Agenda Item D: 2019 Amendment Rulemaking
Attachment 1: Public Comments

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CLARK Christopher * ODOE

From: Beverly Bunker <beverly@rke-law.com>
Sent: Friday, November 15, 2019 2:32 PM
To: EFSC Rulemaking * ODOE
Cc: patrick.g.rowe@doj.state.or.us; CORNETT Todd * ODOE; Gary Kahn
Subject: EFSC Proposed Rulemaking – 2019 Permanent Rules for Site Certificate Amendment Process
Attachments: Letter Oregon Energy Facility Siting Council.pdf

Dear Chair Beyeler and Council Members:

Please see the attached letter from Gary Kahn. The original is being sent to you today.

--

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VIA FIRST-CLASS MAIL AND E-MAIL

November 15, 2019

Oregon Energy Facility Siting Council
c/o EFSC Rules Coordinator
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550 Capitol St. NE
Salem, OR 97301
EFSC.rulemaking@oregon.gov

Re: EFSC Proposed Rulemaking – 2019 Permanent Rules for Site Certificate Amendment Process

Dear Chair Beyeler and Council Members:

This office represents Friends of the Columbia Gorge, Northwest Environmental Defense Center, Oregon Natural Desert Association, Oregon Wild, Thrive Hood River, Columbia Riverkeeper, WildLands Defense, Greater Hells Canyon Council, Oregon Coast Alliance, Central Oregon LandWatch, Audubon Society of Portland, and East Cascades Audubon Society (collectively, "Commenters") with respect to the above-referenced proposed permanent rulemaking. Commenters are nonprofit public interest organizations, with more than 60,000 collective members and supporters, with strong interests in responsible energy generation and the proper implementation of state law governing the approval, construction, and modification of large energy facilities in Oregon.

Commenters are currently reviewing the proposed permanent rules and intend to submit substantive comments on these rules at a later date. At this time, Commenters write to make two requests authorized by the Oregon Administrative Procedures Act ("APA"), and thereby invoke the APA's mandatory procedural requirements.

First, pursuant to ORS 183.335(3)(d), Commenters request a statement that identifies the objective(s) of the proposed rules and a statement of how the Council and/or ODOE will subsequently determine whether the rules are in fact accomplishing such objective(s). As decided by the Oregon Supreme Court in *Friends of the Columbia Gorge v. EFSC*, this statement must be provided in written form. 365 Or 371, 389–90 & n 7, 446 P3d 53 (2019). In addition, pursuant to OAR 137-001-0095(2) (which applies to EFSC's rulemaking proceedings via OAR 345-001-0005(1)), EFSC and/or ODOE must provide the requested statement within ten days of receiving this request.

Second, pursuant to ORS 183.335(4), Commenters request that EFSC and ODOE postpone the rulemaking process by at least 21 days to allow Commenters and other interested persons a sufficient opportunity to submit data, views, or arguments concerning the proposed permanent rules. Specifically, Commenters request that the Council postpone the November 27, 2019 deadline for written comments on this proposed rulemaking by at least 21 days, and also postpone the December 20, 2019 date (the scheduled date when the Council intends to decide whether to adopt the proposed permanent rules) by at least 21 days.

Although ORS 183.335(4) does not require Commenters to state a reason for the requested postponement, Commenters do have several reasons. First, Commenters, EFSC, ODOE, and the public at large are all currently awaiting a decision by the Oregon Supreme Court in the pending case *Friends of the Columbia Gorge v. EFSC*, SC No. S066993. The Court's decision in this pending case is very likely to affect several issues involving the proposed permanent rules, including which set of rules provides the status quo (and thus the starting point that might be revised by any new permanent rules). The Court's decision may also address disputed questions about the status of applications that were pending at the time the Supreme Court declared certain rules invalid in the prior case, *Friends v. EFSC*, 365 Or 371. Additional time is needed to allow interested persons and the agencies to review the Oregon Supreme Court's forthcoming decision and respond appropriately.

Second, the proposed permanent rules are proposed to be retroactive, going back more than two years, to applications submitted on or after October 24, 2017. *See* Proposed Rules 345-027-0311. The Supreme Court may offer guidance in its forthcoming decision on retroactive rules. Furthermore, Commenters need additional time to research retroactive rules generally and determine whether the proposed retroactive nature of the proposed rules would be lawful and appropriate.

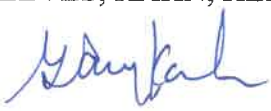
Finally, the current deadline for written comments is November 27, 2019, one day before Thanksgiving. The public interest would be served by extending this deadline at least 21 days. Commenters and other stakeholders simply need more time to prepare and submit their comments, given the upcoming Thanksgiving holiday.

Finally, Commenters note that the two requests made in this letter are timely under ORS 183.335(3)(d) and 183.335(4) because they are made before the earliest date that the rules could become effective pursuant to ORS 183.335(1). Assuming that all types of notice under ORS 183.335(1) were given on the same day (October 25, 2019), then the earliest date the proposed rules could become effective would be December 14, 2019 (50 days after notice was given pursuant to ORS 183.335(1)(d)), and the deadline for requests under ORS 183.335(3)(d) and 183.335(4) would be December 13, 2019 (one day before the earliest date the rules could become effective). See also Oregon Attorney General's Administrative Law Manual (2019) at 38, 43–44. This letter is submitted 28 days before the December 13, 2019 deadline, and the requests therein are therefore timely.

Commenters look forward to the Council's response to this letter, and to our continuing cooperative efforts to facilitate meaningful comments from the public regarding the proposed permanent rules. Thank you for your time and consideration.

Sincerely,

REEVES, KAHN, HENNESSY & ELKINS



Gary K. Kahn

GKK/blb
cc (via email only): Clients
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November 22, 2019

Gary Kahn
Reeves, Kahn, Hennessy & Elkins
PO Box 86100
Portland, OR 97286

Sent via email to: gkahn@rke-law.com

Dear Mr. Kahn,

Thank you for your comments on the proposed rule for the 2019 Permanent Rules for Site Certificate Amendment Process. The department received the comments on November 15, 2019. The comments contain two requests authorized by ORS 183.335: a request for 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); and a request for Council and the Department to postpone the rulemaking process by at least 21 days under ORS 183.335(4).

The Council acknowledges that these requests were made on behalf of more than five persons, and were made before the earliest date that the rule could become effective after the Council's rulemaking notices were issued under ORS 183.335(1).[1] This letter provides the Council's responses to your requests.

Statement of Objective

You 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. The following statements are intended to respond to this request as required by ORS 183.335(3)(d) and OAR 137-001-0095.

The proposed rules are intended to accomplish several objectives. First, the proposed rules are intended to replace rules governing the site certificate amendment review process that were declared invalid by the Oregon Supreme Court in a manner that provides regulatory certainty and continuity in the processing of requests for site certificate amendments. Second, the proposed changes intend to reduce the costs of compliance to applicants and certificate holders by clarifying procedures for issuance of contested case notices and other public notices (see proposed OAR 345-015-0014, 345-015-0016, 345-015-0080, 345-015-0083, 345-015-0230, and 345-027-0371), and reducing the number of printed materials that must be submitted by persons requesting to terminate a site certificate or construct a natural-gas testing pipeline (see proposed OAR 345-027-0110 and 345-027-0220). Third, the rules intend

[1] The Council notes that notices under 183.335(1)(a), (c) and (d) were issued on October 28, 2019. By the Department's calculation, the earliest date the rules could be effective after giving notice is December 17, 2019.

to improve consistency between the Council's rules and local government practice regarding property owner notification requirements (see proposed OAR 345-027-0110 and OAR 345-027-0360). Finally, the rules contain a number of additional grammatical and wording changes which are intended to improve the clarity and consistency of the rules.

To determine whether the rules are accomplishing the first objective, the Council has committed 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. The RAC will be asked to provide advice on any outstanding issues on the amendment rules that are not addressed during this rulemaking, and any new issues that are raised during or after their adoption. The Council will also consider any suggestions to enhance opportunities for public participation in the amendment review process while minimizing adverse economic impacts on certificate holders.

For the remaining objectives, the Council will continue to track any issues related to contested case notices, electronic submission of application materials, property owner notification, and general consistency and clarity of the rules raised by stakeholders and staff to determine whether additional rules changes are needed.

Request for Postponement

Second, you request that Council postpone the rulemaking process by at least 21 days to allow you, the organizations you represent, and other persons a sufficient opportunity to submit data, views, or arguments concerning the proposed permanent rules. Specifically, you request that the Council postpone the November 27, 2019 deadline for written comments by at least 21 days, and also postpone by at least 21 days the December 20, 2019 date on which Council intends to decide whether to adopt the proposed permanent rules.

Under ORS 183.335(4), "Upon request of an interested person * * * the agency shall postpone the date of its intended action no less than 21 nor more than 90 days in order to allow the requesting person an opportunity to submit data, views or arguments concerning the proposed action. * * *" Because this request was made timely, as described above, the Council will extend the public comment period to allow you, the organizations you represent, and other persons, to provide additional opportunity to submit data, views, or arguments concerning the proposed rules by 21 days, to December 18, 2019. The Department will also defer its final decision on adoption of the permanent rules until its January meeting; however, Council may begin review and discussion of any issues raised in testimony provided on the proposed rules at its December meeting.

Thank you again for your interest and participation in this rulemaking project,

Hanley Jenkins II
Energy Facility Siting Council Chair

BEFORE THE ENERGY FACILITY SITING COUNCIL

RULEMAKING HEARING

In the matter of proposed amendments to OAR 345-015, 345-025, 345-027	HEARING OFFICER'S REPORT

On October 25, 2019 the Council approved proposed rules presented by staff and authorized staff to issue a Notice of Proposed Rulemaking. The Notice of Proposed Rulemaking 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. The hearing was scheduled to begin at 5:30 pm on November 21, 2019 at the Council's meeting in The Dalles, Oregon. Christopher M. Clark, the Council's Rules Coordinator was named as Hearing Officer. Notice of the hearing also appeared in the Oregon Bulletin for November 2019.

Mr. Clark provided a brief summary of the rulemaking project, the proposed rules, and written testimony received on the rulemaking record prior to the hearing from Mr. Gary Kahn on behalf of multiple parties. The written testimony contained a request for a statement that identifies the objective of the rule and a statement of how the agency will subsequently determine whether the rule is in fact accomplishing that objective under ORS 183.335(3)(d), and a request to postpone the rulemaking process by 21 days to allow additional time for the requestors to submit data, views, or arguments concerning the proposed rules. The Council granted both requests. In response to the second request, the Council extended the public comment period by 21 days to 5:00 pm on December 18, 2019, and extended the schedule for when it will consider adopting the rules to the January 23-24, 2020 EFSC meeting.

Mr. Clark also provided an overview of how the hearing would be conducted and asked anyone who wished to provide oral comment to fill out and return a comment card. Mr. Clark opened the hearing at 6:26 pm.

SUMMARY OF PROCEEDINGS

One person, Ms. Irene Gilbert of La Grande Oregon, signed up to provide comment. Ms. Gilbert thanked the Council for extending the public comment period and stated that she had also intended to ask for an extension.

Ms. Gilbert then raised several concerns related to the proposed rules. An audio recording of the proceedings, including Ms. Gilbert's exact testimony, is available from the Department's website. An approximate transcription of Ms. Gilbert's testimony follows:

> "I have some concerns about the comment regarding how these rules are going to be evaluated [through] the use of a RAC. I served on the initial RAC for these rules in 2014 and…I felt that I was apparently very inadequate in representing the public. The other

person who to represent the public didn't attend any meetings after the first one because his sense was that none of the information he was providing was going…to appear in any rules. And so, none of the information I provided also appeared in those rules. I feel like it would be good if the Council would give some specific information about how this [evaluation] is actually going to occur."

"…I have asked the Council on several different occasions to include comments that I made at these Council meetings in the evaluation of the previous invalidated rules and my sense is that those comments were not saved in any formal way that would be available to anyone evaluating the rules…and also using a RAC really cuts the public out of any opportunity to have any input into whether or not these rules are working for the public at large…"

"I have several concerns about the use of these rules and my understanding is that they are actually changing the original rules from October of 2017 since the Court did determine that the rules after that were not validly promulgated…"

"I have concerns about these rules being active for more than two years because of the fact that there were no valid rules from the last two years…I will try to sort out that issue and see if I can find what the statute would say about the use of…rules being applied for that period of time retroactively."

"One of the…requirements [for a request for a contested case] is that the person specifically and in detail define how they are personally impacted by a rule as part of their request for a contested case. I do not believe that that is an issue that should be required to request a contested case, [because] it really doesn't impact the decision about whether or not the request for an issue is valid, and I feel that is just a requirement that does nothing other than confuse the issue of what it is the person is asking to have a contested case on."

"…I was of the understanding that at the last Energy Facility Siting Council meeting it was determined that if the Council was going to change the word "shall" to "will," or anything else, that that change would be consistently applied…and it was not. There are two places that I noticed already in the division 015 where they changed "shall" to "may," and clearly "may" is not a requirement so that is a pretty significant change that applied in one instance to the department, in terms of their actions, and in another it applied to the developer in terms of their actions."

"[I]n [OAR] 345-027-0230(5), it says 'notwithstanding this division the department…' [the proposed rules] changed 'shall' to 'may not review proposed pipeline for compliance with other state statutes or standards.' …[T]hat's not an issue that is of concern to me, the concern is that "shall" was changed to "may," and I am sure that people who are concerned with pipeline issues would probably not appreciate that kind of change because it is leaving it optional."

"…One significant concern that I have is how…the statutes are not being followed when it comes to these rules. As one example, when it comes to changes exempt from requiring an amendment, ORS 469.320 specifically dictates when there is not a required amendment and the rule language in [OAR] 345-027-0353 left out a bunch of the language from that statute. And it's pretty critical language because… the statute says that a site certificate is required, absolutely, with the following exceptions, and then it lists what those exceptions are specifically…[the statute] talks about things like, 'it's an exception unless there's an increase in the property of a facility.' Now, the Oregon Department of Energy has utilized the new rules that they promulgated to allow, without an amendment request, a developer to add property to their site. So, that clearly is not consistent with what the statute says…and its my [strongly-held] belief…and it is also in the statute and in EFSC rules, that they can't overrule a state statute, but that is in-fact being done in these rules."

