



Oregon

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To: Oregon Energy Facility Siting Council

From: Christopher M. Clark, Rules Coordinator

Date: August 15, 2019

Subject: Agenda Item H, N (Hearing and Action Item): Council Deliberation of Adoption of Permanent Rules Associated with the 2019 Housekeeping Rulemaking Project for the August 22-23, 2019 EFSC Meeting.

Attachments: Attachment 1: Staff Testimony on Proposed Rule Changes
Attachment 2: Draft Permanent Administrative Order

SUMMARY

Staff recommends Council adopt Permanent Rules for the 2019 Housekeeping Rulemaking Project as provided in **Attachment 2**, with any changes determined to be appropriate by Council in consideration of public comments received before the close of the public comment period.

BACKGROUND

At its May 17, 2019 meeting, the Council authorized staff to issue a Notice of Proposed Rulemaking for rule changes associated with the 2019 Housekeeping Rulemaking Project. The proposed rules included changes to OAR 345-001, 345-015, 345-020, and 345-021, 345-027 that are intended to 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. Specific changes included:

- Specifying that rulemaking notices may be sent electronically and adopting procedures to update the Council's rulemaking mailing lists.
- Updating definitions and procedural rules to be more consistent with statute.
- Reducing the number of printed copies of project materials an applicant or certificate holder must submit and facilitating electronic distribution of materials to reviewing agencies.
- Aligning property owner listing requirements with local government practices.

Staff filed the Notice of Proposed Rulemaking with the Secretary of State on June 12, 2019. The Notice appeared in the Oregon Bulletin for July, 2019. Notice was posted to the departments website, sent to the persons on the Council's Rulemaking Mailing List, and the legislators described in ORS 183.335(15) on June 17, 2019.

The notice initiated a public comment period on the proposed rule changes. The Council must consider any comments received before August 23, 2019 at 9:30 a.m. Stakeholders were encouraged to provide written comments by August 1, 2019 for advance distribution to the Council. As of August 15, 2019, the Department had not received any comments; however, if written comments are received before the August 23 public hearing, staff will either email to Council or hand-deliver at the August 22-23 EFSC meeting in Boardman.

On August 1, 2019, the Oregon Supreme Court issued its opinion in *Friends of the Columbia Gorge v. EFSC*. Upon review, the Court found the rules approved by the Energy Facility Siting Council through Permanent Administrative Orders EFSC 4-2017 and EFSC 5-2017 are invalid. A number of rules previously proposed to be included in the 2019 Housekeeping Rulemaking are affected by this decision.¹ As described in Agenda Item C, the Department is recommending Council implement temporary rules related to the Supreme Court decision. Accordingly, the Department is also removing its previously proposed housekeeping rulemaking changes from the rules that are proposed to be implemented in the temporary rulemaking.

In addition, staff have identified several areas in the remaining proposed rules where minor non-substantive changes could improve the clarity and consistency of the rules. A description of these changes is provided in **Attachment 1**, which has been entered into the rulemaking record. A draft Permanent Administrative Order, reflecting these changes recommended in the Staff Testimony, is included in **Attachment 2**.

STAFF RECOMMENDATION

Staff recommends Council adopt the rule changes included in the Notice of Proposed Rulemaking filed on June 12, 2019, with the changes recommended in **Attachment 1**, as permanent, and authorize staff to issue a Permanent Administrative Order as provided in **Attachment 2**. If written or oral comments are received before the comment deadline, staff requests Council to direct staff on what, if any, additional changes to the proposed rules are appropriate.

¹ OAR 345-015-0014; 345-015-0016; 345-015-0080; 345-015-0230; 345-027-0060; and 345-027-0071.

Agenda Item H Staff Report - Attachment 1:

Staff Testimony on Proposed Rule Changes

Agenda Item H Staff Report - Attachment 2:

Draft Permanent Administrative Order