increases the generating capacity of the proposed energy facility, increases the voltage of a proposed transmission line, or significantly increases the capacity or operating pressure of a proposed pipeline;

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

(d) Changes the source of water; or

(e) Significantly changes the means of compliance with the carbon dioxide standard, if applicable.

~~(3) The applicant shall distribute copies of the amended NOI in the manner described in OAR 345-020-0040.~~

(~~4~~3) 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.

Stat. Auth.: ORS 469.470
Stats. Implemented: ORS 469.330

Commented [CC20]: See Issue 1091.

Commented [CC21]: See Issue 1091.

Commented [CC22]: Moved to (1).

345-020-0040 - Distribution of a Notice of Intent

(1) After receiving the notice of intent (NOI), the Department will, ~~prepare the memorandum described in OAR 345-015-0120 and,~~ in coordination with the applicant, determine a distribution date and compile a distribution list that includes, but is not limited to,~~. The applicant shall distribute copies of the NOI to the persons on the distribution list on or before the distribution date. The Department shall include~~ the reviewing agencies for the facility~~ as defined in OAR 345-001-0010 on the distribution list and may include additional persons~~.

(2) The Department will mail or email the memorandum described under OAR 345-015-0120 to each person on the distribution list before the distribution date.

(3) Unless the Department directs otherwise, ~~T~~the applicant ~~shall attach~~must mail or email an electronic copy of the NOI~~ the memorandum from the Department described in OAR 345-015-0120 to the copies of the NOI distributed according to section (1)~~ to each person on the distribution list on or before the distribution date. The applicant must provide a printed copy of all or part of the NOI to any person on the distribution list upon request.

(~~3~~4) The applicant ~~shall~~ must provide ~~additional copies of the NOI to the Department upon request and~~ copies of the NOI or access to copies to any other person requesting copies.

~~(4) The distribution described in section (1) may be done by courier delivery or mailing of printed copies or, with the approval of the Department, any form of electronic delivery.~~

Stat. Auth.: ORS 469.470
Stats. Implemented: ORS 469.330

Commented [CC23]: Moved to (2).

Commented [CC24]: See Issue 1106.

Commented [CC25]: See (2).

DIVISION 21 - APPLICATION FOR SITE CERTIFICATE

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 ~~shall~~ may not construct or expand a facility unless the Council has granted a site certificate or an amendment to an existing site certificate.

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

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

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

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

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

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

(8) If the proposed facility is a non-generating facility for which the applicant must demonstrate need under OAR 345-023-0005, in addition to the application for a site certificate described in OAR 345-021-0010, the applicant ~~shall~~ must submit, to the Department, ~~three~~ two copies of each energy resource

Commented [CC26]: See Issue 1091.

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 plan~~(s)~~s as part of the application for a site certificate. The applicant ~~shall~~ must submit the plan~~(s)~~s to the Department with the site certificate application. The Department may not find the site certificate application to be complete before receiving copies of the plan~~(s)~~s. The ~~plan or~~ plans described in this section are part of the decision record for the Department's proposed order, described in OAR 345-015-0230.

(9) The applicant ~~shall~~ 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 ~~shall~~ must pay the balance of the fee periodically, as specified by the Department.

(10) 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.

Stat. Auth.: ORS 469.373 & 469.470
Stats. Implemented: ORS 469.350, 469.370 & 469.421

345-021-0010 - Contents of an Application

(1) The project order described in OAR 345-015-0160(1) identifies the provisions of this rule applicable to the application for the proposed facility, including any appropriate modifications to applicable provisions of this rule. The applicant ~~shall~~ must include in its application for a site certificate information that addresses each provision of this rule identified in the project order. The applicant ~~shall~~ must designate the information with the appropriate exhibit label identified in the following subsections. 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 ~~shall~~ must include information that addresses all provisions of this rule. 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.

(a) **Exhibit A.** Information about the applicant and participating persons, including:

(A) The name and address of the applicant including all co-owners of the proposed facility, the name, mailing address, email address and telephone number of the contact person for the application, and if there is a contact person other than the applicant, the name, title, mailing address, email address and telephone number of that person~~.~~;

(B) The contact name, mailing address, email address and telephone number of all participating persons, other than individuals, including but not limited to any parent corporation of the applicant, persons upon whom the applicant will rely for third-party permits or approvals related to the facility, and, if known, other persons upon whom the applicant will rely in meeting any facility standard adopted by the Council~~.~~;

(C) If the applicant is a corporation~~, it shall give~~:

(i) The full name, official designation, mailing address, email address and telephone number of the officer responsible for submitting the application;

(ii) The date and place of its incorporation;

(iii) A copy of its articles of incorporation and its authorization for submitting the application; and

(iv) In the case of a corporation not incorporated in Oregon, the name and address of the resident attorney-in-fact in this state and proof of registration to do business in Oregon~~.~~;

(D) If the applicant is a wholly owned subsidiary of a company, corporation or other business entity, in addition to the information required by paragraph (C), ~~it shall give~~ the full name and business address of each of the applicant's full or partial owners~~.~~;

(E) If the applicant is an association of citizens, a joint venture or a partnership~~, it shall give~~:

(i) The full name, official designation, mailing address, email address and telephone number of the person responsible for submitting the application;

(ii) The name, business address and telephone number of each person participating in the association, joint venture or partnership and the percentage interest held by each;

(iii) Proof of registration to do business in Oregon;

(iv) A copy of its articles of association, joint venture agreement or partnership agreement and a list of its members and their cities of residence; and

(v) If there are no articles of association, joint venture agreement or partnership agreement, the applicant ~~shall~~must state that fact over the signature of each member~~.~~;

(F) If the applicant is a public or governmental entity~~, it shall give~~:

(i) The full name, official designation, mailing address, email address and telephone number of the person responsible for submitting the application; and

(ii) Written authorization from the entity's governing body to submit an application~~.~~;

(G) If the applicant is an individual, the individual's ~~shall give his or her~~ mailing address, email address and telephone number~~.~~; and

(H) If the applicant is a limited liability company~~, it shall give~~:

(i) The full name, official designation, mailing address, email address and telephone number of the officer responsible for submitting the application;

(ii) The date and place of its formation;

(iii) A copy of its articles of organization and its authorization for submitting the application; and

(iv) In the case of a limited liability company not registered in Oregon, the name and address of the resident attorney-in-fact in this state and proof of registration to do business in Oregon.

(b) **Exhibit B.** 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) 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 electricity and useful thermal energy~~.~~;

(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:

(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) Process flow, including power cycle and steam cycle diagrams to describe the energy flows within the system~~.~~;

(III) Equipment and systems for disposal of waste heat~~.~~;

(IV) The fuel chargeable to power heat rate~~.~~;

(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, liquefication 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 corridor(s) for analysis in the application. In the assessment, the applicant ~~shall~~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 ~~shall~~must discuss the reasons for selecting the corridor(s), 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~~.~~;

(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~~.~~;

(v) For transmission lines, the rated voltage, load carrying capacity, and type of current and a description of transmission line structures and their dimensions~~.~~; and

(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 ~~shall~~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 ~~shall~~ 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.

(c) **Exhibit C.** 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 ~~shall~~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.

(d) **Exhibit D.** Information about the organizational expertise of the applicant to construct and operate the proposed facility, providing evidence to support a finding by the Council as required by OAR 345-022-0010, including:

(A) The applicant's previous experience, if any, in constructing and operating similar facilities~~.~~;

(B) The qualifications of the applicant's personnel who will be responsible for constructing and operating the facility, to the extent that the identities of such personnel are known when the application is submitted~~.~~;

(C) The qualifications of any architect, engineer, major component vendor, or prime contractor upon whom the applicant will rely in constructing and operating the facility, to the extent that the identities of such persons are known when the application is submitted~~.~~;

(D) The past performance of the applicant, including but not limited to the number and severity of any regulatory citations in constructing or operating a facility, type of equipment, or process similar to the proposed facility~~.~~;

(E) If the applicant has no previous experience in constructing or operating similar facilities and has not identified a prime contractor for construction or operation of the proposed facility, other evidence that the applicant can successfully construct and operate the proposed facility. The applicant may include, as evidence, a warranty that it will, through contracts, secure the necessary expertise~~.~~;

(F) If the applicant has an ISO 9000 or ISO 14000 certified program and proposes to design, construct and operate the facility according to that program, a description of the program~~.~~; and

(G) If the applicant relies on mitigation to demonstrate compliance with any standards of Division 22 or 24 of this chapter, evidence that the applicant can successfully complete such proposed mitigation, including past experience with other projects and the qualifications and experience of personnel upon whom the applicant will rely, to the extent that the identities of such persons are known at the date of submittal.

