



Oregon

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To: Oregon Energy Facility Siting Council

From: Christopher M. Clark, Rules Coordinator

Date: May 3, 2019

Subject: Item J: 2019 Housekeeping Rulemaking Project Staff Report for May 16-17, 2019, EFSC Meeting (Action Item)

Attachments: Attachment 1: Rulemaking Issues Summary
Attachment 2: Draft Proposed Rules
Attachment 3: Stakeholder Input

OVERVIEW

Staff have conducted preliminary analysis of rulemaking issues for the 2019 Housekeeping Rulemaking Project and made recommendations for proposed rule changes. Staff requests Council authorize staff to issue a Notice of Proposed Rulemaking and initiate an official public comment period for the rulemaking project.

BACKGROUND

On Feb. 22, 2019, the Oregon Energy Facility Siting Council (Council) adopted its 2019 Rulemaking Calendar, which included the 2019 Administrative Housekeeping Rulemaking Project. The purpose of the project is to improve the clarity and consistency of the rules, and make procedural changes that do not have significant fiscal impacts on stakeholders. Staff identified several potential rule changes in the [project summary](#) attached to the Staff Report for Item H of the Feb. 22, 2019 Council meeting. During review, staff identified several additional issues related to noticing requirements in the contested case process.

Attachment 1 contains a summary of the issues and staff's recommendations for rule changes. Draft rule language to implement the recommendations may be found in **Attachment 2**.

SUMMARY OF PROPOSED CHANGES & STAKEHOLDER INPUT

The rule changes are intended facilitate electronic transmission of application materials, improve the consistency of noticing requirements with statute and local government processes, and reduce administrative and reporting costs to applicants and certificate holders. These changes include:

- Amending OAR 345-001-0000 to specify that rulemaking notices under Oregon Revised Statute 183.335 may be sent electronically and adopting procedures to update the Council's rulemaking mailing lists.
- Amending OAR 345-001-0010 to delete the definition of "Office of Energy," add the Department of Aviation to the definition of "reviewing agency," and amend the definition of "related or supporting facilities" to be more consistent with statute.

- Amending OAR 345-015-0014; 345-015-0016; 345-015-0080; 345-015-0083; 345-015-0220; 345-015-0230; 345-015-0310; 345-027-0071; 345-015-0080 to clarify noticing requirements following issuance of a draft proposed order on an application for site certificate or request for amendment. Amending OAR 345-015-0014 to be consistent with ORS 183.413, 183.415 and OAR 137-003-0001.
- Amending OAR 345-015-0110(2)(h), 345-015-0190(8)(f), and 345-015-0220(3)(c) and (f) to remove references to “project officers.”
- Amending OAR 345-015-0310(5), 345-020-0011(3), 345-020-0016, 345-021-0000(8), 345-021-0010(3), 345-021-0055(1), 345-021-0090(5), 345-027-0110(4), and 345-027-0220(3) to reduce the number of printed copies of project materials an applicant or certificate holder must submit from an original and two copies to an original and one copy.
- Amending OAR 345-020-0011(1)(f), 345-021-0010(1)(f), 345-027-0060(1)(f), and 345-027-0110(5) to align property owner listing requirements with local government practices.
- Amending OAR 345-015-0120; 345-015-0180; 345-015-0190; 345-015-0200; 345-020-0040(2); 345-021-0050(2); 345-021-00055(3) to provide that an applicant must send electronic copies of application materials to reviewing agencies, and must provide printed copies of all or part of the application materials upon request.
- Amending OAR 345-021-0055 to clarify use of the terms “application supplement” and “complete application.”

On April 23, 2019, the Oregon Department of Energy published an initial draft of the issues document and draft proposed rules, and requested input from over 3,200 subscribers on the Council’s rulemaking mailing list. The Department received two letters of advice requesting the Council delay changes to OAR 345-027-0060, OAR 345-027-0063 and OAR 345-027-0071 and other rule impacted by the Amendment Rulemaking Project until the Supreme Court releases an opinion in *Friends of the Columbia Gorge v. Energy Facility Siting Council*. This advice is provided as **Attachment 3**. Staff reviewed the proposed rule changes in light of this request. Because the changes to OAR 345-027-0063 were not substantive, staff removed them from the draft proposed rules. Staff believes the recommended changes to OAR 345-027-0060 and 345-027-0071 are necessary to carry out the purpose of the rulemaking project and they have been retained. Note that while these changes would supersede some rules under review, the rules related to the “Type B” amendment review process, which are central to the case, are not affected.

EXPECTED FISCAL AND ECONOMIC IMPACT & COSTS OF COMPLIANCE¹

The proposed rule changes may slightly decrease costs associated with printing and mailing application materials and required notices by facilitating electronic transmission of these materials. These cost savings may be partially offset by the changes to the property owner listing requirements, which may result in some additional costs associated with noticing property owners who be excluded from the list under the current rule. The department is unable to determine the extent of these additional costs because they will depend on the size and location of a proposed facility. Due to the relatively small changes in costs, the department does not expect the proposed rules to have a significant fiscal or economic impact on the agency or its stakeholders.

¹ This information is required to be included in the Notice of Rulemaking under OAR 183.335(2)(b)(E) and is presented here for Council review and comment.

There are no expected fiscal impacts or costs to state agencies, local or tribal governments associated with the proposed rule changes. There are expected impacts to site certificate holders and applicants. Site certificate holders and applicants generally include public and private utilities, independent power producers, and energy financing and development firms. The majority of these firms are not small businesses. It is possible that the rules could affect a few small businesses in the finance sector; however, the department does not collect employment data from applicants so the number of small businesses is unknown.

In addition to expenses directly related to the development and submission of application materials, ORS 469.421 requires these persons to pay all expenses incurred by the Energy Facility Siting Council and the department related to the review of application materials and decision of the council under ORS 469.421(1). The Department expects the proposed rules to slightly decrease reporting, recordkeeping and administrative activities and costs by facilitating the electronic transmission of application materials and required notices where possible. The changes to property owner listing requirements could potentially increase some printing and mailing costs, depending on the size and location of a proposed facility. The rules are not expected to affect costs of professional services, equipment supplies, labor and increased administration required to comply with the rules.

RECOMMENDATIONS AND NEXT STEPS

Staff recommends Council authorize staff to issue a draft notice of proposed rulemaking reflecting the changes in **Attachment 2**. If Council authorizes the notice, staff recommends the deadline for written comments be set to end on Friday, August 2, 2019. Staff also recommends Council schedule a rulemaking hearing for the Council’s August meeting. The table below provides a summary of the anticipated timeline for the remaining steps of this rulemaking project.

Rulemaking Steps	Completion Date (Possible)
Council approves rulemaking project & method of obtaining public input.	Dec. 22, 2019
Council appoints Rules Advisory Committee, if any	Not Applicable
Staff obtains public input, as directed by Council	May 2, 2019
Staff prepares draft proposed rules for Council review	May 3, 2019
Council authorizes staff to issue Notice	(May 17, 2019)
Staff issues Notice	(May 24, 2019)
Public Comment Period	(May 24 – Aug 23, 2019)
Rulemaking Hearing	(Aug. 22-23, 2019)
Council and Staff consider all written and oral comments, revise proposed rules as needed	TBD
Council adopts, amends, or repeals rules	TBD
Staff submits permanent rule filing to Secretary of State	TBD
Rules are effective	Sept./Oct. 2019