"[T]he statute says that "there will be a site certificate." It talks about an amended site certificate also in terms of the actions and yet…the Department of Energy is recommending that you promulgate rules that are allowing them either not to require a site certificate at all, or do it in a way that is not consistent with the statute. The statute says, if the developer wants to have an exception for instance, there's a 60-day period where that request for exception must go to the [Energy Facility] Siting Council and so, that's not what's happening, and the Siting Council must approve that exception, if their asking for an exception that is allowed under the state statute. So that's just kind of one example of several things that have come to my mind that are problems with these amendment rules and I really encourage the Energy Facility Siting Council to carefully look at what the statute is demanding and what you are being asked to approve in terms of these changes to the amendment rules, because there are several different areas of conflict and a bunch of them start out with [ORS 469.320]."

"I am concerned with…the fact that they are limiting the areas that a public person can disagree with and ask for a contested case to just division 22, 23, and 24. I believe when the Council initially suggested these rules that Councilor Jenkins suggested that that limitation might not be wise, and yet it appeared in the amendment rules, so [I am] just kind of encouraging you to really consider language that says "except as provided in section (2) and (5) of this section, no facility shall be constructed or expanded unless a site certificate has been issued for the site in the manner provided in ORS 469.300, lists the rules…no facility shall be constructed or operated except in conformity with the requirements and it lists the same rules…and clearly it's a lot bigger issue than just what's listed as exceptions to site certificates in this amendment."

Mr. Clark thanked Ms. Gilbert for her testimony and asked if there was anyone on the phone or in the room who wished to provide testimony. There being no further testimony, Mr. Clark adjourned the hearing at 6:39 p.m.

CLARK Christopher * ODOE

From: Brian Kelly <Brian.Kelly.261424218@p2a.co>
Sent: Thursday, December 12, 2019 6:58 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

I am strongly opposed to the proposed revisions to OAR Chapter 345, Division 27. These revisions, if adopted, would dramatically change EFSC's review procedures, amounting to what EFSC and ODOE have previously described as a "wholesale re-write" of Division 27. The proposed rule revisions would reduce transparency, diminish or eliminate opportunities for public participation, and impose unreasonable barriers and burdens for stakeholders if and when they want to request contested case proceedings on specific energy projects.

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- The proposed revisions would interfere with the Council's discretion to decide whether the public should be allowed a public hearing and the opportunity to request a contested case for specific proposed certificate amendments, and would instead delegate to ODOE staff the authority to make these important decisions. This would reduce transparency and give too much power to agency staff, thus likely leading to arbitrary and capricious decisions that will shut the public out of the process.

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Regards,
Brian Kelly
PO Box 2768
La Grande, OR 97850

CLARK Christopher * ODOE

From: George Cummings <George.Cummings.218828182@p2a.co>
Sent: Friday, December 13, 2019 8:56 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

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Regards,
George Cummings
3816 NE 17th Ave
Portland, OR 97212

CLARK Christopher * ODOE

From: Matthew Barmann <Matthew.Barmann.221463895@p2a.co>
Sent: Friday, December 13, 2019 8:56 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

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Regards,
Matthew Barmann
417 17th Street
Hood River, OR 97031

CLARK Christopher * ODOE

From: judith lienhard <judith.lienhard.218828443@p2a.co>
Sent: Friday, December 13, 2019 8:57 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

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Regards,
judith lienhard
4455 SW 94th Ave
Portland, OR 97225

CLARK Christopher * ODOE

From: Sandra Joos <Sandra.Joos.219793379@p2a.co>
Sent: Friday, December 13, 2019 8:57 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

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Regards,
Sandra Joos
4259 SW Patrick Pl
Portland, OR 97239

CLARK Christopher * ODOE

From: Rick McMonagle <Rick.McMonagle.261513499@p2a.co>
Sent: Friday, December 13, 2019 8:58 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

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Regards,
Rick McMonagle
1203 SE Boise St
Portland, OR 97202

CLARK Christopher * ODOE

From: John Eskridge <John.Eskridge.218942563@p2a.co>
Sent: Friday, December 13, 2019 8:58 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

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Regards,
John Eskridge
18265 Vista View Ct SE
Sandy, OR 97055

CLARK Christopher * ODOE

From: Kyenne Williams <Kyenne.Williams.261513705@p2a.co>
Sent: Friday, December 13, 2019 8:58 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

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Regards,
Kyenne Williams
1620 NE Broadway St. #515
Portland, OR 97232

CLARK Christopher * ODOE

From: Bill O'Brien <Bill.OBrien.242143824@p2a.co>
Sent: Friday, December 13, 2019 9:01 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

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Regards,
Bill O'Brien
12520 SW Gem Ln, 202
Beaverton, OR 97005

CLARK Christopher * ODOE

From: Bev Hedin <Bev.Hedin.228315333@p2a.co>
Sent: Friday, December 13, 2019 9:01 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

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Regards,
Bev Hedin
1720 SW 4th Ave, #416
Portland, OR 97201

CLARK Christopher * ODOE

From: haris wolfgang <haris.wolfgang.218828641@p2a.co>
Sent: Friday, December 13, 2019 9:01 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

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Regards,
haris wolfgang
PO Box 2266
Lake Oswego, OR 97035

CLARK Christopher * ODOE

From: Todd Sargent <Todd.Sargent.261514542@p2a.co>
Sent: Friday, December 13, 2019 9:01 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

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Regards,
Todd Sargent
4035 SE Reedway St
Portland, OR 97202

CLARK Christopher * ODOE

From: Monica Gilman <Monica.Gilman.221502981@p2a.co>
Sent: Friday, December 13, 2019 9:01 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

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Regards,
Monica Gilman
25525 S. Laura Ln
Estacada, OR 97023

CLARK Christopher * ODOE

From: Carol Clark <Carol.Clark.218831197@p2a.co>
Sent: Friday, December 13, 2019 9:01 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

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Regards,
Carol Clark
3221 NE schuyler st.
Portland, OR 97212

CLARK Christopher * ODOE

From: Jay Humphrey <Jay.Humphrey.221502981@p2a.co>
Sent: Friday, December 13, 2019 9:02 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

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Sent: Friday, December 13, 2019 9:02 AM
To: EFSC Rulemaking * ODOE
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Regards,
Bill Kirkland
4050 SW Bancroft St
Portland, OR 97221

CLARK Christopher * ODOE

From: Sharon Miller <Sharon.Miller.220145826@p2a.co>
Sent: Friday, December 13, 2019 9:02 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

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Regards,
Sharon Miller
1501 NE 89th Ct
Vancouver, WA 98664

CLARK Christopher * ODOE

From: Patricia Always <Patricia.Always.218853012@p2a.co>
Sent: Friday, December 13, 2019 9:03 AM
To: EFSC Rulemaking * ODOE
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unfair to retroactively change the rules years later.

In conclusion, the rules reinstated by the Oregon Supreme Court worked just fine for years. There is no reason to dramatically change those rules now, especially not to adopt the rules proposed by ODOE staff, which would decrease opportunities for public participation, impose new onerous hurdles and roadblocks to participate in contested cases, and weaken and narrow the scope of the Council's review of requested certificate amendments. Please reject the proposed "wholesale re-write" of OAR Chapter 345, Division 27.

Regards,
Patricia Always
10511 W. Kingswood Circle
Sun City, AZ 85351

CLARK Christopher * ODOE

From: Valerie Huffman <Valerie.Huffman.261514957@p2a.co>
Sent: Friday, December 13, 2019 9:04 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

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Regards,
Valerie Huffman
1673 N. JANTZEN AVE
Portland, OR 97217

CLARK Christopher * ODOE

From: Samuel Taylor <Samuel.Taylor.249851308@p2a.co>
Sent: Friday, December 13, 2019 9:05 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Samuel Taylor
2330 Old Dalles Dr.
Hood River, OR 97031

CLARK Christopher * ODOE

From: Rick Beam <Rick.Beam.218829352@p2a.co>
Sent: Friday, December 13, 2019 9:05 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Rick Beam
19773 Bellevue Way
West Linn, OR 97068

CLARK Christopher * ODOE

From: Abigail Corbet <Abigail.Corbet.221640582@p2a.co>
Sent: Friday, December 13, 2019 9:06 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Abigail Corbet
6637 SE 57th Ave
Portland, OR 97206

CLARK Christopher * ODOE

From: Leslie Hunter <Leslie.Hunter.261515587@p2a.co>
Sent: Friday, December 13, 2019 9:07 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Leslie Hunter
699 W. 40th Ave.
Eugene, OR 97405

CLARK Christopher * ODOE

From: Rachael Pappano <Rachael.Pappano.220168687@p2a.co>
Sent: Friday, December 13, 2019 9:09 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Rachael Pappano
330 River Rd
Mattawamkeag, ME 04459

CLARK Christopher * ODOE

From: Michael McKeag <Michael.McKeag.218836020@p2a.co>
Sent: Friday, December 13, 2019 9:12 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Michael McKeag
1190 Morgensen Road
Mosier, OR 97040

CLARK Christopher * ODOE

From: Grant Fuj <Grant.Fuj.218846182@p2a.co>
Sent: Friday, December 13, 2019 9:13 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Grant Fuj
5906 N Depauw St
Portland, OR 97203

CLARK Christopher * ODOE

From: Kristian Burch <Kristian.Burch.218830468@p2a.co>
Sent: Friday, December 13, 2019 9:14 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

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In conclusion, the rules reinstated by the Oregon Supreme Court worked just fine for years. There is no reason to dramatically change those rules now, especially not to adopt the rules proposed by ODOE staff, which would decrease opportunities for public participation, impose new onerous hurdles and roadblocks to participate in contested cases, and weaken and narrow the scope of the Council's review of requested certificate amendments. Please reject the proposed "wholesale re-write" of OAR Chapter 345, Division 27.

Regards,
Kristian Burch
28601 NE Reilly Rd.
Camas, WA 98607

CLARK Christopher * ODOE

From: Jim Clarkson <Jim.Clarkson.261517071@p2a.co>
Sent: Friday, December 13, 2019 9:14 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

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Regards,
Jim Clarkson
86083 Cherokee Dr
Eugene, OR 97402

CLARK Christopher * ODOE

From: Jennifer Doob <Jennifer.Doob.261517503@p2a.co>
Sent: Friday, December 13, 2019 9:17 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Jennifer Doob
3415 SE Stark Street
Portland, OR 97214

CLARK Christopher * ODOE

From: Craig Heverly <Craig.Heverly.218834932@p2a.co>
Sent: Friday, December 13, 2019 9:19 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Craig Heverly
3712 SE 9th Avenue
Portland, OR 97202

CLARK Christopher * ODOE

From: Judy Steinberger <Judy.Steinberger.249678743@p2a.co>
Sent: Friday, December 13, 2019 9:21 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Judy Steinberger
2744 ne 26Th
Portland, OR 97212

CLARK Christopher * ODOE

From: John Nutt <John.Nutt.228162559@p2a.co>
Sent: Friday, December 13, 2019 9:21 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

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Regards,
John Nutt
3820 SW Mount Adams Drive
Portland, OR 97239

CLARK Christopher * ODOE

From: Samuel Urko <Samuel.Urko.221438424@p2a.co>
Sent: Friday, December 13, 2019 9:22 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Samuel Urko
8821 SE 29th Ave
Milwaukie, OR 97222

CLARK Christopher * ODOE

From: Debra Asakawa <Debra.Asakawa.249567638@p2a.co>
Sent: Friday, December 13, 2019 9:22 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Debra Asakawa
3747 SW 50th Ave
Portland, OR 97221

CLARK Christopher * ODOE

From: Thomas Keys <Thomas.Keys.218828317@p2a.co>
Sent: Friday, December 13, 2019 9:24 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Thomas Keys
1103 SE 21st Ct
Gresham, OR 97080

CLARK Christopher * ODOE

From: Janet Johnson <Janet.Johnson.221452536@p2a.co>
Sent: Friday, December 13, 2019 9:25 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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unfair to retroactively change the rules years later.

In conclusion, the rules reinstated by the Oregon Supreme Court worked just fine for years. There is no reason to dramatically change those rules now, especially not to adopt the rules proposed by ODOE staff, which would decrease opportunities for public participation, impose new onerous hurdles and roadblocks to participate in contested cases, and weaken and narrow the scope of the Council's review of requested certificate amendments. Please reject the proposed "wholesale re-write" of OAR Chapter 345, Division 27.

Regards,
Janet Johnson
556 NE 20th Pl
Newport, OR 97365

CLARK Christopher * ODOE

From: Carmie McMinn <Carmie.McMinn.228316044@p2a.co>
Sent: Friday, December 13, 2019 9:26 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

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Regards,
Carmie McMinn
0520 SW Florida St
Portland, OR 97219

CLARK Christopher * ODOE

From: Annie McCuen <Annie.McCuen.218847550@p2a.co>
Sent: Friday, December 13, 2019 9:28 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Annie McCuen
1825 Fairmount Ave S
Salem, OR 97302

CLARK Christopher * ODOE

From: Margaret Chula <Margaret.Chula.261520383@p2a.co>
Sent: Friday, December 13, 2019 9:31 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

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Regards,
Margaret Chula
2141 NW Walmer Dr
Portland, OR 97229

CLARK Christopher * ODOE

From: Kalama Reuter <Kalama.Reuter.221452428@p2a.co>
Sent: Friday, December 13, 2019 9:31 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Kalama Reuter
920 NE Fields Ave
White Salmon, WA 98672

CLARK Christopher * ODOE

From: Jeremy Benjamin <Jeremy.Benjamin.221437489@p2a.co>
Sent: Friday, December 13, 2019 9:34 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Jeremy Benjamin
2337 20th St., apt. B
Santa Monica, CA 90405

CLARK Christopher * ODOE

From: Roberta Cade <Roberta.Cade.250993147@p2a.co>
Sent: Friday, December 13, 2019 9:36 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Roberta Cade
1321 CHEMEKETA ST NE
Salem, OR 97301

CLARK Christopher * ODOE

From: John Wood <John.Wood.261522327@p2a.co>
Sent: Friday, December 13, 2019 9:37 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
John Wood
601 State St
Hood River, OR 97031

CLARK Christopher * ODOE

From: Susan Palmiter <Susan.Palmiter.220182483@p2a.co>
Sent: Friday, December 13, 2019 9:38 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Susan Palmiter
4435 SW Carl Place
Portland, OR 97239

CLARK Christopher * ODOE

From: Stephen Tidyman <Stephen.Tidyman.222289113@p2a.co>
Sent: Friday, December 13, 2019 9:41 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

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unfair to retroactively change the rules years later.