(e) **Exhibit E.** Information about permits needed for construction and operation of the facility, including:

(A) Identification of all federal, state and local government permits related to the siting of the proposed facility, a legal citation of the statute, rule or ordinance governing each permit, and the name, mailing address, email address and telephone number of the agency or office responsible for each permit~~.~~;

(B) A description of each permit, the reasons the permit is needed for construction or operation of the facility and the applicant's analysis of whether the permit should or should not be included in and governed by the site certificate~~.~~;

(C) For any state or local government agency permits, licenses or certificates that are proposed to be included in and governed by the site certificate, evidence to support findings by the Council that construction and operation of the proposed facility will comply with the statutes, rules and standards applicable to the permit. The applicant may show this evidence:

(i) In Exhibit J for permits related to wetlands~~.~~;

(ii) In Exhibit O for permits related to water rights~~.~~;

(D) For federally-delegated permit applications, evidence that the responsible agency has received a permit application and the estimated date when the responsible agency will complete its review and issue a permit decision~~.~~;

(E) If the applicant relies on a state or local government permit or approval issued to a third party, identification of any such third-party permit and for each:

(i) Evidence that the applicant has, or has a reasonable likelihood of entering into, a contract or other agreement with the third party for access to the resource or service to be secured by that permit~~.~~;

(ii) Evidence that the third party has, or has a reasonable likelihood of obtaining, the necessary permit~~.~~;

(iii) An assessment of the impact of the proposed facility on any permits that a third party has obtained and on which the applicant relies to comply with any applicable Council standard~~.~~;

(F) If the applicant relies on a federally-delegated permit issued to a third party, identification of any such third-party permit and for each:

(i) Evidence that the applicant has, or has a reasonable likelihood of entering into, a contract or other agreement with the third party for access to the resource or service to be secured by that permit~~.~~;

(ii) Evidence that the responsible agency has received a permit application~~.~~;

(iii) The estimated the date when the responsible agency will complete its review and issue a permit decision~~.~~; and

(G) The applicant's proposed monitoring program, if any, for compliance with permit conditions.

(f) **Exhibit F.** A list of the names and mailing addresses of all owners of record, as shown on the most recent property tax assessment roll, of property ~~located within or adjacent to the site boundary as defined in OAR 345-001-0010~~upon which the facility is proposed to be located and any adjacent property. The applicant ~~shall~~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. In addition to incorporating the list in the application for a site certificate, the applicant ~~shall~~must submit the list to the Department in an electronic format approved by the Department. For the purposes of this rule, "adjacent property" ~~Property adjacent to the site boundary~~ means property that is:

(A) Within 100 feet of the ~~site boundary~~ property upon which the facility is proposed to be located, where the ~~site, corridor or micrositing corridor is~~ property is wholly or in part within an urban growth boundary~~.~~;

(B) Within 250 feet of the ~~site boundary~~ property upon which the facility is proposed to be located, where the ~~site, corridor or micrositing corridor is~~property is outside an urban growth boundary and not within a farm or forest zone;~~.~~ or

(C) Within 500 feet of the ~~site boundary~~ property upon which the facility is proposed to be located, where the ~~site, corridor or micrositing corridor is~~property is within a farm or forest zone.

Commented [CC27]: See Issue 1062.

(g) **Exhibit G.** 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.

(h) **Exhibit H.** Information from reasonably available sources regarding the geological and soil stability within the analysis area, providing evidence to support findings by the Council as required by OAR 345-022-0020, including:

(A) A geologic report meeting the Oregon State Board of Geologist Examiners geologic report guidelines. Current guidelines ~~shall~~must be determined based on consultation with the Oregon Department of Geology and Mineral Industries, as described in paragraph (B) of this subsection~~.~~;

(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 as 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 ~~shall~~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 addresses all issues relating to the consultation with the Oregon Department of Geology and Mineral Industries as described in (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:

(i) 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

(ii) 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.

(i) **Exhibit I.** 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.

(j) **Exhibit J.** Information based on literature and field study, as appropriate, about waters of this state, as defined under ORS 196.800, including:

(A) A description of all areas within the site boundary that might be waters of this state and a map showing the location of these features~~.~~;

(B) An analysis of whether construction or operation of the proposed facility would adversely affect any waters of this state~~.~~;

(C) A description of the significance of potential adverse impacts to each feature identified in (A), including the nature and amount of material the applicant would remove from or place in the waters analyzed in (B)~~.~~;

(D) If the proposed facility would not need a removal-fill authorization, an explanation of why no such authorization is required for the construction and operation of the proposed facility~~.~~;

(E) If the proposed facility would need a removal-fill authorization, information to support a determination by the Council that the Oregon Department of State Lands should issue a removal-fill permit, including information in the form required by the Department of State Lands under OAR Chapter 141 Division 85~~.~~; and

(F) A description of proposed actions to mitigate adverse impacts to the features identified in (A) and the applicant's proposed monitoring program, if any, for such impacts.

(k) **Exhibit K.** Information about the proposed facility's compliance with the statewide planning goals adopted by the Land Conservation and Development Commission, providing evidence to support a finding by the Council as required by OAR 345-022-0030. The applicant ~~shall~~ must state whether the applicant elects to address the Council's land use standard by obtaining local land use approvals under ORS 469.504(1)(a) or by obtaining a Council determination under ORS 469.504(1)(b). An applicant may elect different processes for an energy facility and a related or supporting facility but may not otherwise combine the two processes. Once the applicant has made an election, the applicant may not amend the application to make a different election. In this subsection, "affected local government" means a local government that has land use jurisdiction over any part of the proposed site of the facility. In the application, the applicant ~~shall~~must:

(A) Include a map showing the comprehensive plan designations and land use zones in the analysis area~~.~~;

(B) If the applicant elects to obtain local land use approvals:

(i) Identify the affected local government(s) from which land use approvals will be sought~~.~~;

(ii) Describe the land use approvals required in order to satisfy the Council's land use standard~~.~~;

(iii) Describe the status of the applicant's application for each land use approval~~.~~;

(iv) Provide an estimate of time for issuance of local land use approvals~~.~~;

(C) If the applicant elects to obtain a Council determination on land use:

(i) Identify the affected local government~~(s).~~;

(ii) Identify the applicable substantive criteria from the affected local government's acknowledged comprehensive plan and land use regulations that are required by the statewide planning goals and that are in effect on the date the application is submitted and describe how the proposed facility complies with those criteria~~.~~;

(iii) Identify all Land Conservation and Development Commission administrative rules, statewide planning goals and land use statutes directly applicable to the facility under ORS 197.646(3) and describe how the proposed facility complies with those rules, goals and statutes~~.~~;

(iv) If the proposed facility might not comply with all applicable substantive criteria, identify the applicable statewide planning goals and describe how the proposed facility complies with those goals~~.~~;

(v) If the proposed facility might not comply with all applicable substantive criteria or applicable statewide planning goals, describe why an exception to any applicable statewide planning goal is justified, providing evidence to support all findings by the Council required under ORS 469.504(2).; and

(D) If the proposed facility will be located on federal land:

(i) Identify the applicable land management plan adopted by the federal agency with jurisdiction over the federal land.;

(ii) Explain any differences between state or local land use requirements and federal land management requirements.;

(iii) Describe how the proposed facility complies with the applicable federal land management plan.;

(iv) Describe any federal land use approvals required for the proposed facility and the status of application for each required federal land use approval.;

(v) Provide an estimate of time for issuance of federal land use approvals.; and

(vi) If federal law or the land management plan conflicts with any applicable state or local land use requirements, explain the differences in the conflicting requirements, state whether the applicant requests Council waiver of the land use standard described under paragraph (B) or (C) of this subsection and explain the basis for a waiver.

(L) **Exhibit L.** Information about the proposed facility's impact on protected areas, providing evidence to support a finding by the Council as required by OAR 345-022-0040, including:

(A) A list of the protected areas within the analysis area showing the distance and direction from the proposed facility and the basis for protection by reference to a specific subsection under OAR 345-022-0040(1).;

(B) A map showing the location of the proposed facility in relation to the protected areas listed in OAR 345-022-0040 located within the analysis area.; and

(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:

(i) Noise resulting from facility construction or operation;

(ii) Increased traffic resulting from facility construction or operation;

(iii) Water use during facility construction or operation;

(iv) Wastewater disposal resulting from facility construction or operation;

(v) Visual impacts of facility structures or plumes.; and

(vi) 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.

(m) **Exhibit M.** Information 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 subsection ~~shall~~ requires the disclosure of information or records protected from public disclosure by any provision of state or federal law. The applicant ~~shall~~ 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~~.~~; 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.

(n) **Exhibit N.** If the proposed facility is a non-generating facility for which the applicant must demonstrate need under OAR 345-023-0005, information about the need for the facility, providing evidence to support a finding by the Council as required by OAR 345-023-0005, including:

(A) Identification of the rule in Division 23 of this chapter under which the applicant chooses to demonstrate need~~.~~;

(B) If the applicant chooses to demonstrate need for the proposed facility under OAR 345-023-0020(1), the least-cost plan rule:

(i) Identification of the energy resource plan or combination of plans on which the applicant relies to demonstrate need~~.~~;

(ii) The name, address and telephone number of the person responsible for preparing each energy resource plan identified in subparagraph (i)~~.~~;

(iii) For each plan reviewed by a regulatory agency, the agency's findings and final decision, including:

(I) For a plan reviewed by the Oregon Public Utility Commission, the acknowledgment order; or

(II) For a plan reviewed by any other regulatory agency, a summary of the public process including evidence to support a finding by the Council that the agency's decision process included a full, fair and open public participation and comment process as required by OAR 345-023-0020(1)(L), and the location of and means by which the Department can obtain a complete copy of the public record.

