



Oregon

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To: Oregon Energy Siting Council

From: Christopher Clark, Rules Coordinator

Date: December 4, 2019

Subject: Agenda Item D (Information Item): 2019 Amendment Rulemaking, Council Review of Comments for the December 19-20, 2019 Council Meeting

Attachments: Attachment A: Public Comments
Attachment B: Staff Evaluation of Issues

STAFF RECOMMENDATION

Staff's evaluation of issues raised in public comments is provided in Attachment B. Staff does not recommend action on issues that are: (1) procedural in nature; (2) make recommendations that are inconsistent with statutory requirements; or (3) beyond the scope of this rulemaking project. Staff does recommend that council act on one issue raised in Ms. Gilbert's oral testimony by deleting the proposed OAR 345-027-0371(6)(e) and existing OAR 345-015-0016(5)(d) because these sections appear to duplicate requirements in OAR 345-027-0371(6)(h) and (i) and the Attorney General's model rules, respectively. Staff recommends that Council make this change either during the current rulemaking or at a later date.

BACKGROUND

On October 25, 2019, the Council approved proposed permanent rules governing the site certificate amendment review process. The rules would replace temporary rules adopted on August 22, 2019 and contain additional changes to: (1) clarify procedures for issuance of contested case notices; (2) provide requirements for property owner notification for a request for amendment; and (3) reduce the number of printed materials that must be submitted by persons requesting to terminate a site certificate or construct a natural-gas testing pipeline. The rules also contain additional grammatical, formatting, and wording changes needed to improve the clarity and consistency of rules in OAR chapter 345.

The Notice of Proposed Rulemaking, filed with the Secretary of State on October 25, 2019, initiated a public comment period on the proposed rules and established a hearing date for the

Council to accept oral testimony on the proposed rules.¹ As discussed further below, at its November 21, 2019 meeting in The Dalles, Oregon, the Council extended the deadline for public comment included in the notice in response to a timely request made under ORS 183.335(4). The close of the public comment period is now 5:00 pm on December 18, 2019.

The Council must consider fully any written or oral testimony received on the proposed rules prior to the close of the public comment period and may make changes to the proposed rules in response to issues raised in that testimony.

SUMMARY OF PUBLIC COMMENTS TO DATE

On November 15, 2019, the Department received a written comment from Mr. Gary Kahn, on behalf of several nonprofit public interest organizations, containing two procedural requests related to the rulemaking process. First, the commenters requested a statement that identifies the objectives of the proposed rules and a statement of how the Council will subsequently determine whether the rules are in fact accomplishing such objectives under ORS 183.335(3)(d). Second the commenters requested that the Council postpone the rulemaking process by at least 21 days to allow additional opportunity to submit data, views, or arguments concerning the proposed permanent rules.

The Council discussed these requests at its meeting on November 21, 2019 in The Dalles, Oregon. In response to the first request, the Council provided a written statement of objective that explained the Council intended to evaluate the proposed rules by committing to appointing a Rules Advisory Committee (RAC) to begin review of the newly adopted rules in OAR 345-027 within two years after adoption of permanent rules. In response to the second request, the Council agreed to postpone the final decision on the proposed rules until its January meeting, and extended the public comment period by 21 days to allow the commenters, and other interested persons additional opportunity to submit data, views, or arguments concerning the proposed rules.

The hearing on the proposed rules was also held at the Council meeting on November 21, 2019. One person, Ms. Irene Gilbert, provided Oral testimony at the hearing. Ms. Gilbert thanked the Council for extending the public comment period and raised several concerns about the proposed rules.

Attachment A to this report contains an indexed record of all comments received on the proposed rules through December 4, 2019, including a summary of Ms. Gilbert's oral testimony. Staff's evaluation of issues raised in the comments is included as Attachment B. The

¹ The Notice was distributed to the persons specified under OAR 345-001-0000(1) on October 28, 2019, and appeared in the Secretary of State's Bulletin on November 1.

Department will provide an updated version of the record and its evaluation to Council following the close of the public comment period on December 18, 2019.

Attachments:

Attachment A: Public Comments
Attachment B: Staff Evaluation of Issues