In conclusion, the rules reinstated by the Oregon Supreme Court worked just fine for years. There is no reason to dramatically change those rules now, especially not to adopt the rules proposed by ODOE staff, which would decrease opportunities for public participation, impose new onerous hurdles and roadblocks to participate in contested cases, and weaken and narrow the scope of the Council's review of requested certificate amendments. Please reject the proposed "wholesale re-write" of OAR Chapter 345, Division 27.

Regards,
Stephen Tidyman
PO Box 279
Stevenson, WA 98648

CLARK Christopher * ODOE

From: Blaine Ackley <Blaine.Ackley.219172224@p2a.co>
Sent: Friday, December 13, 2019 9:45 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

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Regards,
Blaine Ackley
655 NE 67th Ave.
Hillsboro, OR 97124

CLARK Christopher * ODOE

From: M Jones <M.Jones.238372465@p2a.co>
Sent: Friday, December 13, 2019 9:47 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

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Regards,
M Jones
PO Box 11884
Portland, OR 97211

CLARK Christopher * ODOE

From: Helen Jaskoski <Helen.Jaskoski.228167257@p2a.co>
Sent: Friday, December 13, 2019 9:49 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

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Regards,
Helen Jaskoski
p.o. box 66074
Portland, OR 97290

CLARK Christopher * ODOE

From: Merna Blagg <Merna.Blagg.251963671@p2a.co>
Sent: Friday, December 13, 2019 9:51 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Merna Blagg
1410 Z St
Vancouver, WA 98661

CLARK Christopher * ODOE

From: Debra Smith <Debra.Smith.249607480@p2a.co>
Sent: Friday, December 13, 2019 9:51 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

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Dear Council:

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Regards,
Debra Smith
14561 se Garland lane
Milwaukie, OR 97267

CLARK Christopher * ODOE

From: Gary Wallace <Gary.Wallace.261526486@p2a.co>
Sent: Friday, December 13, 2019 9:52 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Gary Wallace
179 Lodgepole Rd
Kalama, WA 98625

CLARK Christopher * ODOE

From: Gary Wallace <Gary.Wallace.261526477@p2a.co>
Sent: Friday, December 13, 2019 9:52 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

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Dear Council:

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Regards,
Gary Wallace
179 Lodgepole Rd
Kalama, WA 98625

CLARK Christopher * ODOE

From: John Nelson <John.Nelson.221442014@p2a.co>
Sent: Friday, December 13, 2019 10:05 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
John Nelson
524 W 3rd Pl
The Dalles, OR 97058

CLARK Christopher * ODOE

From: Teresa Allen <Teresa.Allen.218828597@p2a.co>
Sent: Friday, December 13, 2019 10:06 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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There is no need to dramatically change the procedures for reviewing site certificate amendments. In fact, the Oregon Supreme Court has already held that EFSC's previous permanent rule revisions to Division 27, which EFSC attempted to adopt in 2017, were "invalid." The Supreme Court's decision reverts the permanent rules to their status before the invalid 2017 rulemaking. I support that outcome, because the rules reinstated by the Supreme Court are transparent, easy to understand, and fair to all stakeholders. In fact, the reinstated rules have been supported by numerous stakeholders, including everyone from Friends of the Columbia Gorge to PGE. The controversial proposal by ODOE staff to (once again) dramatically change these rules is another purported solution in search of a nonexistent problem.

Although the proposed revisions to Division 27 have many flaws, I will briefly summarize a few of them here:

- The proposed revisions would eliminate the public's rights to comment on requested amendments to site certificates early in the process. This rule revision would result in one-sided recommendations from ODOE staff, who will hear only from energy developers in preparing draft proposed orders.

- The proposed revisions would interfere with the Council's discretion to decide whether the public should be allowed a public hearing and the opportunity to request a contested case for specific proposed certificate amendments, and would instead delegate to ODOE staff the authority to make these important decisions. This would reduce transparency and give too much power to agency staff, thus likely leading to arbitrary and capricious decisions that will shut the public out of the process.

- The proposed revisions would eliminate the Council's discretion, when deciding whether to extend deadlines for beginning or completing construction of energy projects, to establish new construction periods shorter than the maximum lengths prescribed by rule. There is no valid reason for eliminating this discretionary authority.

- The proposed revisions would apply retroactively for a period of more than two years. Specifically, the proposed revisions are drafted to expressly apply to all requests for amendment submitted as far back as October 24, 2017. This would be unfair to concerned stakeholders and the public at large. Applications to amend energy projects and site certificates should be subject to the rules in effect at the time the applications were submitted. It is unreasonable and

unfair to retroactively change the rules years later.

In conclusion, the rules reinstated by the Oregon Supreme Court worked just fine for years. There is no reason to dramatically change those rules now, especially not to adopt the rules proposed by ODOE staff, which would decrease opportunities for public participation, impose new onerous hurdles and roadblocks to participate in contested cases, and weaken and narrow the scope of the Council's review of requested certificate amendments. Please reject the proposed "wholesale re-write" of OAR Chapter 345, Division 27.

Regards,
Teresa Allen
6184 North Fork Rd.
Deming, WA 98244

CLARK Christopher * ODOE

From: Michael Wilson <Michael.Wilson.220725723@p2a.co>
Sent: Friday, December 13, 2019 10:07 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

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Regards,
Michael Wilson
1405 SE Taylor St
Portland, OR 97214

CLARK Christopher * ODOE

From: Trish Claffey <Trish.Claffey.249839997@p2a.co>
Sent: Friday, December 13, 2019 10:09 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

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Regards,
Trish Claffey
2527 NE Clackamas St
Portland, OR 97232

CLARK Christopher * ODOE

From: Ted Light <Ted.Light.231074139@p2a.co>
Sent: Friday, December 13, 2019 10:10 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

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Regards,
Ted Light
612 SE 48th Ave
Portland, OR 97215

CLARK Christopher * ODOE

From: Cory Buckley <Cory.Buckley.218837704@p2a.co>
Sent: Friday, December 13, 2019 10:20 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Cory Buckley
11338 SW 91st Ct
Tigard, OR 97223

CLARK Christopher * ODOE

From: Maija Schaefer <Maija.Schaefer.221621772@p2a.co>
Sent: Friday, December 13, 2019 10:24 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Maija Schaefer
2 Adobe Ct
Novato, CA 94945

CLARK Christopher * ODOE

From: Martha Stevenson <Martha.Stevenson.220140759@p2a.co>
Sent: Friday, December 13, 2019 10:32 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Martha Stevenson
PO Box 1878
White Salmon, WA 98672

CLARK Christopher * ODOE

From: Jan Aszman <Jan.Aszman.220147545@p2a.co>
Sent: Friday, December 13, 2019 10:46 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

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Regards,
Jan Aszman
2277 Glenwood Hwy.
Goldendale, WA 97064

CLARK Christopher * ODOE

From: Philip Pizanelli <Philip.Pizanelli.220577638@p2a.co>
Sent: Friday, December 13, 2019 10:56 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Philip Pizanelli
38835 H. Columbia River Hwy.
Corbett, OR 97019

CLARK Christopher * ODOE

From: John Nettleton <John.Nettleton.220135719@p2a.co>
Sent: Friday, December 13, 2019 11:03 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

I am strongly opposed to the proposed revisions to OAR Chapter 345, Division 27. These revisions, if adopted, would dramatically change EFSC's review procedures, amounting to what EFSC and ODOE have previously described as a "wholesale re-write" of Division 27. The proposed rule revisions would reduce transparency, diminish or eliminate opportunities for public participation, and impose unreasonable barriers and burdens for stakeholders if and when they want to request contested case proceedings on specific energy projects.

There is no need to dramatically change the procedures for reviewing site certificate amendments. In fact, the Oregon Supreme Court has already held that EFSC's previous permanent rule revisions to Division 27, which EFSC attempted to adopt in 2017, were "invalid." The Supreme Court's decision reverts the permanent rules to their status before the invalid 2017 rulemaking. I support that outcome, because the rules reinstated by the Supreme Court are transparent, easy to understand, and fair to all stakeholders. In fact, the reinstated rules have been supported by numerous stakeholders, including everyone from Friends of the Columbia Gorge to PGE. The controversial proposal by ODOE staff to (once again) dramatically change these rules is another purported solution in search of a nonexistent problem.

Although the proposed revisions to Division 27 have many flaws, I will briefly summarize a few of them here:

- The proposed revisions would eliminate the public's rights to comment on requested amendments to site certificates early in the process. This rule revision would result in one-sided recommendations from ODOE staff, who will hear only from energy developers in preparing draft proposed orders.

- The proposed revisions would interfere with the Council's discretion to decide whether the public should be allowed a public hearing and the opportunity to request a contested case for specific proposed certificate amendments, and would instead delegate to ODOE staff the authority to make these important decisions. This would reduce transparency and give too much power to agency staff, thus likely leading to arbitrary and capricious decisions that will shut the public out of the process.

- The proposed revisions would eliminate the Council's discretion, when deciding whether to extend deadlines for beginning or completing construction of energy projects, to establish new construction periods shorter than the maximum lengths prescribed by rule. There is no valid reason for eliminating this discretionary authority.

- The proposed revisions would apply retroactively for a period of more than two years. Specifically, the proposed revisions are drafted to expressly apply to all requests for amendment submitted as far back as October 24, 2017. This would be unfair to concerned stakeholders and the public at large. Applications to amend energy projects and site certificates should be subject to the rules in effect at the time the applications were submitted. It is unreasonable and

unfair to retroactively change the rules years later.

In conclusion, the rules reinstated by the Oregon Supreme Court worked just fine for years. There is no reason to dramatically change those rules now, especially not to adopt the rules proposed by ODOE staff, which would decrease opportunities for public participation, impose new onerous hurdles and roadblocks to participate in contested cases, and weaken and narrow the scope of the Council's review of requested certificate amendments. Please reject the proposed "wholesale re-write" of OAR Chapter 345, Division 27.

Regards,
John Nettleton
4311 SE 37th Ave
Portland, OR 97202

CLARK Christopher * ODOE

From: Barbara Coleman <Barbara.Coleman.261541551@p2a.co>
Sent: Friday, December 13, 2019 11:03 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

I am strongly opposed to the proposed revisions to OAR Chapter 345, Division 27. These revisions, if adopted, would dramatically change EFSC's review procedures, amounting to what EFSC and ODOE have previously described as a "wholesale re-write" of Division 27. The proposed rule revisions would reduce transparency, diminish or eliminate opportunities for public participation, and impose unreasonable barriers and burdens for stakeholders if and when they want to request contested case proceedings on specific energy projects.

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Regards,
Barbara Coleman
2226 NE Hancock St.
Portland, OR 97212

CLARK Christopher * ODOE

From: Jaylen Schmitt <Jaylen.Schmitt.261541696@p2a.co>
Sent: Friday, December 13, 2019 11:04 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

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Regards,
Jaylen Schmitt
2407 NE Mason St
Portland, OR 97211

CLARK Christopher * ODOE

From: Sherry Meier <Sherry.Meier.237825472@p2a.co>
Sent: Friday, December 13, 2019 11:04 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

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Regards,
Sherry Meier
4161 Post Canyon Dr
Hood River, OR 97031

CLARK Christopher * ODOE

From: Elaine Nelson <Elaine.Nelson.218831430@p2a.co>
Sent: Friday, December 13, 2019 11:04 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Elaine Nelson
6786 SW 204th Ave
Aloha, OR 97078

CLARK Christopher * ODOE

From: Derek Gendvil <Derek.Gendvil.220141181@p2a.co>
Sent: Friday, December 13, 2019 11:08 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Derek Gendvil
9030 W. Sahara Ave., #360
Las Vegas, NV 89117

CLARK Christopher * ODOE

From: Nora Polk <Nora.Polk.218830071@p2a.co>
Sent: Friday, December 13, 2019 11:12 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

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Regards,
Nora Polk
6405 SE 62nd Ave
Portland, OR 97206

CLARK Christopher * ODOE

From: Judy Henderson <Judy.Henderson.220230966@p2a.co>
Sent: Friday, December 13, 2019 11:14 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

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Regards,
Judy Henderson
2541 SW Miles St
Portland, OR 97219

CLARK Christopher * ODOE

From: Todd Corbett <Todd.Corbett.218834617@p2a.co>
Sent: Friday, December 13, 2019 11:18 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Todd Corbett
10815 Hubbard Creek Rd
Umpqua, OR 97486

CLARK Christopher * ODOE

From: KB Mercer <KB.Mercer.228135838@p2a.co>
Sent: Friday, December 13, 2019 11:20 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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- The proposed revisions would eliminate the Council's discretion, when deciding whether to extend deadlines for beginning or completing construction of energy projects, to establish new construction periods shorter than the maximum lengths prescribed by rule. There is no valid reason for eliminating this discretionary authority.

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unfair to retroactively change the rules years later.

In conclusion, the rules reinstated by the Oregon Supreme Court worked just fine for years. There is no reason to dramatically change those rules now, especially not to adopt the rules proposed by ODOE staff, which would decrease opportunities for public participation, impose new onerous hurdles and roadblocks to participate in contested cases, and weaken and narrow the scope of the Council's review of requested certificate amendments. Please reject the proposed "wholesale re-write" of OAR Chapter 345, Division 27.