(iv) Identification of the section(s) of the short-term action plan(s) that call(s) for the acquisition of the proposed facility or, as defined in OAR 345-001-0010, a facility substantially similar to the proposed facility~~.~~;

(v) The attributes of the proposed facility that qualify it as one called for in the short-term action plan of the energy resource plan or combination of plans identified in subparagraph (i) or a demonstration that, as defined in OAR 345-001-0010, a facility substantially similar to the proposed facility is called for in the plan~~(s).~~;

(C) In addition to the information described in paragraph (B), if the applicant chooses to demonstrate need for the proposed facility under OAR 345-023-0020(1), the least-cost plan rule, and relies on an energy resource plan not acknowledged by the Public Utility Commission of Oregon:

(i) The names, addresses and telephone numbers of members of any public advisory groups that participated in the preparation and review of each plan identified in paragraph (B)~~.~~;

(ii) A discussion of how the plan or combination of plans conforms to the standards in OAR 345-023-0020(1)(a) through (L) including citations to relevant portions of the plan documents or other supporting evidence~~.~~;

(iii) The expected annual emissions in tons of nitrogen oxides, PM-10 particulate, sulfur dioxide, carbon dioxide and mercury and a discussion of other environmental impacts, as compared to resources in the applicable energy resource plan~~.~~;

(D) In addition to the information described in paragraphs (B) and (C), if the applicant chooses to demonstrate need for a proposed natural gas pipeline or storage facility for liquefied natural gas under OAR 345-023-0020(1), the least-cost plan rule, and relies on an energy resource plan not acknowledged by the Public Utility Commission of Oregon, the applicant ~~shall~~must include the information described in paragraph (G) of this subsection if the energy resource plan or combination of plans does not contain that information. If the energy resource plan or combination of plans contains the information described in paragraph (G), the applicant ~~shall~~ must provide a list of citations to the sections of the energy resource plan(s) that contain the information;

(E) In addition to the information described in paragraphs (B) and (C), if the applicant chooses to demonstrate need for a proposed electric transmission line under OAR 345-023-0020(1), the least-cost plan rule and relies on an energy resource plan not acknowledged by the Public Utility Commission of Oregon, the applicant ~~shall~~must include the information described in paragraph (F) of this subsection if the energy resource plan or combination of plans does not contain that information. If the energy resource plan or combination of plans contains the information described in paragraph (F), the applicant ~~shall~~must provide a list of citations to the sections of the energy resource plan(s) that contain the information~~.~~;

(F) If the applicant chooses to demonstrate need for a proposed electric transmission line under OAR 345-023-0030, the system reliability rule:

(i) Load-resource balance tables for the area to be served by the proposed facility. In the tables, the applicant ~~shall~~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~~.~~;

(ii) Within the tables described in subparagraph (i), 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 ~~shall~~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 ~~shall~~must include a discussion of how the forecast incorporates reductions in firm capacity demand and firm annual electricity sales resulting from:

(I) 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;

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

(III) Conservation that results from responses to price; and

(IV) Retail customer fuel choice;

(iii) Within the tables described in subparagraph (i), a forecast of existing and committed firm resources used to meet the demands described in subparagraph (ii). The applicant ~~shall~~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 ~~shall~~must list each resource separately~~.~~;

(iv) A discussion of the reasons each resource is being retired or displaced if the forecast described in subparagraph (iii) includes expected retirements or displacements~~.~~;

(v) A discussion of the annual capacity factors assumed for any generating facilities listed in the forecast described in subparagraph (iii)~~.~~;

(vi) 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~~.~~;

(vii) A discussion of reasons why the proposed facility is economically reasonable compared to the alternatives described below. In the discussion, the applicant ~~shall~~ 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 ~~shall~~ must include documentation of assumptions and calculations supporting the table. The applicant ~~shall~~ must evaluate alternatives to construction and operation of the proposed facility that include, but are not limited to:

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

(II) Construction and operation of electric generating facilities as a substitute for the proposed facility~~.~~;

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

(IV) Adding standard sized smaller or larger transmission line capacity~~.~~;

(viii) 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~~.~~; and

(G) If the applicant chooses to demonstrate need for a proposed natural gas pipeline or a proposed facility for storing liquefied natural gas under OAR 345-023-0040, the economically reasonable rule:

(i) Load-resource balance tables for the area to be served by the proposed facility. In the tables, the applicant ~~shall~~ must include firm demands and resource availability 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 proposed facility. In the tables, the applicant ~~shall~~ must list flowing supply and storage supply separately.

(ii) Within the tables described in subparagraph (i), a forecast of firm capacity demands for the area to be served by the proposed facility. The applicant ~~shall~~ must separate firm capacity demands into firm demands of retail customers, system losses and each wholesale contract for firm sale. The applicant ~~shall~~ must accompany the tables with load duration curves of firm capacity and interruptible demands for the most recent historical year, the year the facility is expected to be placed in service and the fifth year after the expected in-service date. In the forecast of firm capacity demands, the applicant ~~shall~~ must include a discussion of how the forecast incorporates reductions in firm capacity demand resulting from:

(I) 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;

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

(III) Conservation that results from responses to price; and

(IV) Retail customer fuel choice;

(iii) Within the tables described in subparagraph (i), a forecast of existing and committed firm resources used to meet the demands described in subparagraph (ii). The applicant ~~shall~~ must include, as existing and committed firm capacity resources, existing pipelines, storage

facilities, and scheduled and budgeted new facilities minus expected resource retirements or displacement. In the forecast, the applicant ~~shall~~ must list each committed resource separately~~.~~;

(iv) A discussion of the reasons each resource is being retired or displaced if the forecast described in subparagraph (iii) includes expected retirements or displacements~~.~~;

(v) A discussion of the capacity factors assumed for any storage facilities listed in the forecast described in subparagraph (iii)~~.~~;

(vi) A discussion of the reliability criteria the applicant uses to demonstrate the proposed facility is needed, considering the capacity of existing gas system facilities supporting the area to be served by the proposed facility;

(vii) A discussion of reasons why the proposed facility is economically reasonable compared to the alternatives described in subparagraphs (viii) or (ix). In the discussion, the applicant ~~shall~~ must include a table showing the amounts of firm capacity 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 ~~shall~~ must include documentation of assumptions and calculations supporting the table~~.~~;

(viii) In an application for a proposed natural gas pipeline, an evaluation of alternatives to construction and operation of the proposed facility including, but not limited to:

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

(II) Installation of propane storage systems, facilities to store liquefied natural gas and underground gas storage reservoirs as a substitute for the proposed facility~~.~~;

(III) Direct use of electricity, solar or geothermal resources at retail loads as a substitute for use of natural gas supplied by the proposed facility~~.~~;

(IV) Adding standard sized smaller or larger pipeline capacity~~.~~;

(ix) In an application for a proposed liquefied natural gas storage facility, an evaluation of alternatives to construction and operation of the proposed facility including, but not limited to:

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

(II) Installation of propane storage systems, natural gas pipelines and underground gas storage facilities as a substitute for the proposed facility~~.~~;

(III) Direct use of electricity, solar or geothermal resources at retail loads as a substitute for use of natural gas supplied by the proposed facility~~.~~;

(IV) Adding smaller or larger liquefied natural gas storage capacity; and

(x) The earliest and latest expected in-service date of the facility and a discussion of the circumstances of the energy supplier, as defined in OAR 345-001-0010, that determine these dates.

(o) **Exhibit O.** Information about anticipated water use during construction and operation of the proposed facility. The applicant ~~shall~~must include:

(A) A description of the use of water during construction and operation of the proposed facility~~.~~;

(B) A description of each source of water and the applicant's estimate of the amount of water the facility will need during construction and during operation from each source under annual average and worst-case conditions~~.~~;

(C) A description of each avenue of water loss or output from the facility site for the uses described in (A), the applicant's estimate of the amount of water in each avenue under annual average and worst-case conditions and the final disposition of all wastewater~~.~~;

(D) For thermal power plants, a water balance diagram, including the source of cooling water and the estimated consumptive use of cooling water during operation, based on annual average conditions~~.~~;

(E) If the proposed facility would not need a groundwater permit, a surface water permit or a water right transfer, an explanation of why no such permit or transfer is required for the construction and operation of the proposed facility~~.~~;

(F) If the proposed facility would need a groundwater permit, a surface water permit or a water right transfer, information to support a determination by the Council that the Water Resources Department should issue the permit or transfer of a water use, including information in the form required by the Water Resources Department under OAR Chapter 690, Divisions 310 and 380~~.~~; and

(G) A description of proposed actions to mitigate the adverse impacts of water use on affected resources.

(p) **Exhibit P.** Information about the fish and wildlife habitat and the fish and wildlife species, other than the species addressed in subsection (q) that could be affected by the proposed facility, providing evidence to support a finding by the Council as required by OAR 345-022-0060. The applicant ~~shall~~ 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).

(q) **Exhibit Q.** Information about threatened and endangered plant and animal species that may be affected by the proposed facility, providing evidence to support a finding by the Council as required by OAR 345-022-0070. The applicant ~~shall~~ must include:

(A) Based on appropriate literature and field study, identification of all threatened or endangered species listed under ORS 496.172(2) and ORS 564.105(2) that may be affected by the proposed facility~~.~~;

(B) For each species identified under (A), a description of the nature, extent, locations and timing of its occurrence in the analysis area and how the facility might adversely affect it~~.~~;

(C) For each species identified under (A), a description of measures proposed by the applicant, if any, to avoid or reduce adverse impact~~.~~;

(D) For each plant species identified under (A), a description of how the proposed facility, including any mitigation measures, complies with the protection and conservation program, if any, that the Oregon Department of Agriculture has adopted under ORS 564.105(3)~~.~~;

(E) For each plant species identified under paragraph (A), if the Oregon Department of Agriculture has not adopted a protection and conservation program under ORS 564.105(3), a

description of significant potential impacts of the proposed facility on the continued existence of the species and on the critical habitat of such species and evidence that the proposed facility, including any mitigation measures, is not likely to cause a significant reduction in the likelihood of survival or recovery of the species~~.~~;

(F) For each animal species identified under (A), a description of significant potential impacts of the proposed facility on the continued existence of such species and on the critical habitat of such species and evidence that the proposed facility, including any mitigation measures, is not likely to cause a significant reduction in the likelihood of survival or recovery of the species~~.~~; and

(G) The applicant's proposed monitoring program, if any, for impacts to threatened and endangered species.

