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To: Oregon Energy Facility Siting Council

From: Christopher M. Clark, Rules Coordinator

Date: August 15, 2019

Subject: **Attachment 1:** Staff Testimony on Proposed Rulemaking for the 2019 Housekeeping Rulemaking Project.

SUMMARY

In its review of proposed rule changes included in the Notice of Proposed Rulemaking issued on June 12, 2019, Staff identified several areas in the proposed rules where minor non-substantive changes could improve the clarity and consistency of the rules. Additional minor corrections to typographic or scrivener's errors have been made, but are not reflected in this document but will appear on the track change version available from the Secretary of State.

For the purposes of this document, existing rule text is shown with language included in the proposed rules shown in **red**, and new changes in **blue**. Deleted text is in ~~striethrough~~, new text is **underlined**, and restored text is **double underlined**.

1. Remove proposed changes to OAR 345-015-0014; OAR 345-015-0016; 345-015-0080; 345-015-0230; 345-027-0060; 345-027-0071; 345-027-0110; and 345-027-0220.

In *Friends of the Columbia Gorge v. EFSC* (2019), the Supreme Court decided that rules approved by the Council in Administrative Orders EFSC 4-2017 and EFSC 5-2017 are invalid. Because the proposed changes to OAR 345-015-0014; OAR 345-015-0016; 345-015-0080; 345-027-0060; and 345-027-0071 were based on the versions of these rules effective October 24, 2017, they have been removed from this Rulemaking. To ensure consistency within the rules, proposed amendments to 345-015-0230; 345-027-0110; and 345-027-0220 have also been removed and will be addressed in future rulemaking.

2. Make minor structural and wording changes to improve the readability and consistency of the rules.

OAR 345-015-0190

“(1) * * * In the notification, the Department will * * *

(b) State that the application is incomplete, and:

(A) ~~D~~describe any information needed to complete the application to the extent known to the Department at the time of the notification;

(B) ~~A~~ask the applicant to submit the needed information by the deadline described in section (4); and

(C) Estimate the additional time the Department will need to make a determination of completeness; or”

“(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 all persons on:

(a) ~~†~~The Council's general mailing list as defined in OAR 345-011-0020; ~~and~~

(b) ~~†~~Any special mailing list set up for the proposed facility; ~~and~~ ~~to~~

(c) ~~†~~The list of property owners ~~listed~~provided in Exhibit F of the application.”

OAR 345-015-0220

“(2) The Department ~~of Energy shall~~will, at least 20 days before the hearing * * *

(b) Send notice of the hearing by mail or email to all persons on:

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

(B) ~~†~~Any special mailing list set up for the proposed ~~project~~facility; ~~and~~

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

OAR 345-015-0310(15)

(b) Send the notice described in section (14) by mail or email to all persons on:

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

(B) ~~†~~Any special mailing list set up for the proposed project; ~~and~~

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

OAR 345-015-0310(21)

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

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

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

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

3. Amend rules to specify that that applicants and certificate holders must submit two printed copies of application materials, instead of an original and one copy.

The department determined that because most application materials are prepared electronically, there is no longer a need to distinguish between the original and copy.

OAR 345-015-0310(5)

“(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 an electronic version of the preliminary application in a non-copy-protected electronic format acceptable to the Department. * * *”

“(b) Unless the Department directs otherwise, the applicant ~~shall~~must send an electronic copy of the preliminary application to each persons on the mailing list described in section (4). * * *”

OAR 345-020-0011(4)

“(a) The applicant ~~shall~~must submit, to the Department, an original and two printed copies a copy of the ~~printed~~ NOI and a non-copy-protected an electronic version of the NOI in a non-copy-protected electronic format acceptable to the Department. * * *”

OAR 345-020-0016

(1) * * * The applicant ~~shall~~must submit, to the Department, the an original and two printed copies a copy of the ~~printed~~ amended NOI, and a non-copy-protected an electronic version of the amended NOI in a format acceptable to the Department of Energy. * * *”

OAR 345-021-0055

“(1) ~~The supplement may consist of a total revision of the application when necessary to provide a clear presentation of new information~~ applicant must submit to the Department, the original and a copy two printed copies of the printed application supplement, and a non-copy-protected electronic copy of the application supplement in a format acceptable to the Department. * * *”

OAR 345-021-0090

“(5) The applicant ~~shall~~must submit, to the Department, an original and two printed copies a copy of the ~~printed~~ amended application and a non-copy-protected an electronic copy-version of the amended application in a non-copy-protected format acceptable to the Department.

4. Clarify language in Exhibit F to use language closer to the language used in ORS 197.736.

In part, this change is intended to clarify which property owners must be included in the list for an amendment by specifying that the list should be based only on the facility components which are the subject of a request for amendment, not on the entire facility. The department intends to address amendments specifically in future rulemaking.

OAR 345-020-0011

“(f) Exhibit F. A list of the names and mailing addresses of property owners, as described in this rule:

(A) The list must include all owners of record, as shown on the most recent property tax assessment roll, of property located:

~~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. Property adjacent to the site boundary. For the purpose of this rule, “adjacent property” means property that is:~~

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

~~(B) Within 250 feet of the site boundary where the site, corridor or micro siting corridor property which is the subject of the NOI upon which the facility is proposed to be located, where the site, corridor or micro siting corridor subject 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 where the site, corridor or micro siting corridor property which is the subject of the NOI upon which the facility is proposed to be located, where the site, corridor or micro siting corridor subject property is within a farm or forest zone; and~~

(B) In addition to incorporating the list in the application for a site certificate, the applicant shall submit the list to the Department in an electronic format approved by the Department.”

OAR 345-021-0010(1)

“(f) Exhibit F. A list of the names and mailing addresses of property owners, as described in this rule:

(A) The list must include all owners of record, as shown on the most recent property tax assessment roll, of property located:

~~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. Property adjacent to the site boundary For the purpose of this rule, “adjacent property” means property that is:

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

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

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

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

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

5. Remove reference to ORS 192.355(4) from Exhibit S.

The exemption from public disclosure provided under ORS 192.502(4) is not applicable to information required to be submitted by rule, and is likely not applicable to information submitted under Exhibit S. Exhibit S information is still conditionally exempt from public disclosure under ORS 192.345(11).