Regards,
KB Mercer
10811 SE Schiller St
Portland, OR 97266

CLARK Christopher * ODOE

From: Bruce Cantwell <Bruce.Cantwell.261544530@p2a.co>
Sent: Friday, December 13, 2019 11:24 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

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Regards,
Bruce Cantwell
4838 NE 41st Ave
Portland, OR 97211

CLARK Christopher * ODOE

From: LAURA SERNA <LAURA.SERNA.218830189@p2a.co>
Sent: Friday, December 13, 2019 11:24 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

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Dear Council:

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Regards,
LAURA SERNA
2206 NE STRAND RD
Vancouver, WA 98686

CLARK Christopher * ODOE

From: Dermot Noonan <Dermot.Noonan.221524987@p2a.co>
Sent: Friday, December 13, 2019 11:25 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

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Regards,
Dermot Noonan
4510 48th Ave N.E.
Seattle, WA 98105

CLARK Christopher * ODOE

From: Wendy Bartlett <Wendy.Bartlett.220136330@p2a.co>
Sent: Friday, December 13, 2019 11:41 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Wendy Bartlett
255 N Forest Street #116
Bellingham, WA 98225

CLARK Christopher * ODOE

From: Keith Robbins <Keith.Robbins.220219590@p2a.co>
Sent: Friday, December 13, 2019 11:42 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Keith Robbins
211 Malfait Tracts Rd
Washougal, WA 98671

CLARK Christopher * ODOE

From: Patricia Rau <Patricia.Rau.221452301@p2a.co>
Sent: Friday, December 13, 2019 11:48 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Patricia Rau
3169 Royce Way
Lake Oswego, OR 97034

CLARK Christopher * ODOE

From: John Koenig <John.Koenig.218830387@p2a.co>
Sent: Friday, December 13, 2019 11:53 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

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Regards,
John Koenig
3968 Brae Burn Dr.
Eugene, OR 97405

CLARK Christopher * ODOE

From: Audrey Oliver <Audrey.Oliver.261550849@p2a.co>
Sent: Friday, December 13, 2019 11:57 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Audrey Oliver
6550 SW Arranmore Ct.
Portland, OR 97223

CLARK Christopher * ODOE

From: David Griffith <David.Griffith.228463014@p2a.co>
Sent: Friday, December 13, 2019 12:01 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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- The proposed revisions would eliminate the Council's discretion, when deciding whether to extend deadlines for beginning or completing construction of energy projects, to establish new construction periods shorter than the maximum lengths prescribed by rule. There is no valid reason for eliminating this discretionary authority.

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unfair to retroactively change the rules years later.

In conclusion, the rules reinstated by the Oregon Supreme Court worked just fine for years. There is no reason to dramatically change those rules now, especially not to adopt the rules proposed by ODOE staff, which would decrease opportunities for public participation, impose new onerous hurdles and roadblocks to participate in contested cases, and weaken and narrow the scope of the Council's review of requested certificate amendments. Please reject the proposed "wholesale re-write" of OAR Chapter 345, Division 27.

Regards,
David Griffith
2700 SE 160th Ave. #7
Portland, OR 97236

CLARK Christopher * ODOE

From: Joe Wiederhold <Joe.Wiederhold.221688247@p2a.co>
Sent: Friday, December 13, 2019 12:02 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

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Regards,
Joe Wiederhold
1405 Edwards St
Bellingham, WA 98229

CLARK Christopher * ODOE

From: KRISTINE BEAM <KRISTINE.BEAM.220187686@p2a.co>
Sent: Friday, December 13, 2019 12:07 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

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Regards,
KRISTINE BEAM
19773 Bellevue Way
West Linn, OR 97068

CLARK Christopher * ODOE

From: Mauria McClay <Mauria.McClay.218952120@p2a.co>
Sent: Friday, December 13, 2019 12:09 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Mauria McClay
8125 Ne Wygant St
Portland, OR 97218

CLARK Christopher * ODOE

From: Susan Dornfeld <Susan.Dornfeld.220187965@p2a.co>
Sent: Friday, December 13, 2019 12:13 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Susan Dornfeld
6005 NW Vineyard Dr
Corvallis, OR 97330

CLARK Christopher * ODOE

From: Wendy Cogan <Wendy.Cogan.261554638@p2a.co>
Sent: Friday, December 13, 2019 12:17 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Wendy Cogan
7219 SE 28th Avenue
Portland, OR 97202

CLARK Christopher * ODOE

From: Nancy pilgrim <Nancy.pilgrim.249577655@p2a.co>
Sent: Friday, December 13, 2019 12:18 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Nancy pilgrim
11141 SW Collina Ave
Portland, OR 97219

CLARK Christopher * ODOE

From: Judy Todd <Judy.Todd.228937180@p2a.co>
Sent: Friday, December 13, 2019 12:23 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Judy Todd
1631 NE Broadway St #232
Portland, OR 97232

CLARK Christopher * ODOE

From: Susan Mates <Susan.Mates.228908768@p2a.co>
Sent: Friday, December 13, 2019 1:17 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Susan Mates
8945 NW Oak St
Portland, OR 97229

CLARK Christopher * ODOE

From: Don Jacobson <Don.Jacobson.218828704@p2a.co>
Sent: Friday, December 13, 2019 1:20 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

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unfair to retroactively change the rules years later.

In conclusion, the rules reinstated by the Oregon Supreme Court worked just fine for years. There is no reason to dramatically change those rules now, especially not to adopt the rules proposed by ODOE staff, which would decrease opportunities for public participation, impose new onerous hurdles and roadblocks to participate in contested cases, and weaken and narrow the scope of the Council's review of requested certificate amendments. Please reject the proposed "wholesale re-write" of OAR Chapter 345, Division 27.

Regards,
Don Jacobson
2545 SW Terwilliger Blvd. #314
Portland, OR 97201

CLARK Christopher * ODOE

From: Annie McCuen <Annie.McCuen.218847550@p2a.co>
Sent: Friday, December 13, 2019 1:20 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

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Regards,
Annie McCuen
1825 Fairmount Ave S
Salem, OR 97302

CLARK Christopher * ODOE

From: Coryn Buckholdt <Coryn.Buckholdt.261571189@p2a.co>
Sent: Friday, December 13, 2019 1:38 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Coryn Buckholdt
0203 SW Palater Rd.
Portland, OR 97219

CLARK Christopher * ODOE

From: Joe Wiederhold <Joe.Wiederhold.221688247@p2a.co>
Sent: Friday, December 13, 2019 1:45 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

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Regards,
Joe Wiederhold
1405 Edwards St
Bellingham, WA 98229

CLARK Christopher * ODOE

From: Howard Shapiro <Howard.Shapiro.218848568@p2a.co>
Sent: Friday, December 13, 2019 1:52 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Howard Shapiro
7426 SE 21st Ave.
Portland, OR 97202

CLARK Christopher * ODOE

From: Catherine Smith-Williams <Catherine.SmithWilliams.261575653@p2a.co>
Sent: Friday, December 13, 2019 1:54 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Catherine Smith-Williams
8415 NE Hazel Dell Ave apt #41
Vancouver, WA 98665

CLARK Christopher * ODOE

From: Teresa McFarland <Teresa.McFarland.261576742@p2a.co>
Sent: Friday, December 13, 2019 1:58 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Teresa McFarland
10740 SW 11th Dr
Portland, OR 97219

CLARK Christopher * ODOE

From: Deborah Ferrer <Deborah.Ferrer.237877349@p2a.co>
Sent: Friday, December 13, 2019 2:03 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Deborah Ferrer
900 W 18th St
The Dalles, OR 97058

CLARK Christopher * ODOE

From: Laurie Balmuth <Laurie.Balmuth.261579163@p2a.co>
Sent: Friday, December 13, 2019 2:07 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Laurie Balmuth
3690 Westcliff Dr
Hood River, OR 97031

CLARK Christopher * ODOE

From: Erica Maranowski <Erica.Maranowski.220149462@p2a.co>
Sent: Friday, December 13, 2019 2:14 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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There is no need to dramatically change the procedures for reviewing site certificate amendments. In fact, the Oregon Supreme Court has already held that EFSC's previous permanent rule revisions to Division 27, which EFSC attempted to adopt in 2017, were "invalid." The Supreme Court's decision reverts the permanent rules to their status before the invalid 2017 rulemaking. I support that outcome, because the rules reinstated by the Supreme Court are transparent, easy to understand, and fair to all stakeholders. In fact, the reinstated rules have been supported by numerous stakeholders, including everyone from Friends of the Columbia Gorge to PGE. The controversial proposal by ODOE staff to (once again) dramatically change these rules is another purported solution in search of a nonexistent problem.

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- The proposed revisions would eliminate the public's rights to comment on requested amendments to site certificates early in the process. This rule revision would result in one-sided recommendations from ODOE staff, who will hear only from energy developers in preparing draft proposed orders.

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- The proposed revisions would eliminate the Council's discretion, when deciding whether to extend deadlines for beginning or completing construction of energy projects, to establish new construction periods shorter than the maximum lengths prescribed by rule. There is no valid reason for eliminating this discretionary authority.

- The proposed revisions would apply retroactively for a period of more than two years. Specifically, the proposed revisions are drafted to expressly apply to all requests for amendment submitted as far back as October 24, 2017. This would be unfair to concerned stakeholders and the public at large. Applications to amend energy projects and site certificates should be subject to the rules in effect at the time the applications were submitted. It is unreasonable and

unfair to retroactively change the rules years later.

In conclusion, the rules reinstated by the Oregon Supreme Court worked just fine for years. There is no reason to dramatically change those rules now, especially not to adopt the rules proposed by ODOE staff, which would decrease opportunities for public participation, impose new onerous hurdles and roadblocks to participate in contested cases, and weaken and narrow the scope of the Council's review of requested certificate amendments. Please reject the proposed "wholesale re-write" of OAR Chapter 345, Division 27.

Regards,
Erica Maranowski
22 NE 2nd Ave, Apt 1620
Portland, OR 97231

CLARK Christopher * ODOE

From: Luan Pinson <Luan.Pinson.220693701@p2a.co>
Sent: Friday, December 13, 2019 2:15 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

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Regards,
Luan Pinson
826 SE Morgan Rd
Vancouver, WA 98664

CLARK Christopher * ODOE

From: Joell Ellis <Joell.Ellis.218829523@p2a.co>
Sent: Friday, December 13, 2019 2:17 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

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Regards,
Joell Ellis
1622 SE 32nd Ave
Portland, OR 97214

CLARK Christopher * ODOE

From: Laurie Fisher <Laurie.Fisher.221460799@p2a.co>
Sent: Friday, December 13, 2019 2:31 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

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Regards,
Laurie Fisher
10414 SW Bonanza Way
Tigard, OR 97224

CLARK Christopher * ODOE

From: Joel Kay <Joel.Kay.218871481@p2a.co>
Sent: Friday, December 13, 2019 2:45 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Joel Kay
10707 SE Stanley Ave
Milwaukie, OR 97222

CLARK Christopher * ODOE

From: Sammy Low <Sammy.Low.218853427@p2a.co>
Sent: Friday, December 13, 2019 2:58 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Sammy Low
20420 Marine Drive, #P2
Stanwood, WA 98292

CLARK Christopher * ODOE

From: Gloria Fisher <Gloria.Fisher.218836480@p2a.co>
Sent: Friday, December 13, 2019 3:04 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Gloria Fisher
8725 Ne Davis St
Portland, OR 97220

CLARK Christopher * ODOE

From: Sarah Hafer <Sarah.Hafer.218828560@p2a.co>
Sent: Friday, December 13, 2019 3:21 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Sarah Hafer
12111 NE 4th St
Vancouver, WA 98684

CLARK Christopher * ODOE

From: Richard Stellner <Richard.Stellner.261600654@p2a.co>
Sent: Friday, December 13, 2019 3:35 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Richard Stellner
133 NW 18th Ave
Portland, OR 97209

CLARK Christopher * ODOE

From: Nina Pollock <Nina.Pollock.220140704@p2a.co>
Sent: Friday, December 13, 2019 3:41 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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unfair to retroactively change the rules years later.

In conclusion, the rules reinstated by the Oregon Supreme Court worked just fine for years. There is no reason to dramatically change those rules now, especially not to adopt the rules proposed by ODOE staff, which would decrease opportunities for public participation, impose new onerous hurdles and roadblocks to participate in contested cases, and weaken and narrow the scope of the Council's review of requested certificate amendments. Please reject the proposed "wholesale re-write" of OAR Chapter 345, Division 27.

Regards,
Nina Pollock
10342 NW ALPENGLOW WAY
Portland, OR 97229

CLARK Christopher * ODOE

From: Sandra Siegner <Sandra.Siegner.220440972@p2a.co>
Sent: Friday, December 13, 2019 3:49 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

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Regards,
Sandra Siegner
9640 SW Lancaster Rd
Portland, OR 97219

CLARK Christopher * ODOE

From: shireen press <shireen.press.218831935@p2a.co>
Sent: Friday, December 13, 2019 3:49 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
shireen press
5032 ne simpson st
Portland, OR 97218

CLARK Christopher * ODOE

From: Lynne Oulman <Lynne.Oulman.218926840@p2a.co>
Sent: Friday, December 13, 2019 3:58 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

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Regards,
Lynne Oulman
816 14th St
Bellingham, WA 98225

CLARK Christopher * ODOE

From: ed moye <ed.moye.221455056@p2a.co>
Sent: Friday, December 13, 2019 3:59 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
ed moye
70 W 30th Ave
Eugene, OR 97405

CLARK Christopher * ODOE

From: ed moye <ed.moye.221455056@p2a.co>
Sent: Friday, December 13, 2019 4:00 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

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Dear Council:

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Regards,
ed moye
70 W 30th Ave
Eugene, OR 97405

CLARK Christopher * ODOE

From: John Harris <John.Harris.218943490@p2a.co>
Sent: Friday, December 13, 2019 4:30 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
John Harris
8407 NW 15TH Court
Vancouver, WA 98665

CLARK Christopher * ODOE

From: mary n <mary.n.220176507@p2a.co>
Sent: Friday, December 13, 2019 4:35 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
mary n
14005 SE 38th St
Vancouver, WA 98683

CLARK Christopher * ODOE

From: Sarah Collmer <Sarah.Collmer.220396765@p2a.co>
Sent: Friday, December 13, 2019 4:41 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Sarah Collmer
704 W 20th St
Vancouver, WA 98660

CLARK Christopher * ODOE

From: Barbara Branham <Barbara.Branham.218829217@p2a.co>
Sent: Friday, December 13, 2019 4:44 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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There is no need to dramatically change the procedures for reviewing site certificate amendments. In fact, the Oregon Supreme Court has already held that EFSC's previous permanent rule revisions to Division 27, which EFSC attempted to adopt in 2017, were "invalid." The Supreme Court's decision reverts the permanent rules to their status before the invalid 2017 rulemaking. I support that outcome, because the rules reinstated by the Supreme Court are transparent, easy to understand, and fair to all stakeholders. In fact, the reinstated rules have been supported by numerous stakeholders, including everyone from Friends of the Columbia Gorge to PGE. The controversial proposal by ODOE staff to (once again) dramatically change these rules is another purported solution in search of a nonexistent problem.