(r) **Exhibit R.** An analysis of significant potential impacts of the proposed facility, if any, on scenic resources identified as significant or important in local land use plans, tribal land management plans and federal land management plans for any lands located within the analysis area, providing evidence to support a finding by the Council as required by OAR 345-022-0080, including:

(A) A list of the local, tribal and federal plans that address lands within the analysis area~~.~~;

(B) Identification and description of the scenic resources identified as significant or important in the plans listed in (A), including a copy of the portion of the management plan that identifies the resource as significant or important~~.~~;

(C) A description of significant potential adverse impacts to the scenic resources identified in (B), including, but not limited to, impacts such as:

(i) Loss of vegetation or alteration of the landscape as a result of construction or operation; and

(ii) Visual impacts of facility structures or plumes.

(D) The measures the applicant proposes to avoid, reduce or otherwise mitigate any significant adverse impacts~~.~~;

(E) A map or maps showing the location of the scenic resources described under (B)~~.~~; and

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

(s) **Exhibit S.** Information about historic, cultural and archaeological resources. Information concerning the location of archaeological sites or objects may be exempt from public disclosure under ORS 192.~~502~~355(4) or ORS 192.~~501~~345(11). The applicant ~~shall~~ must submit such information separately, clearly marked as "confidential," and ~~shall~~must request that the Department and the Council keep the information confidential to the extent permitted by law. The applicant ~~shall~~must include information in Exhibit S or in confidential submissions providing evidence to support a finding by the Council as required by OAR 345-022-0090, including:

(A) Historic and cultural resources within the analysis area that have been listed, or would likely be eligible for listing, on the National Register of Historic Places~~.~~;

(B) For private lands, archaeological objects, as defined in ORS 358.905(1)(a), and archaeological sites, as defined in ORS 358.905(1)(c), within the analysis area~~.~~;

(C) For public lands, archaeological sites, as defined in ORS 358.905(1)(c), within the analysis area~~.~~;

(D) The significant potential impacts, if any, of the construction, operation and retirement of the proposed facility on the resources described in paragraphs (A), (B) and (C) and a plan for protection of those resources that includes at least the following:

(i) A description of any discovery measures, such as surveys, inventories, and limited subsurface testing work, recommended by the State Historic Preservation Officer or the National Park Service of the U.S. Department of Interior for the purpose of locating, identifying and assessing the significance of resources listed in paragraphs (A), (B) and (C)~~.~~;

(ii) The results of the discovery measures described in subparagraph (i), together with an explanation by the applicant of any variations from the survey, inventory, or testing recommended~~.~~;

(iii) A list of measures to prevent destruction of the resources identified during surveys, inventories and subsurface testing referred to in subparagraph (i) or discovered during construction~~.~~; and

(E) The applicant's proposed monitoring program, if any, for impacts to historic, cultural and archaeological resources during construction and operation of the proposed facility.

(t) **Exhibit T.** 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 significant potential adverse impacts to the important opportunities identified in (A) including, but not limited to:

(i) Direct or indirect loss of a recreational opportunity as a result of facility construction or operation~~.~~;

(ii) Noise resulting from facility construction or operation~~.~~;

(iii) Increased traffic resulting from facility construction or operation~~.~~;

(iv) Visual impacts of facility structures or plumes~~.~~;

(C) A description of any measures the applicant proposes to avoid, reduce or otherwise mitigate the significant adverse impacts identified in (B)~~.~~;

(D) A map of the analysis area showing the locations of important recreational opportunities identified in (A)~~.~~; and

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

(u) **Exhibit U.** Information about significant potential adverse impacts of construction and operation of the proposed facility on the ability of public and private providers in the analysis area to provide the services listed in OAR 345-022-0110, providing evidence to support a finding by the Council as required by OAR 345-022-0110. The applicant ~~shall~~ must include:

(A) The important assumptions the applicant used to evaluate potential impacts~~.~~;

(B) Identification of the public and private providers in the analysis area that would likely be affected~~.~~;

(C) A description of any likely adverse impact to the ability of the providers identified in (B) to provide the services listed in OAR 345-022-0110~~.~~;

(D) Evidence that adverse impacts described in (C) are not likely to be significant, taking into account any measures the applicant proposes to avoid, reduce or otherwise mitigate the impacts~~.~~; and

(E) The applicant's proposed monitoring program, if any, for impacts to the ability of the providers identified in (B) to provide the services listed in OAR 345-022-0110.

(v) **Exhibit V.** Information about the applicant's plans to minimize the generation of solid waste and wastewater and to recycle or reuse solid waste and wastewater, providing evidence to support a finding by the Council as required by OAR 345-022-0120. The applicant ~~shall~~ must include:

(A) A description of the major types of solid waste and wastewater that construction, operation and retirement of the facility are likely to generate, including an estimate of the amount of solid waste and wastewater~~.~~;

(B) A description of any structures, systems and equipment for management and disposal of solid waste, wastewater and storm water~~.~~;

(C) A discussion of any actions or restrictions proposed by the applicant to reduce consumptive water use during construction and operation of the facility~~.~~;

(D) The applicant's plans to minimize, recycle or reuse the solid waste and wastewater described in (A)~~.~~;

(E) A description of any adverse impact on surrounding and adjacent areas from the accumulation, storage, disposal and transportation of solid waste, wastewater and stormwater during construction and operation of the facility~~.~~;

(F) Evidence that adverse impacts described in (D) are likely to be minimal, taking into account any measures the applicant proposes to avoid, reduce or otherwise mitigate the impacts~~.~~; and

(G) The applicant's proposed monitoring program, if any, for minimization of solid waste and wastewater impacts.

(w) **Exhibit W.** Information about site restoration, providing evidence to support a finding by the Council as required by OAR 345-022-0050(1). The applicant ~~shall~~ 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.

(x) **Exhibit X.** Information about noise generated by construction and operation of the proposed facility, providing evidence to support a finding by the Council that the proposed facility complies with the Oregon Department of Environmental Quality's noise control standards in OAR 340-035-0035. The applicant ~~shall~~ must include:

(A) Predicted noise levels resulting from construction and operation of the proposed facility~~.~~;

(B) An analysis of the proposed facility's compliance with the applicable noise regulations in OAR 340-035-0035, including a discussion and justification of the methods and assumptions used in the analysis~~.~~;

(C) Any measures the applicant proposes to reduce noise levels or noise impacts or to address public complaints about noise from the facility~~.~~;

(D) Any measures the applicant proposes to monitor noise generated by operation of the facility~~.~~;

(E) A list of the names and addresses of all owners of noise sensitive property, as defined in OAR 340-035-0015, within one mile of the proposed site boundary~~.~~;

(y) **Exhibit Y.** If the facility is a base load gas plant, a non-base load power plant, or a nongenerating energy facility that emits carbon dioxide, a statement of the means by which the applicant elects to comply with the applicable carbon dioxide emissions standard under OAR 345-024-0560, 345-024-0600, or 345-024-0630 and information, showing detailed calculations, about the carbon dioxide emissions of the energy facility. The applicant may present the calculations in tabular form. The applicant ~~shall~~ must include the following information and calculations:

(A) Fuel cycle and usage including the maximum hourly fuel use at net electrical power output at average annual conditions for a base load gas plant and the maximum hourly fuel use at nominal electric generating capacity for a non-base load power plant or a base load gas plant with power augmentation technologies, as applicable~~.~~;

(B) The gross capacity as estimated at the generator output terminals for each generating unit. For a base load gas plant, gross capacity is based on the average annual ambient conditions for temperature, barometric pressure and relative humidity. For a non-base load plant, gross capacity is based on the average temperature, barometric pressure and relative humidity at the site during the times of year when the facility is intended to operate. For a baseload gas plant with power augmentation, gross capacity in that mode is based on the average temperature, barometric pressure and relative humidity at the site during the times of year when the facility is intended to operate with power augmentation~~.~~;

(C) A table showing a reasonable estimate of all on-site electrical loads and losses greater than 50 kilowatts, including losses from on-site transformers, plus a factor for incidental loads, that are required for the normal operation of the plant when the plant is at its designed full power operation~~.~~;

(D) The maximum number of hours per year and energy content (Btu per year, higher heating value) of alternate fuel use~~.~~;

(E) The total gross carbon dioxide emissions for 30 years, unless an applicant for a non-base load power plant or nongenerating energy facility proposes to limit operation to a shorter time~~.~~;

(F) The gross carbon dioxide emissions rate expressed as:

(i) Pounds of carbon dioxide per kilowatt-hour of net electric power output for a base load gas plant, including operation with or without power augmentation, as appropriate, or for a non-base load power plant;

(ii) Pounds of carbon dioxide per horsepower hour for nongenerating facilities for which the output is ordinarily measured in horsepower; or

(iii) A rate comparable to pounds of carbon dioxide per kilowatt-hour of net electric power output for nongenerating facilities other than those measured in horsepower~~.~~;

(G) The total excess carbon dioxide emissions for 30 years, unless an applicant for a non-base load power plant or a nongenerating energy facility proposes to limit operation to a shorter time~~.~~;

(H) The excess carbon dioxide emissions rate, using the same measure as required for paragraph (F)~~.~~;

(I) The average annual site conditions, including temperature, barometric pressure and relative humidity, together with a citation of the source and location of the data collection devices~~.~~;

(J) For a non-base load power plant (or when using power augmentation), the average temperature, barometric pressure and relative humidity at the site during the times of the year when the facility is intended to operate, together with a citation of the source and location of the data collection devices~~.~~;

(K) The annual fuel input in British thermal units, higher heating value, to the facility for each type of fuel the facility will use, assuming:

(i) For a base load gas plant, a 100-percent capacity factor on a new and clean basis and the maximum number of hours annually that the applicant proposes to use alternative fuels~~.~~;

(ii) For a non-base load power plant, the applicant's proposed annual hours of operation on a new and clean basis, the maximum number of hours annually that the applicant proposes to use alternative fuels and, if the calculation is based on an operational life of fewer than 30 years, the proposed operational life of the facility~~.~~;

(iii) For a nongenerating energy facility, the reasonably likely operation of the facility based on one year, 5-year, 15-year, and 30-year averages, unless an applicant proposes to limit operation to a shorter time~~.~~;

(L) For each type of fuel a base load gas plant or a non-base load power plant will use, the estimated heat rate and capacity of the facility measured on a new and clean basis with no thermal energy to cogeneration, consistent with the data supplied in Exhibit B~~.~~;

(M) For each type of fuel a nongenerating energy facility will use, the estimated efficiency and capacity of the facility with no thermal energy to cogeneration~~.~~;

(N) If the facility provides thermal energy for cogeneration to lower its net carbon dioxide emissions rate~~, the applicant shall include~~:

(i) The estimated annual useful thermal energy available from the facility for non-electric processes, annual useful thermal energy used by non-electric processes, and annual thermal energy rejected as waste heat~~.~~;

(ii) For a base load gas plant or non-base load power plant, the estimated annual net electric power output and annual fuel input in British thermal units higher heating value for the facility for each type of fuel the facility will use and the basis of such estimates~~.~~;

(iii) A description of the non-electric thermal processes, the names and addresses of the persons intending to use the non-electric thermal energy, and a description and an estimate of the fuel displaced by cogeneration, including supporting assumptions~~.~~;

(iv) A description of the products produced and thermal energy needed for production of the primary products made by the persons intending to use the non-electric thermal energy produced by the proposed facility, supported by fuel use and steam production records or estimates, if the production facility is new~~.~~;

(v) The efficiency of each boiler that the thermal energy will displace~~.~~;

(vi) For each boiler, the annual fossil fuel displaced in million Btu, higher heating value, by type of fuel that will be displaced by the thermal energy~~.~~;

(vii) The annual carbon dioxide offset by the cogeneration host, using a rate of 117 pounds of carbon dioxide per million Btu of natural gas fuel (higher heating value) and a rate of 161 pounds of carbon dioxide per million Btu of distillate fuel (higher heating value)~~.~~;

(viii) The cumulative carbon dioxide offset by the steam host through the thirtieth year of facility operation, or for a shorter period if an applicant for a nongenerating facility proposes a shorter operational period~~.~~;

(ix) A copy of the contractual agreement between the applicant and the cogeneration host for the use of the thermal energy~~.~~;

(x) A description of the guarantees of offsets that the applicant ~~shall~~ must provide for cogeneration projects, pursuant to OAR 345-024-0560(1) and 345-024-0600(1)~~.~~;

(xi) A proposed monitoring and evaluation plan and an independent verification plan, pursuant to subparagraphs (O)(xix) and (O)(xx)~~.~~;

(xii) A copy of the instrument by which the certificate holder will transfer the offsets to the Council for it to hold in trust~~.~~;

(O) If the applicant proposes to offset carbon dioxide emissions as described in OAR 345-024-0550(3), 345-024-0560(2), 345-024-0590(3), 345-024-0600(2), 345-024-0620(3) or 345-024-0630(1)~~, the applicant shall include~~:

(i) A description of each offset project~~.~~;

(ii) A description of who will implement the offset project, including qualifications and experience~~.~~;

(iii) Detailed estimates of the of carbon dioxide offset, measured in short tons, that the offset projects will achieve over the life of the project~~.~~;

(iv) For each offset project, an explanation of how the applicant quantified its carbon dioxide estimates to a degree of certainty acceptable to the Council though a transparent and replicable calculation methodology~~.~~;

(v) For each offset project, evidence that the offset project would not likely have been implemented if not for the applicant's activities or funding~~.~~;

(vi) For each offset project, a description of a "Baseline" projection that does not include the proposed project and a "Project Case" projection that does. The historic Baseline ~~shall~~must use reliable emissions data or pre-project data available for the most recent three years unless the applicant can demonstrate that a different period more closely represents historical operations or unless it can demonstrate that another method provides a more reasonable estimate. The applicant ~~shall~~ must show how the Baseline projection changes over time if changes from business-as-usual could be reasonably anticipated during the project life~~.~~;

(vii) For each offset project, a description, in a transparent and realistic manner, of the assumptions and methodologies used to quantify the Baseline and the Project Case projections, including a description of key parameters and data sources. This ~~shall~~ must include a description of the formulae used to estimate carbon dioxide emissions or sequestration within the project boundary and a net change of carbon dioxide emissions or

sequestration that occurs outside of the project boundary that is measurable and attributable to the project activity~~.~~;

(viii) For projects that avoid conventional electricity generation, a description of a Baseline that calculates the carbon dioxide emissions per kilowatt hour in two steps:

(~~1~~I) ~~f~~For the first five years of operation, a description of the rate based on dispatch data or models or, absent that, a weighted average of all resources in a power pool except zero-fuel-cost or must-run facilities~~,~~; and

(~~2~~II) ~~a~~ A description of the rate for any subsequent years based on a group of similar facilities built within the prior five years or under construction in the electrical distribution region of the project or the three most recent plants built in the region, whichever rate is lower~~.~~;

(ix) For projects that avoid conventional electricity generation, a description of avoided transmission and distribution losses, using average grid area or national losses~~.~~;

(x) A description of any guarantee for offsets from projects that the applicant proposes pursuant to OAR 345-024-0560(2), 345-024-0600(2), and 345-024–630(1), if the applicant chooses to offer a guarantee~~.~~;

(xi) A description of the offset project boundary. The boundary ~~shall~~must encompass all carbon dioxide emissions under the control of the project that are significant and reasonably attributable to the project activity. If the project is being conducted by one part of a corporation, the boundary ~~shall~~must include the emissions and reductions of the whole corporate entity and the carbon dioxide emissions resulting from processes and facilities that are related to the project, with identification of subsidiaries that are affected by the project~~.~~;

(xii) A description of significant risks and risk mitigation strategies, including an estimate of the range of uncertainty around the expected carbon dioxide offsets~~.~~;

(xiii) For biological sequestration projects, an assessment of the risk of climate change to natural systems that are sequestering the carbon dioxide, including, if appropriate, the risks from forest fires, pest and other unplanned releases of carbon from sequestration~~.~~;

(xiv) A description of whether the offset project will permanently avoid or displace emissions of carbon dioxide. If a project only temporarily sequesters carbon, an indication of the duration of sequestration or storage~~.~~;

(xv) A description of the amount of funding the applicant will provide for each offset project it proposes~~.~~;

(xvi) If the applicant anticipates that a project will have funding sources in addition to itself, identification of the sources of those funds, the amount of other funding that is required to implement a project, the amount of funds other parties have committed, and the risks of other funds not being available~~.~~;

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(xvii) If the applicant proposes that a project will have funding sources in addition to itself, a description of how ownership of the offsets will be allocated among the several funding sources~~.~~;

(xviii) A copy of the instrument by which the certificate holder will transfer all the offsets to the Council for it to hold in trust~~.~~;

(xix) A description of a transparent and replicable methodology for the applicant's monitoring and evaluation plan and for an independent verification plan, including:

(~~1~~I) ~~p~~Procedures the applicant and the independent entity will employ~~,~~;

(~~2~~II) ~~h~~How the applicant will assure funds for ongoing monitoring, evaluation and verification~~,~~;

(~~3~~III) ~~t~~The time frame and frequency over which the applicant will conduct monitoring and evaluation and over which the independent entity will conduct verification, including the frequency of site visits, if applicable~~,~~;

(~~4~~IV) ~~t~~The reporting procedures and guidelines for the plans~~,~~ and

(~~5~~V) ~~w~~Whether the applicant has identified the independent entity that will perform the verification~~.~~;

(xx) The monitoring and evaluation plan and the verification plan ~~shall~~must identify the data needs and data quality with regard to accuracy, comparability, completeness and validity. It ~~shall~~ must include methodologies to be used for data collection, monitoring, storage, reporting and management, including quality assurance and quality control provisions. It ~~shall~~ must provide complete calculations used to calculate and estimate carbon dioxide emissions from activity within the project boundary. It ~~shall~~ must show any formulae and assumptions the applicant used to calculate offset project leakage~~.~~;

(xxi) A description of reasonably likely, significant undesirable long-term environmental impacts from the implementation of an offset project~~.~~; and

(P) If the applicant elects to comply with the applicable carbon dioxide emissions standard by using the monetary path under OAR 345-024-0560(3), 345-024-0600(3) or 345-024-0630(2), the applicant ~~shall~~ must include:

(i) A statement of the applicant's election to use the monetary path~~.~~;

(ii) The amount of carbon dioxide reduction, in tons, for which the applicant is taking credit by using the monetary path~~.~~;

(iii) The qualified organization to whom the applicant will provide offset funds and funds for the cost of selecting and contracting for offsets. The applicant ~~shall~~ must include evidence that the organization meets the definition of a qualified organization under OAR 345-001-0010. The applicant may identify an organization that has applied for, but has not received, an exemption from federal income taxation, but the Council ~~shall~~ will not find that the organization is a qualified organization unless the organization is exempt from federal

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taxation under section 501(c)(3) of the Internal Revenue Code as amended and in effect on September 18, 2015~~.~~; and

(iv) A statement of whether the applicant intends to provide a bond or letter of credit to secure the funds it must provide to the qualified organization or whether it requests the option of providing either a bond or a letter of credit.