Although the proposed revisions to Division 27 have many flaws, I will briefly summarize a few of them here:

- The proposed revisions would eliminate the public's rights to comment on requested amendments to site certificates early in the process. This rule revision would result in one-sided recommendations from ODOE staff, who will hear only from energy developers in preparing draft proposed orders.

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- The proposed revisions would eliminate the Council's discretion, when deciding whether to extend deadlines for beginning or completing construction of energy projects, to establish new construction periods shorter than the maximum lengths prescribed by rule. There is no valid reason for eliminating this discretionary authority.

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unfair to retroactively change the rules years later.

In conclusion, the rules reinstated by the Oregon Supreme Court worked just fine for years. There is no reason to dramatically change those rules now, especially not to adopt the rules proposed by ODOE staff, which would decrease opportunities for public participation, impose new onerous hurdles and roadblocks to participate in contested cases, and weaken and narrow the scope of the Council's review of requested certificate amendments. Please reject the proposed "wholesale re-write" of OAR Chapter 345, Division 27.

Regards,
Barbara Branham
3070 SW Garden View Avenue
Portland, OR 97223

CLARK Christopher * ODOE

From: Francis Lenski <Francis.Lenski.218906400@p2a.co>
Sent: Friday, December 13, 2019 4:45 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

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Regards,
Francis Lenski
921 NW 115th Cir
Vancouver, WA 98685

CLARK Christopher * ODOE

From: Debra Rehn <Debra.Rehn.221436714@p2a.co>
Sent: Friday, December 13, 2019 4:49 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

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Regards,
Debra Rehn
5130 SE 30th Ave Apt 9
Portland, OR 97202

CLARK Christopher * ODOE

From: Peter Miller <Peter.Miller.261614028@p2a.co>
Sent: Friday, December 13, 2019 4:51 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

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Regards,
Peter Miller
1706 SE 30th Ave
Portland, OR 97214

CLARK Christopher * ODOE

From: carole beauclerk <carole.beauclerk.218896998@p2a.co>
Sent: Friday, December 13, 2019 5:38 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
carole beauclerk
Sw park avenue, 1500
Portland, OR 97201

CLARK Christopher * ODOE

From: Mona McNeil <Mona.McNeil.218828867@p2a.co>
Sent: Friday, December 13, 2019 5:46 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Mona McNeil
15704 NE 28th Ct
Vancouver, WA 98686

CLARK Christopher * ODOE

From: Kyle Haines <Kyle.Haines.220132569@p2a.co>
Sent: Friday, December 13, 2019 6:17 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Kyle Haines
2685 Swyers Drive
Hood River, OR 97031

CLARK Christopher * ODOE

From: Colleen Wright <Colleen.Wright.218837029@p2a.co>
Sent: Friday, December 13, 2019 7:06 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

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Regards,
Colleen Wright
4160 Chapman Way
Lake Oswego, OR 97035

CLARK Christopher * ODOE

From: Colleen Wright <Colleen.Wright.218837029@p2a.co>
Sent: Friday, December 13, 2019 7:06 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Colleen Wright
4160 Chapman Way
Lake Oswego, OR 97035

CLARK Christopher * ODOE

From: Tika Bordelon <Tika.Bordelon.220132677@p2a.co>
Sent: Friday, December 13, 2019 7:27 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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- The proposed revisions would eliminate the public's rights to comment on requested amendments to site certificates early in the process. This rule revision would result in one-sided recommendations from ODOE staff, who will hear only from energy developers in preparing draft proposed orders.

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- The proposed revisions would eliminate the Council's discretion, when deciding whether to extend deadlines for beginning or completing construction of energy projects, to establish new construction periods shorter than the maximum lengths prescribed by rule. There is no valid reason for eliminating this discretionary authority.

- The proposed revisions would apply retroactively for a period of more than two years. Specifically, the proposed revisions are drafted to expressly apply to all requests for amendment submitted as far back as October 24, 2017. This would be unfair to concerned stakeholders and the public at large. Applications to amend energy projects and site certificates should be subject to the rules in effect at the time the applications were submitted. It is unreasonable and

unfair to retroactively change the rules years later.

In conclusion, the rules reinstated by the Oregon Supreme Court worked just fine for years. There is no reason to dramatically change those rules now, especially not to adopt the rules proposed by ODOE staff, which would decrease opportunities for public participation, impose new onerous hurdles and roadblocks to participate in contested cases, and weaken and narrow the scope of the Council's review of requested certificate amendments. Please reject the proposed "wholesale re-write" of OAR Chapter 345, Division 27.

Regards,
Tika Bordelon
1400 hubbel pl
Seattle, WA 98101

CLARK Christopher * ODOE

From: Marianne Nelson <Marianne.Nelson.218829073@p2a.co>
Sent: Friday, December 13, 2019 7:57 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

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Regards,
Marianne Nelson
1644 SE Rex St,
Portland, OR 97202

CLARK Christopher * ODOE

From: Donna Wehrley <Donna.Wehrley.220139481@p2a.co>
Sent: Friday, December 13, 2019 8:16 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Donna Wehrley
3601 SW River Pkwy Unit 1904
Portland, OR 97239

CLARK Christopher * ODOE

From: April Atwood <April.Atwood.218912007@p2a.co>
Sent: Friday, December 13, 2019 8:30 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

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Regards,
April Atwood
6306 SE 21st Ave
Portland, OR 97202

CLARK Christopher * ODOE

From: Marilyn Stinnett <Marilyn.Stinnett.228136783@p2a.co>
Sent: Friday, December 13, 2019 8:43 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Marilyn Stinnett
1089 W Yapoah Crater Dr
Sisters, OR 97759

CLARK Christopher * ODOE

From: Laura Ackerman <Laura.Ackerman.228137188@p2a.co>
Sent: Friday, December 13, 2019 9:04 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Laura Ackerman
3118 S Windsor Rd
Spokane, WA 99224

CLARK Christopher * ODOE

From: Mona Warner <Mona.Warner.261663682@p2a.co>
Sent: Friday, December 13, 2019 11:48 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Mona Warner
6922 SE Mabel Ave
Milwaukie, OR 97267

CLARK Christopher * ODOE

From: Bonnie New <Bonnie.New.261663952@p2a.co>
Sent: Friday, December 13, 2019 11:52 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

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Regards,
Bonnie New
4045 Stonegate Dr.
Hood River, OR 97031

CLARK Christopher * ODOE

From: Spencer Selander <Spencer.Selander.261664375@p2a.co>
Sent: Friday, December 13, 2019 11:56 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Spencer Selander
341 Pioneer Ave NE
Castle Rock, WA 98611

CLARK Christopher * ODOE

From: Ben Asher <Ben.Asher.219298856@p2a.co>
Sent: Saturday, December 14, 2019 12:06 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

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There is no need to dramatically change the procedures for reviewing site certificate amendments. In fact, the Oregon Supreme Court has already held that EFSC's previous permanent rule revisions to Division 27, which EFSC attempted to adopt in 2017, were "invalid." The Supreme Court's decision reverts the permanent rules to their status before the invalid 2017 rulemaking. I support that outcome, because the rules reinstated by the Supreme Court are transparent, easy to understand, and fair to all stakeholders. In fact, the reinstated rules have been supported by numerous stakeholders, including everyone from Friends of the Columbia Gorge to PGE. The controversial proposal by ODOE staff to (once again) dramatically change these rules is another purported solution in search of a nonexistent problem.

Although the proposed revisions to Division 27 have many flaws, I will briefly summarize a few of them here:

- The proposed revisions would eliminate the public's rights to comment on requested amendments to site certificates early in the process. This rule revision would result in one-sided recommendations from ODOE staff, who will hear only from energy developers in preparing draft proposed orders.

- The proposed revisions would interfere with the Council's discretion to decide whether the public should be allowed a public hearing and the opportunity to request a contested case for specific proposed certificate amendments, and would instead delegate to ODOE staff the authority to make these important decisions. This would reduce transparency and give too much power to agency staff, thus likely leading to arbitrary and capricious decisions that will shut the public out of the process.

- The proposed revisions would eliminate the Council's discretion, when deciding whether to extend deadlines for beginning or completing construction of energy projects, to establish new construction periods shorter than the maximum lengths prescribed by rule. There is no valid reason for eliminating this discretionary authority.

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unfair to retroactively change the rules years later.

In conclusion, the rules reinstated by the Oregon Supreme Court worked just fine for years. There is no reason to dramatically change those rules now, especially not to adopt the rules proposed by ODOE staff, which would decrease opportunities for public participation, impose new onerous hurdles and roadblocks to participate in contested cases, and weaken and narrow the scope of the Council's review of requested certificate amendments. Please reject the proposed "wholesale re-write" of OAR Chapter 345, Division 27.

Regards,
Ben Asher
900 NE 81st Ave Unit 318
Portland, OR 97213

CLARK Christopher * ODOE

From: Cynthia Schwell <Cynthia.Schwell.232867606@p2a.co>
Sent: Saturday, December 14, 2019 12:28 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

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Regards,
Cynthia Schwell
848 SE 178th Ave
Portland, OR 97233

CLARK Christopher * ODOE

From: Scott Hayes <Scott.Hayes.221530377@p2a.co>
Sent: Saturday, December 14, 2019 3:32 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

I am strongly opposed to the proposed revisions to OAR Chapter 345, Division 27. These revisions, if adopted, would dramatically change EFSC's review procedures, amounting to what EFSC and ODOE have previously described as a "wholesale re-write" of Division 27. The proposed rule revisions would reduce transparency, diminish or eliminate opportunities for public participation, and impose unreasonable barriers and burdens for stakeholders if and when they want to request contested case proceedings on specific energy projects.

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Regards,
Scott Hayes
623 NW 185th St
Shoreline, WA 98177

CLARK Christopher * ODOE

From: Lisa Duke <Lisa.Duke.221565487@p2a.co>
Sent: Saturday, December 14, 2019 6:43 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

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Regards,
Lisa Duke
3014 Hummingbird Ln
Eugene, OR 97405

CLARK Christopher * ODOE

From: Jan Polychronis <Jan.Polychronis.220161666@p2a.co>
Sent: Saturday, December 14, 2019 7:09 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

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Regards,
Jan Polychronis
PO Box 639
Hood River, OR 97058

CLARK Christopher * ODOE

From: Linda Browning <Linda.Browning.228140887@p2a.co>
Sent: Saturday, December 14, 2019 7:44 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Linda Browning
7855 SW MATHENY DR
Beaverton, OR 97008

CLARK Christopher * ODOE

From: Michael Young <Michael.Young.219271701@p2a.co>
Sent: Saturday, December 14, 2019 8:20 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Michael Young
2004 E 13th
The Dalles, OR 97058

CLARK Christopher * ODOE

From: Ruth Darden <Ruth.Darden.261720147@p2a.co>
Sent: Saturday, December 14, 2019 8:59 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

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Regards,
Ruth Darden
6524 Park Point Ln NE
Seattle, WA 98115

CLARK Christopher * ODOE

From: Vince Ready <Vince.Ready.261722190@p2a.co>
Sent: Saturday, December 14, 2019 9:11 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Vince Ready
4270 West Ridge Dr
Hood River, OR 97031

CLARK Christopher * ODOE

From: Luan Pinson <Luan.Pinson.220693701@p2a.co>
Sent: Saturday, December 14, 2019 9:14 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

I am strongly opposed to the proposed revisions to OAR Chapter 345, Division 27. These revisions, if adopted, would dramatically change EFSC's review procedures, amounting to what EFSC and ODOE have previously described as a "wholesale re-write" of Division 27. The proposed rule revisions would reduce transparency, diminish or eliminate opportunities for public participation, and impose unreasonable barriers and burdens for stakeholders if and when they want to request contested case proceedings on specific energy projects.

There is no need to dramatically change the procedures for reviewing site certificate amendments. In fact, the Oregon Supreme Court has already held that EFSC's previous permanent rule revisions to Division 27, which EFSC attempted to adopt in 2017, were "invalid." The Supreme Court's decision reverts the permanent rules to their status before the invalid 2017 rulemaking. I support that outcome, because the rules reinstated by the Supreme Court are transparent, easy to understand, and fair to all stakeholders. In fact, the reinstated rules have been supported by numerous stakeholders, including everyone from Friends of the Columbia Gorge to PGE. The controversial proposal by ODOE staff to (once again) dramatically change these rules is another purported solution in search of a nonexistent problem.

Although the proposed revisions to Division 27 have many flaws, I will briefly summarize a few of them here:

- The proposed revisions would eliminate the public's rights to comment on requested amendments to site certificates early in the process. This rule revision would result in one-sided recommendations from ODOE staff, who will hear only from energy developers in preparing draft proposed orders.

- The proposed revisions would interfere with the Council's discretion to decide whether the public should be allowed a public hearing and the opportunity to request a contested case for specific proposed certificate amendments, and would instead delegate to ODOE staff the authority to make these important decisions. This would reduce transparency and give too much power to agency staff, thus likely leading to arbitrary and capricious decisions that will shut the public out of the process.