(z) **Exhibit Z.** If the proposed facility has an evaporative cooling tower, information about the cooling tower plume, including:

(A) The predicted size and frequency of occurrence of a visible plume and an assessment of its visual impact~~.~~;

(B) The predicted locations and frequency of occurrence of ice formation on surfaces and ground level fogging and an assessment of significant potential adverse impacts, including, but not limited to, traffic hazards on public roads~~.~~;

(C) The predicted locations and rates of deposition of solids released from the cooling tower (cooling tower drift) and an assessment of significant potential adverse impacts to soils, vegetation and other land uses~~.~~;

(D) Any measures the applicant proposes to reduce adverse impacts from the cooling tower plume or drift~~.~~;

(E) The assumptions and methods used in the plume analysis~~.~~; and

(F) The applicant's proposed monitoring program, if any, for cooling tower plume impacts;

(aa) **Exhibit AA.** If the proposed energy facility is a transmission line or has, as a related or supporting facility, a transmission line of any size:

(A) Information about the expected electric and magnetic fields, including:

(i) The distance in feet from the proposed center line of each proposed transmission line to the edge of the right-of-way~~.~~;

(ii) 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~~.~~;

(iii) The approximate distance in feet from the proposed center line to each structure identified in (A)~~.~~;

(iv) 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~~.~~;

(v) Any measures the applicant proposes to reduce electric or magnetic field levels~~.~~;

(vi) The assumptions and methods used in the electric and magnetic field analysis, including the current in amperes on each proposed transmission line~~.~~;

(vii) 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.

(bb) **Exhibit BB.** Any other information that the Department requests in the project order or in a notification regarding expedited review.

(cc) **Exhibit CC.** 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 E, and identification of the agencies administering those statutes, administrative rules and ordinances. The applicant ~~shall~~ must identify all statutes, administrative rules and ordinances that the applicant knows to be applicable to the proposed facility, whether or not identified in the project order. To the extent not addressed by other materials in the application, the applicant ~~shall~~ must include a discussion of how the proposed facility meets the requirements of the applicable statutes, administrative rules and ordinances.

(dd) **Exhibit DD.** 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 345-021-0020~~.~~; and

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

(2) 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 section (1) of this rule. 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 ~~shall~~ must include additional information in the site certificate application as needed to meet the requirements of section (1) of this rule.

(3) The applicant ~~shall~~must include a table of contents in the preliminary application identifying the location of each exhibit required by this rule.

(4) The applicant ~~shall~~ must submit, to the Department, ~~an~~ an original and ~~two~~ a copy of the printed ~~copies~~ 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 ~~of the preliminary application to the Department and shall~~ must prepare and distribute additional copies of the application

as required by OAR 345-021-0050. ~~Upon a request by the Department, the applicant must submit printed copies of the preliminary application for members of the Council. In addition to the printed copies, the applicant shall submit the full preliminary application in a non-copy-protected electronic format acceptable to the Department.~~

Commented [CC28]: See Issue 1091.

Stat. Authority: ORS 469.373, 469.470
Stat. Implemented: ORS 469.350, 469.370, 469.501, 469.503, 469.504

345-021-0050 - Distribution of a Preliminary Application

(1) 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. After receiving the preliminary application, the Department will ~~prepare the memorandum described in 345-015-0180 and~~, in coordination with the applicant, determine a distribution date and compile a distribution list~~. The applicant shall distribute copies of the preliminary application to the persons on the distribution list on or before the distribution date.~~ ~~The Department shall include~~ that includes, but is not limited to, the reviewing agencies for the facility ~~as defined in OAR 345-001-0010 on the distribution list and may include additional persons~~.

Commented [CC29]: Moved to (2).

(2) The Department will mail or email the memorandum described under OAR 345-015-0180 to each person on the distribution list before the distribution date.

(~~2~~3) Unless the Department directs otherwise, the applicant must mail or email an electronic copy of the preliminary application to each person on the distribution list on or before the distribution date. The applicant must provide a printed copy of part or all of the preliminary application to a person on the distribution list upon request. ~~If the applicant obtains written consent from the reviewing agency and provides a copy of that written consent to the Department, the applicant may send specified parts of the preliminary application or an electronic copy of all or specified parts of the preliminary application to the reviewing agency instead of sending a full printed copy.~~

~~(3) The distribution described in section (1) may be done by courier delivery or mailing of printed copies or, with the approval of the Department, any form of electronic delivery.~~

Commented [CC30]: See (2).

(4) After reviewing the preliminary application, each reviewing agency ~~shall~~ must submit written comments or recommendations to the Department that:

(a) State whether the reviewing agency needs any additional information from the applicant to review the application under the statutes, administrative rules or ordinances administered by the reviewing agency and describe such information; and

(b) Describe the status of applications for permits, if any, that the applicant has submitted to the reviewing agency and that are necessary for the construction and operation of the proposed facility.

(5) The Department ~~shall~~will, as soon as practicable, send the applicant copies of all comments submitted under section (4) that identify a need for additional information.

(6) (a) If the applicant has elected to demonstrate compliance with the Council's land use standard under ORS 469.504(1)(a), each local government with land use jurisdiction over the proposed facility ~~shall~~must, in the comments or recommendations submitted to the Department under section (4),

describe the status of the local land use proceedings and state the date when the local government expects to issue a final land use decision~~.~~;

(b) If the applicant has elected to obtain a Council determination of compliance with the Council's land use standard under ORS 469.504(1)(b), each local government with land use jurisdiction over the proposed facility ~~shall~~must, in the comments or recommendations submitted to the Department under section (4), include:

(A) A complete list of applicable substantive criteria from the local government's acknowledged comprehensive plan and land use regulations that are required by the statewide planning goals and that are in effect on the date the application was submitted. For the purpose of this rule, the application is submitted on the date that the Department receives the preliminary application. "Applicable substantive criteria" means the criteria and standards that the local government would apply in making all land use decisions necessary to site the proposed facility in the absence of a Council proceeding~~.~~;

(B) A complete list of Land Conservation and Development Commission administrative rules, statewide planning goals and land use statutes directly applicable to the facility under ORS 197.646(3)~~.~~;

(C) Copies of the criteria listed in (A) and any interpretations of ambiguous terms and matters arising from the local government's land use regulations~~.~~; and

(c) The local government may submit its recommendations, comments and interpretations as described in subsection (b) in the form of a resolution adopted by the local governing body.

~~(7) The applicant shall provide additional copies of the preliminary application to the Department upon request, and copies or access to copies to any person requesting copies.~~

Commented [CC31]: See issue 1091.

(8) After receiving the preliminary application, the Department ~~shall~~ will post an announcement on its website to notify the public that a preliminary application has been received. The Department ~~shall~~ will include in the announcement the addresses of locations where the public may review copies of the preliminary application. The announcement may include the preliminary application or sections of the preliminary application that may be viewed or downloaded. The announcement may include a link to the applicant's website, if any, where the preliminary application may be viewed or downloaded.

Stat. Auth.: ORS 469.470
Stats. Implemented: ORS 469.350

345-021-0055 - Distribution of a Complete Application

(1) After receiving notification from the Department of Energy that the application is complete, the applicant ~~shall~~must prepare an application supplement that includes all amendments to the preliminary application and all additional information requested by the Department before the determination of completeness. ~~The supplement may consist of a total revision of the application when necessary to provide a clear presentation of new information.~~

Commented [CC32]: Moved to (4)

(2) The applicant ~~shall submit~~must provide to the Department an original and ~~two printed~~a ~~copies~~ copy of the application supplement, and a non-copy-protected electronic copy of the application supplement to the Department. ~~Upon a request by the Department, t~~The applicant must submit additional printed copies of the application supplement to the Department upon request.~~for members of the Council. In addition to the printed copies, the applicant shall submit the full application supplement in a non-copy-protected electronic format acceptable to the Department.~~

(3) After receiving the application supplement, the Department will determine a distribution date and will prepare a distribution list that includes, but is not limited to the reviewing agencies for the facility.

(4) The Department will mail or email the notice described under OAR 345-015-0200 to each person on the distribution list before the distribution date.

(~~2~~5) Except as described in OAR 345-015-0310, and unless the Department directs otherwise, the applicant ~~shall~~ must ~~distribute~~mail or email an electronic ~~copies~~ copy of the application supplement to each person~~s~~ on ~~a~~ the ~~mailing~~ distribution list provided by the Department on or before the distribution date~~, accompanied by the notice from the Department described in 345-015-0200~~. The applicant must provide a printed copy of all or part of the application supplement to a person on the mailing list upon request.

~~(3) If the applicant obtains written consent from a person named on the mailing list and provides a copy of that written consent to the Department, the applicant may send specified parts of the supplement or an electronic copy of all or specified parts of the supplement to that person instead of sending a full printed copy.~~

~~(4) The distribution described in section (2) may be done by courier delivery or mailing of printed copies or, with the approval of the Department, any form of electronic delivery.~~

~~(5) A "complete application" consists of the preliminary application together with the supplement described in section (1).~~

~~(6) The applicant shall provide additional copies of the complete application to the Department upon request and copies or access to copies to any person requesting copies.~~

(4) If the Department determines it is necessary to present the amendments and additional information described in section (1) of this rule clearly, the Department may require the applicant to provide a complete revision of the preliminary application in place of the application supplement under section (2) and (5) of this rule.

Stat. Auth.: ORS 469.373 & 469.470
Stats. Implemented: ORS 469.350

345-021-0090 - Amendment of an Application

(1) When the applicant is preparing to submit an amended application, the applicant ~~shall~~must notify the Department of Energy.

(2) The applicant may amend a preliminary application at any time.

Commented [CC33]: See Issue 1091.

Commented [CC34]: Moved from OAR 345-015-0200.

Commented [CC35]: See Issue 1106.

Commented [CC36]: See (2).

Commented [CC37]: See (1).

Commented [CC38]: See (1).

Commented [CC39]: See Issue 1107.

(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 345-015-0014, 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 ~~shall~~ must submit to the Department ~~the~~ an original and ~~two~~ one ~~printed copies~~ copy of the printed amended application, and a non-copy-protected electronic copy of the amended application in a format acceptable to the Department. ~~Upon a request by the Department, the~~The applicant must ~~submit~~provide additional printed copies of the amended application to the Department upon request~~for members of the Council~~. The applicant must prepare and distribute additional copies of the amended application in the manner described in OAR 345-021-0050. ~~In addition to the printed copies, the applicant shall submit the full amended application in a non-copy-protected electronic format acceptable to the Department.~~

~~(6) The applicant shall distribute copies of the amended application in the manner described in OAR 345-021-0050.~~

Commented [CC40]: See Issue 1091.

Commented [CC41]: See (5).

Stat. Auth.: ORS 469.373 & 469.470
Stats. Implemented: ORS 469.350

DIVISION 27 - SITE CERTIFICATE CONDITIONS, AMENDMENT, TRANSFER AND TERMINATION AND DEPARTMENT OF ENERGY APPROVAL OF GAS STORAGE TESTING PIPELINES

345-027-0060 - Preliminary Request for Amendment

(1) To request an amendment to the site certificate required by OAR 345-027-0050(3) and (4), the certificate holder ~~shall~~ must submit a written preliminary request for amendment to the Department of Energy that includes the following:

(a) The name of the facility, the name and mailing address of the certificate holder, and the name, mailing address, email address and phone number of the individual responsible for submitting the request~~.~~;

(b) A detailed description of the proposed change, including:

(A) ~~a~~A description of how the proposed change affects the facility~~,~~;

(B) ~~a~~A description of how the proposed change affects those resources or interests protected by applicable laws and Council standards~~,~~; and

(C) ~~t~~The specific location of the proposed change, and any updated maps and/or geospatial data layers relevant to the proposed change~~.~~;

(c) References to any specific Division 21 information that may be required for the Department to make its findings~~.~~;

(d) The specific language of the site certificate, including conditions, that the certificate holder proposes to change, add or delete through the amendment~~.~~;

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

(f) An updated list of ~~the~~ property owners ~~of property located within or adjacent to the site of the facility~~, as described in OAR 345-021-0010(1)(f).

Commented [CC42]: See Issue 1062.

(2) After receiving a preliminary request for amendment, the Department ~~shall~~ will post an announcement on its website to notify the public that a preliminary request for amendment has been received. The announcement ~~shall~~ will include a copy of the preliminary request for amendment.

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

(4) The certificate holder may incorporate, by specific reference, evidence previously submitted to the Department in the application for site certificate or previous request for amendment, or evidence that is otherwise included in the Department's record on the facility.

Stat. Authority: ORS 469.470
Stat. Implemented: ORS 469.405

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345-027-0071 - Proposed Order, Requests for Contested Case and Council's Final Decision on Requests for Amendment Under Type A Review

(1) No later than 30 days after the Council has reviewed the draft proposed order and considered all comments received on the record of the public hearing under 345-027-0067, the Department of Energy ~~shall~~ will issue a proposed order recommending approval, modification or denial of the request(s) for amendment to the site certificate. The Department must consider any oral comments made at the public hearing, written comments received before the close of the record of the public hearing, agency consultation, and any Council comments. The Department may issue the proposed order at a later date, but the Department ~~shall~~will, no later than 30 days after the Council has reviewed the draft proposed order and considered all comments received on the record of the public hearing, notify the certificate holder in writing of the reasons for the delay.

(2) Concurrent with issuing the proposed order, the Department ~~shall~~ will issue public notice of the proposed order, subject to the following:

(a) The Notice will include:

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

(B) A description of the process and deadline for requests for a contested case under sections (5) through (9) of this rule;

(C) The physical and website addresses of where the public may review copies of the proposed order; and

(D) The name, address, email address and telephone number of the Department representative to contact for more information.

(b) The Department will ~~by~~ post~~ing~~ ~~public~~ the notice as an announcement on its website, and will ~~and by~~ send~~ing public~~ the notice by mail or email to:

(~~a~~A) The certificate holder;

(B) All ~~P~~persons on the Council's general mailing list as defined in OAR 345-011-0020~~,~~;

(~~b~~B) All ~~P~~persons on any special list established for the facility~~,~~;

(~~c~~D) The reviewing agencies as defined in OAR 345-001-0010~~(52),~~; ~~and~~

(~~d~~E) The ~~updated~~ property owners on the updated list as described in OAR 345-021-0010(1)(f) Exhibit F~~.~~; and

(F) All persons who commented in person or in writing on the record of the public hearing as described in OAR 345-027-0067.

~~(3) Notice of the proposed order shall include:~~

~~(a) A description of the facility and the facility's general location.~~

~~(b) A description of the process for requesting a contested case.~~

~~(c) The physical and website addresses of where the public may review copies of the proposed order.~~

~~(d) The name, address, email address and telephone number of the Department representative to contact for more information.~~

~~(4) On the same date the notice of proposed order as described in section (2) is issued, the Department shall send, a notice of the opportunity to request a contested case to the certificate holder and to all persons who commented in person or in writing on the record of the public hearing as described in OAR 345-027-0067. The notice shall include the deadline for requesting a contested case and restatements of sections (5), (6), (7), (8) and (9).~~

(~~5~~3) Only those persons, including the site certificate holder, who commented in person or in writing on the record of the public hearing described in OAR 345-027-0067 may request a contested case

Commented [CC43]: Moved from (3).

Commented [CC44]: See Issue 1103.

Commented [CC45]: See Issue 1103.

Commented [CC46]: See (2)(a).

Commented [CC47]: See Issue 1103.

proceeding on the proposed order for an amendment to the site certificate. To properly raise an issue in a request for a contested case proceeding on the proposed order for an amendment, the issue must be within the jurisdiction of the Council, and the person must have raised the issue in person or in writing on the record of the public hearing, unless the Department of Energy did not follow the requirements of OAR 345-027-0067, or unless the action recommended in the proposed order differs materially from the draft proposed order, including any recommended conditions of approval, in which case the person may raise only new issues within the jurisdiction of the Council that are related to such differences. If a person has not raised an issue at the public hearing with sufficient specificity to afford the decision maker an opportunity to respond to the issue, the Council ~~shall~~ will not grant a contested case proceeding for that issue. To have raised an issue with sufficient specificity, the person must have presented facts at the public hearing that support that person's position on the issue.

(~~6~~4) Contested case requests must be submitted in writing and must be received by the Department by a specified deadline that is at least 30 days from the date of notice in section (~~4~~2). Contested case requests must include:

(a) The person's name, mailing address and email address and any organization the person represents;

(b) A short and plain statement of the issue or issues the person desires to raise in a contested case proceeding;

(c) A statement that describes why the Council should find that the requester properly raised each issue, as described in section (~~7~~5), including a specific reference to the person's prior comments to demonstrate that the person raised the specific issue or issues on the record of the public hearing, if applicable;

(d) A statement that describes why the Council should determine that each identified issue justifies a contested case, under the evaluation described in section (~~9~~7);

(e) A detailed description of the person's interest in the proceeding and how that interest may be affected by the outcome of the proceeding;

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

(g) A statement of whether the person's request to participate in a contested case is as a party or a limited party, and if as a limited party, the precise area or areas in which participation is sought;

(h) If the person seeks to protect a personal interest in the outcome of the proceeding, a detailed statement of the person's interest, economic or otherwise, and how such interest may be affected by the results of the proceeding;

(i) If the person seeks to represent a public interest in the results of the proceeding, a detailed statement of such public interest, the manner in which such public interest will be affected by the results of the proceeding, and the person's qualifications to represent such public interest; and

(j) A statement of the reasons why others who commented on the record of the public hearing cannot adequately represent the interest identified in subsections (h) or (i).