- The proposed revisions would eliminate the Council's discretion, when deciding whether to extend deadlines for beginning or completing construction of energy projects, to establish new construction periods shorter than the maximum lengths prescribed by rule. There is no valid reason for eliminating this discretionary authority.

- The proposed revisions would apply retroactively for a period of more than two years. Specifically, the proposed revisions are drafted to expressly apply to all requests for amendment submitted as far back as October 24, 2017. This would be unfair to concerned stakeholders and the public at large. Applications to amend energy projects and site certificates should be subject to the rules in effect at the time the applications were submitted. It is unreasonable and

unfair to retroactively change the rules years later.

In conclusion, the rules reinstated by the Oregon Supreme Court worked just fine for years. There is no reason to dramatically change those rules now, especially not to adopt the rules proposed by ODOE staff, which would decrease opportunities for public participation, impose new onerous hurdles and roadblocks to participate in contested cases, and weaken and narrow the scope of the Council's review of requested certificate amendments. Please reject the proposed "wholesale re-write" of OAR Chapter 345, Division 27.

Regards,
Luan Pinson
826 SE Morgan Rd
Vancouver, WA 98664

CLARK Christopher * ODOE

From: Tim Thompson <Tim.Thompson.261741919@p2a.co>
Sent: Saturday, December 14, 2019 11:29 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

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Regards,
Tim Thompson
P.O. Box 620
Toppenish, WA 98948

CLARK Christopher * ODOE

From: Tim Thompson <Tim.Thompson.261741919@p2a.co>
Sent: Saturday, December 14, 2019 11:35 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Tim Thompson
14 Jefferson Ave
Toppenish, WA 98948

CLARK Christopher * ODOE

From: Elizabeth Laskey <Elizabeth.Laskey.221521728@p2a.co>
Sent: Saturday, December 14, 2019 12:10 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

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Regards,
Elizabeth Laskey
4838 NE 41st Ave
Portland, OR 97211

CLARK Christopher * ODOE

From: Patricia Mizutani <Patricia.Mizutani.220354266@p2a.co>
Sent: Saturday, December 14, 2019 12:22 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Patricia Mizutani
2335 NE 24th Ave
Portland, OR 97212

CLARK Christopher * ODOE

From: Sue Kelso-Haines <Sue.KelsoHaines.220197810@p2a.co>
Sent: Saturday, December 14, 2019 12:39 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Sue Kelso-Haines
2685 Swyers Dr
Hood River, OR 97031

CLARK Christopher * ODOE

From: Carol Jagiello <Carol.Jagiello.220425555@p2a.co>
Sent: Saturday, December 14, 2019 1:39 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Carol Jagiello
91 Wood Pl
Bloomingdale, NJ 07403

CLARK Christopher * ODOE

From: Adina Parsley <Adina.Parsley.218853427@p2a.co>
Sent: Saturday, December 14, 2019 2:48 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

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Regards,
Adina Parsley
20420 Marine Dr, Apt P2
Stanwood, WA 98292

CLARK Christopher * ODOE

From: Rebecca Clark <Rebecca.Clark.220552121@p2a.co>
Sent: Saturday, December 14, 2019 6:06 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Rebecca Clark
5035 N. Depauw St
Portland, OR 97203

CLARK Christopher * ODOE

From: Carol Sword <Carol.Sword.220401164@p2a.co>
Sent: Saturday, December 14, 2019 8:14 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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In conclusion, the rules reinstated by the Oregon Supreme Court worked just fine for years. There is no reason to dramatically change those rules now, especially not to adopt the rules proposed by ODOE staff, which would decrease opportunities for public participation, impose new onerous hurdles and roadblocks to participate in contested cases, and weaken and narrow the scope of the Council's review of requested certificate amendments. Please reject the proposed "wholesale re-write" of OAR Chapter 345, Division 27.

Regards,
Carol Sword
2701 Landes St
Port Townsend, WA 98368

CLARK Christopher * ODOE

From: Peter Zurcher <Peter.Zurcher.221448162@p2a.co>
Sent: Saturday, December 14, 2019 8:23 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

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Regards,
Peter Zurcher
1956 Belmont Dr.
Hood River, OR 97031

CLARK Christopher * ODOE

From: Peter von Christierson <Peter.vonChristierson.220145934@p2a.co>
Sent: Saturday, December 14, 2019 8:50 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

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Regards,
Peter von Christierson
1229 - 29th St.
Port Townsend, WA 98368

CLARK Christopher * ODOE

From: EFSC Rulemaking * ODOE
Sent: Monday, December 16, 2019 5:02 PM
To: Irene Gilbert
Subject: RE: Comments on the planned Amendment Rules

Hello Irene,

We have received your comments (this letter and the letter time stamped at 4:42 am) and will include them in the rulemaking record. These comments will also be provided to the Council for consideration along with the other materials for this Friday's meeting. I will have to discuss your request to include your previous comments in the record with our legal counsel. In the meantime, if there are specific concerns with the current proposed rules that are not covered in either of the comment letters you submitted today I would encourage you to submit them separately before the close of the public comment period (5:00 pm on Wednesday, December 18).

Thank you,

Christopher M. Clark
Siting Policy Analyst & Rules Coordinator
550 Capitol St. NE | Salem, OR 97301
P: 503-373-1033
P (In Oregon): 800-221-8035

OREGON DEPARTMENT OF ENERGY

Stay connected!

From: Irene Gilbert <ott.irene@frontier.com>
Sent: Saturday, December 14, 2019 10:38 PM
To: EFSC Rulemaking * ODOE <EFSC.Rulemaking@oregon.gov>; BENNER Janine * ODOE <Janine.Benner@oregon.gov>
Subject: Comments on the planned Amendment Rules

Please find attached some of the multiple problems I have with the planned adoption of these illegally promulgated rules. There was no legitimate process for their development in 2017 and the same rules are now being reinstated. Please refer to the multiple comment letters I submitted in 2017 for additional concerns with these rules and include them in the comments for this rule. I should not have to again send them as the same problems identified at that time continue to exist with no apparent plans to promulgate reasonable rules that provide for transparency, fairness and legitimate involvement of the public in the process. It is clear that the Department of Energy views the public as an inconvenience in their decision making and every effort is being made to remove them from the procedures being implemented.

EFSC Rules Coordinator
Oregon Department of Energy
550 Capitol St. NE
Salem Oregon 97301
Email: EFSC.rulemaking@oregon.gov

December 14, 2019

DEPARTMENT OF ENERGY PLANNED AMENDMENT RULES COMMENTS

Number One:
Do not promulgate these rules. They deny the public involvement in the process until the decisions have already been made between the developer and the Department of Energy. The rules in place in 2017 were far more user friendly than these. The public has been denied influence on Oregon Department of Energy and Energy Facility Siting Council decisions by the use of these rules for two years already.

Number Two:
Limit the types of changes that can be processed as amendments as follows:
Any change in the type of energy generation proposed must be processed as a new application, not an amendment.

Number Three:
Turn the decision process regarding who is allowed a contested case over to the Oregon Department of Justice as there is a need for a neutral decision maker regarding the legitimacy of requests. The agency making the decisions should not be determining whether or not to allow the public access to due process to determine if the agency decision is correct. The problem with continuing this method is supported by the historical data showing all but one of the public requests for contested cases on amendment issues have been denied.

Number Four:
Include in the rule objective criteria for when a contested case will be allowed which results in a yes/no decision process absent the current subjective decisions which supports denial of all contested case requests.

Number Five:
The Council said that the changes from Shall would be consistent throughout the rule. That has not been done. The requirements for the public were changed from shall to Must, but for the developer and the Department, the term "shall" was changed to "may" which does not make it mandatory. For example, See OAR 345-025-0006 for an example.

Number Six:
These rules should not be allowed to be retroactive to October 2017. The courts determined that these rules were illegally promulgated at that time. That means the previous amendment rules are the legitimate rules until new rules are legally promulgated. To make rules retroactive will result in extreme prejudice to those who have been and will be subjected to being denied legitimate access and influence on decisions of the council and due process. See OAR 345-027-0311.

Number Seven:
The process for determining that there is no requirement for an amendment contained in OAR 345-027-0353 is not consistent with the statute. For example, the statute states that any change that results

in an addition of land requires an amendment, however, the Department has exempted at least one request that involved increasing the site land. The rule needs to be consistent with the statute which clearly defines the only instances where no site certificate is required. The current amendment rules are not consistent with the statute as they are being interpreted to allow changes to occur without an amended site certificate that the statute does not allow. See ORS 469.320

Number Eight:
The rules state that 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 chapter 345 division 22, 23 and 24."
This is a completely subjective statement. Often the subject of a contested case request is disagreement with the determination that the council has made that a law or standard has been met was made in error. This statement allows the Oregon Department of Energy and Energy Facility Siting council to decide that their decision is right without ever providing an opportunity to have a third party review of whether or not their decision was accurate.
It amounts to denying the public an opportunity to resolve disagreements without going to the Oregon Supreme Court and having to pay thousands of dollars for a decision.

Number Nine:
These rules require unreasonably rigid and extensive requirements to request a contested case. These requirements create an additional barrier to public participation. The council should not be allowed to require information in a contested case request that is not necessary for them to make a decision. For example, the requirement that a requestor state with specificity what their interest is in the issue and how they are impacted should not be required as it is not a part of council decision making.

Number Ten:
Any rule that is used in making a decision regarding an amendment should be a rule that could be the subject of a contested case, not just Div. 22, 23 and 24 of the rules as the amendment rules are suggesting.

The proposed rules add multiple arbitrary requirements that the public must meet beyond what the state has established as reasonable requirements in a quasi-legal proceeding. The Oregon Department of Energy and Energy Facility Siting Council should use the Model Rules and the same process should apply to both an application and an amendment to the rules.

Number Eleven:
All special advisory groups in the notice of an opportunity to review an Amendment request. The special advisory groups are in the best position to determine if they have relevant input to provide regarding the amendment. Since the public is not allowed to comment on the completeness of the application, they are the only ones allowed to do a third party review of the application. It is important to maintain the broadest possible pool of groups doing this review.

Number Twelve:
Amendments need to require review of the entire development as part of an amendment request to increase the size of a development. ORS 469.300(14) and ORS 469.407 state that an increased capacity requires the enlarged facility meets all council standards. There is no statute supporting a review of only the area added.

Number Thirteen:
The requirement that notice be sent to those requesting a contested case when they are denied standing including their legal recourse was removed. This should be added back into the rules. Citizens need to receive legal notice of the outcome of their contested case request and their legal options.

Number Fourteen:
This rule change reduces the area that must be included in the analysis of impacts of the development. The area previously was the larger of the study area or the area described in the project order. Now the area can be reduced by the department following a conference. This change removes the requirement that a reasonable area be surveyed to identiy habitat, Threatened and Endangered Species, wetlands and other areas requiring protection be identified and reported in the application and included in the analysis of impacts of the development.

These rules make no changes that would increase the opportunity for the public being granted a contested case or be allowed any influence on the decision process. Is it the intent of the legislature that no one be allowed a contested case on amendment requests? Is it the intent that due process is only allowed on initial site certificates? This rule allows the Department of Energy and Energy Facility Siting Council to create an illusion that there is an opportunity to access due process while it creates multiple additional barriers which assure a continuation of 100% denial of all requests,

This rule change ensures a continuation of the agency goal of not allowing the public any remedy for incorrect decisions on the part of the Department of Energy and Energy Facility Siting Council. It has demonstrated the fact that it adds confusing and costly procedures which reduce the public access to the contested case process. It also reduces the opportunity for the public to have meaningful input prior to the development of the draft proposed order.

The public has had ample time to attempt to use these rules and they have proven to be as bad as it was predicted they would be. There is no justification for restoring rules that only work for developers and the Oregon Department of Energy.

While there is no doubt that none of these comments will be seriously considered, just as none of the comments from myself or others representing the public were previously included in these rules, I would like the record to reflect that these rules continue to deny the public a place at the table when it comes to making decisions regarding the development and placement of energy facilities in this state.

This entire rule should be withdrawn and all contested cases originating in the Oregon Department of Energy should be required to use the Model Rules to allow for a fair and just determination regarding whether or not the department and the council are legitimately interpreting the statutes and rules..

Irene Gilbert, Legal Research Analyst
Friends of the Grande Ronde Valley
2310 Adams Ave.
La Grande, Oregon 97850
Email: ott.irene@frontier.com

CLARK Christopher * ODOE

From: Ann Turner <Ann.Turner.261874589@p2a.co>
Sent: Sunday, December 15, 2019 9:42 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Ann Turner
2007 NE Mason
Portland, OR 97211

CLARK Christopher * ODOE

From: Lee Chapman <Lee.Chapman.220231217@p2a.co>
Sent: Sunday, December 15, 2019 10:03 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

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Regards,
Lee Chapman
61368 Sally Ln
Bend, OR 97702

CLARK Christopher * ODOE

From: Jack West <Jack.West.261894055@p2a.co>
Sent: Sunday, December 15, 2019 11:55 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

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Regards,
Jack West
3914 SE Licyntra Ln
Milwaukie, OR 97222

CLARK Christopher * ODOE

From: Joan Stevens <Joan.Stevens.228273286@p2a.co>
Sent: Sunday, December 15, 2019 1:28 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

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In conclusion, the rules reinstated by the Oregon Supreme Court worked just fine for years. There is no reason to dramatically change those rules now, especially not to adopt the rules proposed by ODOE staff, which would decrease opportunities for public participation, impose new onerous hurdles and roadblocks to participate in contested cases, and weaken and narrow the scope of the Council's review of requested certificate amendments. Please reject the proposed "wholesale re-write" of OAR Chapter 345, Division 27.

Regards,
Joan Stevens
2545 SW Terwilliger Blvd. apt.731
Portland, OR 97201

CLARK Christopher * ODOE

From: Joan Stevens <Joan.Stevens.228273286@p2a.co>
Sent: Sunday, December 15, 2019 1:29 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

I am strongly opposed to the proposed revisions to OAR Chapter 345, Division 27. These revisions, if adopted, would dramatically change EFSC's review procedures, amounting to what EFSC and ODOE have previously described as a "wholesale re-write" of Division 27. The proposed rule revisions would reduce transparency, diminish or eliminate opportunities for public participation, and impose unreasonable barriers and burdens for stakeholders if and when they want to request contested case proceedings on specific energy projects.