(~~7~~5) Before considering whether an issue justifies a contested case proceeding under section (~~9~~7), the Council must determine that the person requesting a contested case commented in person or in writing on the record of the public hearing and properly raised each issue included in the request. To determine that a person properly raised each issue included in the request, the Council must find that: The person making the contested case request raised the issue on the record of the public hearing described in OAR 345-027-0067 with sufficient specificity to afford the Council, the Department and the certificate holder an adequate opportunity to respond to the issue;

(a) The Department did not follow the requirements of OAR 345-027-0067; or

(b) If the action recommended in the proposed order, including any recommended conditions of approval, differs materially from the action recommended in the draft proposed order, the contested case request identified new issues that are related to such material differences.

(~~8~~6) If the Council finds that the person requesting a contested case failed to comment in person or in writing on the record of the public hearing or failed to properly raise any issue, as described in section (~~7~~5), the Council must deny that person's contested case request. If the Council finds that the person requesting a contested case commented in person or in writing on the record of the public hearing and properly raised one or more issues, the Council's determination of whether an issue justifies a contested case, as described in section (~~9~~7), ~~shall~~will be limited to those issues the Council finds were properly raised.

(~~9~~7) After identifying the issues properly raised the Council ~~shall~~will determine whether any properly raised issue justifies a contested case proceeding on that issue. To determine that an issue justifies a contested case proceeding, the Council must find that the request raises a significant issue of fact or law that may affect the Council's determination that the facility, with the change proposed by the amendment, meets the applicable laws and Council standards included in OAR ~~chapter~~ 345~~-divisions~~-022, 345-023 and 345-024. If the Council does not have jurisdiction over the issue raised in the request, the Council must deny the request.

(~~10~~8) The Council must take one of the following actions when determining if a request identifying one or more properly raised issues justifies a contested case proceeding:

(a) ~~-~~If the Council finds that the request identifies one or more properly raised issues that justify a contested case proceeding, the Council ~~shall~~ will conduct a contested case proceeding according to the applicable provisions of OAR 345-015-0012 to 345-015-0014 and~~-~~ 345-015-0018 to 345-015-0085. The Council ~~shall~~ will identify the contested case parties and ~~shall~~ will identify the issues each contested case party may participate on. The parties to a contested case proceeding ~~shall~~will be limited to those persons who commented on the record of the public hearing and who properly raised issues in their contested case request that the Council found sufficient to justify a contested case, except that the certificate holder is an automatic party to a contested case. The issues a party to a contested case proceeding may participate on ~~shall~~ will be limited to those issues that party properly raised in its contested case request that the Council found sufficient to justify a contested case, except that the certificate holder may participate on any issue the Council found sufficient to justify a contested case proceeding~~.~~;

(b) If the Council finds that the request identifies one or more properly raised issues that an amendment to the proposed order, including modification to conditions, would settle in a manner satisfactory to the Council, the Council may deny the request as to those issues and direct the Department to amend the proposed order and send a notice of the amended proposed order ~~to the persons~~as described in section (~~4~~2). Only the certificate holder and those persons who commented on the record of the hearing may, in a writing received by the Department within 30 days after the Department issues the notice of the amended proposed order, request a contested case proceeding limited to issues related to the amendment to the proposed order. As described in section (~~9~~8), the Council ~~shall~~ will determine whether any issue identified in the request for a contested case proceeding justifies a contested case proceeding. A person's contested case request under this subsection ~~shall~~ must include:

(A) The person's name, mailing address and email address;

(B) A statement of the contested issues related to the amendment to the proposed order, including facts believed to be at issue; and

(C) A statement that describes why the Council should find an issue justifies a contested case, as described in section (~~8~~7)~~.~~;

(c) If the Council finds that the request does not identify a properly raised issue that justifies a contested case proceeding, the Council ~~shall~~will deny the request. In a written order denying the request, the Council ~~shall~~ will state the basis for the denial. The Council ~~shall~~will then adopt, modify or reject the proposed order based on the considerations described in OAR-345-027-0075. In a written order the Council ~~shall~~ will either grant or deny issuance of an amended site certificate. If the Council grants issuance of an amended site certificate, the Council ~~shall~~ will issue an amended site certificate, which is effective upon execution by the Council Chair and by the certificate holder.

(~~11~~9) If there is no request for a contested case proceeding as described in section (~~6~~4) or subsection (~~10~~8)(b), the Council, may adopt, modify or reject the proposed order based on the considerations described in OAR 345-027-0075. In a written order, the Council ~~shall~~ may either grant or deny issuance of an amended site certificate. If the Council grants issuance of an amended site certificate, the Council ~~shall~~will issue an amended site certificate, which is effective upon execution by the Council Chair and by the certificate holder.

(~~12~~10) Judicial review of the Council's final order either granting or denying an amended site certificate ~~shall~~will be as provided in ORS 469.403.

Stat. Authority: ORS 469.470
Stat. Implemented: ORS 469.405

345-027-0110 - Termination of a Site Certificate

(1) A certificate holder may apply to the Council to terminate a site certificate at any time, subject to the requirements of this rule.

(2) A certificate holder must apply to the Council to terminate a site certificate within two years following cessation of construction or operation of the facility.

(3) If the certificate holder fails to apply to the Council to terminate the site certificate and the Council finds that the certificate holder has permanently ceased construction or operation of the facility, then the Council may terminate the site certificate according to the procedure described in OAR 345-025-0006(16).

(4) In an application for termination of the site certificate, the certificate holder shall must include a proposed final retirement plan for the facility and site. The certificate holder shall must submit, to the Department, an original and two one printed copies copy of the printed application for termination and the proposed final retirement plan, and a non-copy-protected electronic copy of the application for termination and the proposed final retirement plan in a format acceptable to the Department of Energy. Upon a request by the Department, tThe certificate holder must submitprovide additional printed copies of the application for termination and the proposed final retirement plan to the Department upon requestfor members of the Council. In addition to the printed copies, the certificate holder shall submit the full copies of the application for termination and the proposed final retirement plan in a non-copy-protected electronic format acceptable to the Department.

Commented [CC48]: See Issue 1091.

(5) In the proposed final retirement plan, the certificate holder shall must include:

(a) A plan for retirement that provides for completion of retirement without significant delay and that protects public health, safety and the environment.;

(b) A description of actions the certificate holder proposes to take to restore the site to a useful, non-hazardous condition, including information on how impacts to fish, wildlife and the environment would be minimized during the retirement process.;

(c) A current detailed cost estimate and a plan for ensuring the availability of adequate funds for completion of retirement.; and

(d) An updated list of the owners of property owners located within or adjacent to the site of the facility, as described in OAR 345-021-0010(1)(f).

Commented [CC49]: See Issue 1062.

(6) Within 15 days after receiving an application for termination of a site certificate, the Department of Energy shallwill:

(a) Send a notice of the application by mail or email to all persons on the Council's general mailing list as defined in OAR 345-011-0020, to any special list established for the facility and to the updated property owner list submitted by the certificate holder under section (5) specifying a date by which comments on the application are due.;

(b) Send copies of the application for termination by mail or email to the reviewing agencies as defined in OAR 345-001-0010 and shallwill ask those agencies to comment by a specified date.; and

(c) Post an announcement of the application for termination on the Department's website.

(7) The Council shall will review the proposed final retirement plan and shall will consider any comments received from the public and the reviewing agencies. The Council may approve the proposed final retirement plan or modify the plan to comply with the rules of this chapter and applicable conditions in the site certificate. The Council shall will issue an order authorizing retirement according to the

approved or modified final retirement plan and subject to any conditions the Council finds appropriate. The Council's order may be appealed as described in ORS 183.480.

(8) When the Council finds that the certificate holder has completed the retirement of the facility according to the Council's order authorizing retirement, the Council ~~shall~~ will issue an order terminating the site certificate.

(9) When the Council finds that the site certificate has expired as described in OAR 345-027-0013, the Council ~~shall~~ will issue an order terminating the site certificate.

Stat. Authority: ORS 469.470
Stat. Implemented: ORS 469.405 & 469.501

Department of Energy Approval of Gas Storage Testing Pipelines

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 ~~shall~~must:

(a) Inform the Department of Energy 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), the Department ~~shall~~ will 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 ~~shall~~ will 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; and

(c) The time requirements for the approval process, if different from the time requirements described in OAR 345-027-0230.

(3) The certificate holder ~~shall~~ 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 ~~shall~~ must submit, to the Department, ~~the~~ an original and ~~two~~ one ~~paper copies~~ copy of the printed request, and a non-copy-protected electronic copy of the request in a format acceptable to the Department. The certificate holder ~~shall~~ must provide additional printed copies of the request to the Department upon request, and must provide copies or access to copies to any person requesting copies. ~~In addition to the printed copies of the request for approval, the certificate holder shall submit the full request in a non-copy-protected electronic format acceptable to the Department.~~

Commented [CC50]: See Issue 1091.

(4) In a request for approval, the certificate holder ~~shall~~ 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 the location of the proposed pipeline;

(g) The information that the Department has identified in the letter described in section (2); and

(h) Any other information that the Department requests as needed to make the findings described in the applicable standards.

Stat. Authority: ORS 469.405
Stat. Implemented: ORS 469.405, 469.421 & 469.441