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Regards,
Joan Stevens
2545 SW Terwilliger Blvd
Portland, OR 97201

CLARK Christopher * ODOE

From: Jan Hurst <Jan.Hurst.221709405@p2a.co>
Sent: Sunday, December 15, 2019 6:35 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

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Regards,
Jan Hurst
7344 SW 27th Ave
Portland, OR 97219

CLARK Christopher * ODOE

From: Kelly Skovlin <Kelly.Skovlin.261975884@p2a.co>
Sent: Sunday, December 15, 2019 9:37 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

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Regards,
Kelly Skovlin
1529 SE Maple Ave
Portland, OR 97214

CLARK Christopher * ODOE

From: Rhett Lawrence <Rhett.Lawrence.220137168@p2a.co>
Sent: Sunday, December 15, 2019 9:46 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

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Regards,
Rhett Lawrence
6445 N Commercial Avenue
Portland, OR 97217

CLARK Christopher * ODOE

From: Irene Gilbert <ott.irene@frontier.com>
Sent: Monday, December 16, 2019 4:41 AM
To: EFSC Rulemaking * ODOE; BENNER Janine * ODOE
Subject: Addendum to comments on Amendment Rules- Conflicts with Oregon Statutes
Attachments: Additional comments and statutes amendment rules.docx

Follow Up Flag: Follow up
Flag Status: Completed

Attached please find my additional comments regarding the planned Amendment Rules. This document focuses on places where the proposed rules are in conflict with the Oregon Revised Statutes. Since the Oregon Department of Energy is not allowed to overrule state statutes through promulgation of agency rules, Please make appropriate changes to the proposed rules to comply with Oregon law.

EFSC Rules Coordinator
Oregon Department of Energy
550 Capitol St. NE
Salem, Oregon 97301
Email: EFSC.rulemaking@oregon.gov

December 16, 2019

Addendum to Previously submitted comments regarding Amendment Rules. This addendum focuses on state statutes which conflict with the language of the proposed rules. The Oregon Department of Energy cannot overrule state statutes by promulgating administrative rules which fail to comply with the statutes.

1. OAR 345-027-0350(4)(a) states that an amendment is required for changes that "could result in a "significant" adverse impact that the Council has not addressed in an earlier order…."
   a. Conflicts with ORS 469.320 which states "No facility shall be constructed or operated except in conformity with requirements of ORS 469.300 to 469.363…." and "Except as provided in subsection (2) and (5) of this section, no facility shall be constructed or expanded unless a site certificate has been issued for the site thereof in the manner provided……" The statute does not allow construction or operation in another way, significant or not.
   b. ORS 469.320 lists the only instances where a site certificate is not required. The exceptions to requiring a site certificate need to be consistent with this rule. A qualifier states "The site is not being enlarged." This rule needs to include that statement.

2. OAR 345-027-0351 allows for three different processes for Amendment Applications. This conflicts with ORS 469.370(10) which states there can be two processes, a standard and an expedited review for applications.

3. OAR 345-027-0353 allows an exemption to an amendment for changes which increase the generating capacity. There is not an open opportunity to increase the generating capacity absent a prior amendment to allow the increase in capacity.

   a. This rule is not in compliance with the requirements of ORS 469.320 which states a separate site certificate is not required for "Expansion within the site or within the energy generation of a facility for which a site certificate has been issued **IF the existing site certificate has been amended to authorize expansion."**
   b. It conflicts with ORS 469.407 which requires an amendment to increase the capacity of a facility.
   c. This rule needs to include all the statutory language contained in ORS 469.320 as the current language fails to include all limitations on allowing changes absent an amended site certificate.
   d. ORS 469.300(26) defines a "site certificate" as a "binding agreement between the State of Oregon and the applicant, authorizing the applicant to construct and operate a facility on an approved site, incorporating all conditions imposed by the council on the applicant." This statute does not allow the developer or the department to allow

construction or operation in a way not included in the site certificate without amending it.

When the capacity of a development is increased, there will virtually always be other changes such as increasing the height, clearance, noise, etc. that need to be evaluated through an amended site certificate.

4. OAR 345-027-0372 regarding Amendments Under Type B review fails to provide notice to those commenting that a final order has been issued, findings of fact and conclusions of law that form the basis of their decision, and a response to the comments provided. Individuals are also not provided any notice of their appeal rights. This makes it nearly impossible for the public to object to the final order as they are unable to determine why the order was issued, the decision process that was used, or their appeal rights.

5. OAR 345-027-0375(2)(a) can not limit the review of changes adding land to the site to only the area added.
   a. This conflicts with ORS 469.503 which states that in order to issue a site certificate the preponderance of the evidence on the record must support the following conclusion: (l) The facility complies with the applicable standards adopted by the council pursuant to ORS 469.50l, …. The entire facility must be reviewed for compliance with council standards, not just the area of the expansion.

6. OAR 345-027-0311 which indicates the effective date of the rules is October 24, 2017 is not consistent with state law.
   a. ORS 183.355 Filing and taking effect of rules, (3) states: "Each rule is effective upon filing as required by subsection (2) of this section, except that:
      (a) If a later effective date is required by statute or specified in the rule, the later date is the effective date.
      (b) A temporary rule becomes effective upon filing with the Secretary of State, or at a designated later date, only if the statement required by ORS 183.335 (Notice) (5) is filed with the rule….."

The rule fails to provide opportunity for the public to actively participate in the development of the site certificates for energy developments in the state. In addition, these rules place a significant financial burden upon any private party adversely impacted by decisions of the council in the Type B process due to the requirement to take any objections directly to the Oregon Supreme Court rather than being able to resolve them through a contested case process. There is also a significant financial burden in the Type A process due to the complicated procedure required to request a contested case and the subjective decision process that is utilized by the Oregon Department of Energy and the Energy Facility Siting Council which results in denials of all requests for a contested case.

Irene Gilbert, Legal Research Analyst
Friends of the Grande Ronde Valley
2310 Adams Ave.
La Grande, Oregon 97850

CLARK Christopher * ODOE

From: Susan Geer <Susan.Geer.262002936@p2a.co>
Sent: Monday, December 16, 2019 6:18 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Susan Geer
906 Penn Ave
La Grande, OR 97850

CLARK Christopher * ODOE

From: David Komlosi <David.Komlosi.262002936@p2a.co>
Sent: Monday, December 16, 2019 6:19 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

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Regards,
David Komlosi
906, penn ave
La Grande, OR 97850

CLARK Christopher * ODOE

From: Mary Hernandez <Mary.Hernandez.262012692@p2a.co>
Sent: Monday, December 16, 2019 7:25 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

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Regards,
Mary Hernandez
1011 Fulton St
Newberg, OR 97132

CLARK Christopher * ODOE

From: Fuji Kreider <Fuji.Kreider.262018236@p2a.co>
Sent: Monday, December 16, 2019 7:48 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

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Dear Council:

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I am strongly opposed to the proposed revisions to OAR Chapter 345, Division 27. These revisions, if adopted, would dramatically change EFSC's review procedures, amounting to what EFSC and ODOE have previously described as a "wholesale re-write" of Division 27. The proposed rule revisions would reduce transparency, diminish or eliminate opportunities for public participation, and impose unreasonable barriers and burdens for stakeholders if and when they want to request contested case proceedings on specific energy projects.

There is no need to dramatically change the procedures for reviewing site certificate amendments. In fact, the Oregon Supreme Court has already held that EFSC's previous permanent rule revisions to Division 27, which EFSC attempted to adopt in 2017, were "invalid." The Supreme Court's decision reverts the permanent rules to their status before the invalid 2017 rulemaking. I support that outcome, because the rules reinstated by the Supreme Court are transparent, easy to understand, and fair to all stakeholders. In fact, the reinstated rules have been supported by numerous stakeholders, including everyone from Friends of the Columbia Gorge to PGE. The controversial proposal by ODOE staff to (once again) dramatically change these rules is another purported solution in search of a nonexistent problem.

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- The proposed revisions would interfere with the Council's discretion to decide whether the public should be allowed a public hearing and the opportunity to request a contested case for specific proposed certificate amendments, and would instead delegate to ODOE staff the authority to make these important decisions. This would reduce transparency and give too much power to agency staff, thus likely leading to arbitrary and capricious decisions that will shut the public out of the process.

- The proposed revisions would eliminate the Council's discretion, when deciding whether to extend deadlines for beginning or completing construction of energy projects, to establish new construction periods shorter than the maximum lengths prescribed by rule. There is no valid reason for eliminating this discretionary authority.

- The proposed revisions would apply retroactively for a period of more than two years. Specifically, the proposed revisions are drafted to expressly apply to all requests for amendment submitted as far back as October 24, 2017. This would be unfair to concerned stakeholders and the public at large. Applications to amend energy projects and site certificates should be subject to the rules in effect at the time the applications were submitted. It is unreasonable and

unfair to retroactively change the rules years later.

In conclusion, the rules reinstated by the Oregon Supreme Court worked just fine for years. There is no reason to dramatically change those rules now, especially not to adopt the rules proposed by ODOE staff, which would decrease opportunities for public participation, impose new onerous hurdles and roadblocks to participate in contested cases, and weaken and narrow the scope of the Council's review of requested certificate amendments. Please reject the proposed "wholesale re-write" of OAR Chapter 345, Division 27.

Regards,
Fuji Kreider
60366 Marvin Rd
La Grande, OR 97850

CLARK Christopher * ODOE

From: David Grant <David.Grant.220440936@p2a.co>
Sent: Monday, December 16, 2019 9:13 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

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Regards,
David Grant
211 Stanford Ave
Medford, OR 97504

CLARK Christopher * ODOE

From: Mark Mccormick <Mark.Mccormick.221530223@p2a.co>
Sent: Monday, December 16, 2019 10:17 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

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Regards,
Mark Mccormick
5602 SE Lexington St
Portland, OR 97206

CLARK Christopher * ODOE

From: Trudy Maney <Trudy.Maney.262099435@p2a.co>
Sent: Monday, December 16, 2019 10:40 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

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Regards,
Trudy Maney
82516 S JUNIPER CNYN RD
Helix, OR 97835

CLARK Christopher * ODOE

From: Brian Doherty <Brian.Doherty.262156152@p2a.co>
Sent: Monday, December 16, 2019 11:50 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Brian Doherty
70516 Hwy 207 Echo Lexington, OR 97839
Lexington, OR 97839

CLARK Christopher * ODOE

From: ANDY BALTENSPERGER <ANDY.BALTENSPERGER.262166025@p2a.co>
Sent: Monday, December 16, 2019 12:02 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
ANDY BALTENSPERGER
1707 CEDAR ST.
La Grande, OR 97850

CLARK Christopher * ODOE

From: Barbara Manildi <Barbara.Manildi.218847802@p2a.co>
Sent: Monday, December 16, 2019 12:05 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Barbara Manildi
3525 Red Cedar Way
Lake Oswego, OR 97035

CLARK Christopher * ODOE

From: Tim Murphy <Tim.Murphy.218829497@p2a.co>
Sent: Monday, December 16, 2019 12:22 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Tim Murphy
811 SW Naito #500
Portland, OR 97204

CLARK Christopher * ODOE

From: Jane Heisler <Jane.Heisler.221494639@p2a.co>
Sent: Monday, December 16, 2019 12:29 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Jane Heisler
2731 SE Harrison St.
Portland, OR 97214

CLARK Christopher * ODOE

From: Cathy Webb <Cathy.Webb.262303428@p2a.co>
Sent: Monday, December 16, 2019 2:42 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

I am strongly opposed to the proposed revisions to OAR Chapter 345, Division 27. These revisions, if adopted, would dramatically change EFSC's review procedures, amounting to what EFSC and ODOE have previously described as a "wholesale re-write" of Division 27. The proposed rule revisions would reduce transparency, diminish or eliminate opportunities for public participation, and impose unreasonable barriers and burdens for stakeholders if and when they want to request contested case proceedings on specific energy projects.

There is no need to dramatically change the procedures for reviewing site certificate amendments. In fact, the Oregon Supreme Court has already held that EFSC's previous permanent rule revisions to Division 27, which EFSC attempted to adopt in 2017, were "invalid." The Supreme Court's decision reverts the permanent rules to their status before the invalid 2017 rulemaking. I support that outcome, because the rules reinstated by the Supreme Court are transparent, easy to understand, and fair to all stakeholders. In fact, the reinstated rules have been supported by numerous stakeholders, including everyone from Friends of the Columbia Gorge to PGE. The controversial proposal by ODOE staff to (once again) dramatically change these rules is another purported solution in search of a nonexistent problem.

Although the proposed revisions to Division 27 have many flaws, I will briefly summarize a few of them here:

- The proposed revisions would eliminate the public's rights to comment on requested amendments to site certificates early in the process. This rule revision would result in one-sided recommendations from ODOE staff, who will hear only from energy developers in preparing draft proposed orders.

- The proposed revisions would interfere with the Council's discretion to decide whether the public should be allowed a public hearing and the opportunity to request a contested case for specific proposed certificate amendments, and would instead delegate to ODOE staff the authority to make these important decisions. This would reduce transparency and give too much power to agency staff, thus likely leading to arbitrary and capricious decisions that will shut the public out of the process.

- The proposed revisions would eliminate the Council's discretion, when deciding whether to extend deadlines for beginning or completing construction of energy projects, to establish new construction periods shorter than the maximum lengths prescribed by rule. There is no valid reason for eliminating this discretionary authority.

- The proposed revisions would apply retroactively for a period of more than two years. Specifically, the proposed revisions are drafted to expressly apply to all requests for amendment submitted as far back as October 24, 2017. This would be unfair to concerned stakeholders and the public at large. Applications to amend energy projects and site certificates should be subject to the rules in effect at the time the applications were submitted. It is unreasonable and

unfair to retroactively change the rules years later.

In conclusion, the rules reinstated by the Oregon Supreme Court worked just fine for years. There is no reason to dramatically change those rules now, especially not to adopt the rules proposed by ODOE staff, which would decrease opportunities for public participation, impose new onerous hurdles and roadblocks to participate in contested cases, and weaken and narrow the scope of the Council's review of requested certificate amendments. Please reject the proposed "wholesale re-write" of OAR Chapter 345, Division 27.

Regards,
Cathy Webb
1708 Cedar St
La Grande, OR 97850

CLARK Christopher * ODOE

From: Lani Roberts <Lani.Roberts.262323372@p2a.co>
Sent: Monday, December 16, 2019 3:01 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

I am strongly opposed to the proposed revisions to OAR Chapter 345, Division 27. These revisions, if adopted, would dramatically change EFSC's review procedures, amounting to what EFSC and ODOE have previously described as a "wholesale re-write" of Division 27. The proposed rule revisions would reduce transparency, diminish or eliminate opportunities for public participation, and impose unreasonable barriers and burdens for stakeholders if and when they want to request contested case proceedings on specific energy projects.

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- The proposed revisions would interfere with the Council's discretion to decide whether the public should be allowed a public hearing and the opportunity to request a contested case for specific proposed certificate amendments, and would instead delegate to ODOE staff the authority to make these important decisions. This would reduce transparency and give too much power to agency staff, thus likely leading to arbitrary and capricious decisions that will shut the public out of the process.

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Regards,
Lani Roberts
3515 Belmont Drive
Hood River, OR 97031

CLARK Christopher * ODOE

From: George Vaughan <George.Vaughan.262344388@p2a.co>
Sent: Monday, December 16, 2019 3:20 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

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Regards,
George Vaughan
6916 NE 27th Ave
Vancouver, WA 98665

CLARK Christopher * ODOE

From: Alison Andrews <Alison.Andrews.262355340@p2a.co>
Sent: Monday, December 16, 2019 3:30 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

I am strongly opposed to the proposed revisions to OAR Chapter 345, Division 27. These revisions, if adopted, would dramatically change EFSC's review procedures, amounting to what EFSC and ODOE have previously described as a "wholesale re-write" of Division 27. The proposed rule revisions would reduce transparency, diminish or eliminate opportunities for public participation, and impose unreasonable barriers and burdens for stakeholders if and when they want to request contested case proceedings on specific energy projects.

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Regards,
Alison Andrews
1970 Old Fort Rd
Klamath Falls, OR 97601

CLARK Christopher * ODOE

From: Delores Porch <Delores.Porch.218833663@p2a.co>
Sent: Monday, December 16, 2019 3:39 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

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Regards,
Delores Porch
1212 34TH AVE SE, APT 63
Albany, OR 97322

CLARK Christopher * ODOE

From: Robin Anderson <Robin.Anderson.221471652@p2a.co>
Sent: Monday, December 16, 2019 4:08 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

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Regards,
Robin Anderson
155 Endresen Rd
Hoquiam, WA 98550

CLARK Christopher * ODOE

From: EFSC Rulemaking * ODOE
Sent: Monday, December 16, 2019 5:12 PM
To: Jim Kreider
Cc: 'lois barry'; Fuji Kreider; Irene Gilbert; 'Charlie Gillis'
Subject: RE: STOP B2H Coalitions comments on EFSC's rules governing the site certificate amendment rearview process

Hello Jim,

We have received your comments and will include them in the rulemaking record. The comments will also be provided to the Council for consideration along with the other materials for this Friday's meeting.

Thank you,

Christopher M. Clark
Siting Policy Analyst & Rules Coordinator
550 Capitol St. NE | Salem, OR 97301
P: 503-373-1033
P (In Oregon): 800-221-8035

OREGON DEPARTMENT OF ENERGY

Stay connected!

From: Jim Kreider <jkreider@campblackdog.org>
Sent: Monday, December 16, 2019 4:13 PM
To: EFSC Rulemaking * ODOE <EFSC.Rulemaking@oregon.gov>
Cc: 'lois barry' <loisbarry31@gmail.com>; Fuji Kreider <fkreider@campblackdog.org>; Irene Gilbert <ott.irene@frontier.com>; 'Charlie Gillis' <charlie@gillis-law.com>; 'Jim Kreider' <jkreider@campblackdog.org>
Subject: STOP B2H Coalitions comments on EFSC's rules governing the site certificate amendment rearview process

Greetings Chris,

Please accept the attached as the STOP B2H Coalitions comments on EFSC's rules governing the site certificate amendment rearview process. I would appreciate it if you could acknowledge receiving this email and attachment.

Thank You – jim

STOP IDAHO POWER B2H stopb2h.org

Jim Kreider for the
STOP B2H Coalition
541-406-0727

Protect Our Land; Preserve Our Heritage

Stop B2H Coalition
60366 Marvin Road
La Grande, Oregon 97850
www.stopb2h.org
info@stopb2h.org

Chris Clark
EFSC Rules Coordinator
Oregon Department of Energy
Energy Facility Siting Council
550 Capitol St. NE
Salem Oregon 97301
Email: EFSC.rulemaking@oregon.gov

December 16, 2019

DEPARTMENT OF ENERGY PLANNED AMENDMENT RULES COMMENTS

Dear Council:

We are writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a northeast Oregon, grassroots nonprofit organization of 700 members and eight organizational members, working to protect our land and preserve our heritage, we have a strong interest in EFSC achieving a fair and open process for evaluating proposed site certificate amendments for energy facilities.

As a result, we are strongly opposed to the proposed revisions to OAR Chapter 345, Division 27. These revisions, if adopted, would dramatically change EFSC's review procedures, raising the question: "Who benefits?" The proposed rule revisions would reduce transparency, diminish or eliminate opportunities for public participation, and impose unreasonable barriers and burdens for stakeholders if and when they want to request contested case proceedings on specific energy projects.

The Oregon Supreme Court has already held that EFSC's previous permanent rule revisions to Division 27, which EFSC attempted to adopt in 2017, were "invalid." The Supreme Court's decision reverts the permanent rules to their status before the invalid 2017 rulemaking.

We cite a few problems that would result from the proposed rule revisions to site certificate amendment reviews:

The revisions would eliminate important Council discretion to decide whether the public should be allowed a public hearing early in the process, as well as the opportunity to request a contested case for specific proposed certificate amendments. This would allow

staff to limit transparency and public participation, and limit Council discretion to extend deadlines for beginning or completing construction of energy projects.

The proposed revisions would apply retroactively for a period of more than two years. It is unreasonable and unfair to retroactively change the rules. Specifically, the proposed revisions are drafted to expressly apply to all requests for amendment submitted back to October 24, 2017. This would be unfair to concerned stakeholders and the public at large. Applications to amend energy projects and site certificates should be subject to the rules in effect at the time the applications were submitted.

We urge the Council to reject the proposed rule revisions. Even now, it is difficult for the public to participate in an unfamiliar and challenging process. The proposed rule revisions would further limit transparency and the public's opportunities for reasonable participation.

Please keep us informed on the status of this rulemaking process. Thank you for your consideration.

Regards,

Jim Kreider, Co-Chair
Stop B2H Coalition
60366 Marvin Road
La Grande, Oregon 97850
jim@stopb2h.org

CLARK Christopher * ODOE

From: TJL LLC <TJL.LLC.262393177@p2a.co>
Sent: Monday, December 16, 2019 4:16 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

I am strongly opposed to the proposed revisions to OAR Chapter 345, Division 27. These revisions, if adopted, would dramatically change EFSC's review procedures, amounting to what EFSC and ODOE have previously described as a "wholesale re-write" of Division 27. The proposed rule revisions would reduce transparency, diminish or eliminate opportunities for public participation, and impose unreasonable barriers and burdens for stakeholders if and when they want to request contested case proceedings on specific energy projects.

There is no need to dramatically change the procedures for reviewing site certificate amendments. In fact, the Oregon Supreme Court has already held that EFSC's previous permanent rule revisions to Division 27, which EFSC attempted to adopt in 2017, were "invalid." The Supreme Court's decision reverts the permanent rules to their status before the invalid 2017 rulemaking. I support that outcome, because the rules reinstated by the Supreme Court are transparent, easy to understand, and fair to all stakeholders. In fact, the reinstated rules have been supported by numerous stakeholders, including everyone from Friends of the Columbia Gorge to PGE. The controversial proposal by ODOE staff to (once again) dramatically change these rules is another purported solution in search of a nonexistent problem.

Although the proposed revisions to Division 27 have many flaws, I will briefly summarize a few of them here:

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In conclusion, the rules reinstated by the Oregon Supreme Court worked just fine for years. There is no reason to dramatically change those rules now, especially not to adopt the rules proposed by ODOE staff, which would decrease opportunities for public participation, impose new onerous hurdles and roadblocks to participate in contested cases, and weaken and narrow the scope of the Council's review of requested certificate amendments. Please reject the proposed "wholesale re-write" of OAR Chapter 345, Division 27.

Regards,
TJL LLC
1420 NW Gilman Blvd, Ste 2-2655
Issaquah, WA 98027

CLARK Christopher * ODOE

From: Carolyn Stewart <Carolyn.Stewart.218831557@p2a.co>
Sent: Monday, December 16, 2019 4:46 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

I am strongly opposed to the proposed revisions to OAR Chapter 345, Division 27. These revisions, if adopted, would dramatically change EFSC's review procedures, amounting to what EFSC and ODOE have previously described as a "wholesale re-write" of Division 27. The proposed rule revisions would reduce transparency, diminish or eliminate opportunities for public participation, and impose unreasonable barriers and burdens for stakeholders if and when they want to request contested case proceedings on specific energy projects.

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Regards,
Carolyn Stewart
515 SW Cheltenham St
Portland, OR 97239

CLARK Christopher * ODOE

From: Deanna Eichler <Deanna.Eichler.252005402@p2a.co>
Sent: Monday, December 16, 2019 5:41 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

I am strongly opposed to the proposed revisions to OAR Chapter 345, Division 27. These revisions, if adopted, would dramatically change EFSC's review procedures, amounting to what EFSC and ODOE have previously described as a "wholesale re-write" of Division 27. The proposed rule revisions would reduce transparency, diminish or eliminate opportunities for public participation, and impose unreasonable barriers and burdens for stakeholders if and when they want to request contested case proceedings on specific energy projects.

There is no need to dramatically change the procedures for reviewing site certificate amendments. In fact, the Oregon Supreme Court has already held that EFSC's previous permanent rule revisions to Division 27, which EFSC attempted to adopt in 2017, were "invalid." The Supreme Court's decision reverts the permanent rules to their status before the invalid 2017 rulemaking. I support that outcome, because the rules reinstated by the Supreme Court are transparent, easy to understand, and fair to all stakeholders. In fact, the reinstated rules have been supported by numerous stakeholders, including everyone from Friends of the Columbia Gorge to PGE. The controversial proposal by ODOE staff to (once again) dramatically change these rules is another purported solution in search of a nonexistent problem.

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- The proposed revisions would eliminate the public's rights to comment on requested amendments to site certificates early in the process. This rule revision would result in one-sided recommendations from ODOE staff, who will hear only from energy developers in preparing draft proposed orders.

- The proposed revisions would interfere with the Council's discretion to decide whether the public should be allowed a public hearing and the opportunity to request a contested case for specific proposed certificate amendments, and would instead delegate to ODOE staff the authority to make these important decisions. This would reduce transparency and give too much power to agency staff, thus likely leading to arbitrary and capricious decisions that will shut the public out of the process.

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unfair to retroactively change the rules years later.

In conclusion, the rules reinstated by the Oregon Supreme Court worked just fine for years. There is no reason to dramatically change those rules now, especially not to adopt the rules proposed by ODOE staff, which would decrease opportunities for public participation, impose new onerous hurdles and roadblocks to participate in contested cases, and weaken and narrow the scope of the Council's review of requested certificate amendments. Please reject the proposed "wholesale re-write" of OAR Chapter 345, Division 27.

Regards,
Deanna Eichler
40205 SE Gibson Rd
Washougal, WA 98671

CLARK Christopher * ODOE

From: Leslie Wheaton <Leslie.Wheaton.262520085@p2a.co>
Sent: Monday, December 16, 2019 6:47 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

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Regards,
Leslie Wheaton
1777 Valley Ave
Baker City, OR 97814

CLARK Christopher * ODOE

From: Jillana Meyer <Jillana.Meyer.262523370@p2a.co>
Sent: Monday, December 16, 2019 6:51 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Jillana Meyer
255 October Ln
Merlin, OR 97532

CLARK Christopher * ODOE

From: wendie Vermillion <wendie.Vermillion.262552873@p2a.co>
Sent: Monday, December 16, 2019 7:26 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

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Regards,
wendie Vermillion
PO Box 1168
Sisters, OR 97759

CLARK Christopher * ODOE

From: Randall Mierow <Randall.Mierow.228171135@p2a.co>
Sent: Monday, December 16, 2019 8:53 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Randall Mierow
26040 S Jewell Rd
Beavercreek, OR 97004

CLARK Christopher * ODOE

From: Rhonda Starling <Rhonda.Starling.262691275@p2a.co>
Sent: Monday, December 16, 2019 10:55 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Rhonda Starling
PO Box 665
Mosier, OR 97040

CLARK Christopher * ODOE

From: CINDY ALLEN <CINDY.ALLEN.221705562@p2a.co>
Sent: Monday, December 16, 2019 11:08 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
CINDY ALLEN
3533 Avalon Dr
Hood River, OR 97031

CLARK Christopher * ODOE

From: Letha Joseph <Letha.Joseph.263655823@p2a.co>
Sent: Tuesday, December 17, 2019 6:55 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Letha Joseph
440 E Birch St
Union, OR 97883

CLARK Christopher * ODOE

From: Mark Reynolds <Mark.Reynolds.264613107@p2a.co>
Sent: Tuesday, December 17, 2019 3:51 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Mark Reynolds
4930 Neal Creek Rd
Hood River, OR 97031

CLARK Christopher * ODOE

From: Lara Dunn <Lara.Dunn.264465247@p2a.co>
Sent: Tuesday, December 17, 2019 1:12 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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There is no need to dramatically change the procedures for reviewing site certificate amendments. In fact, the Oregon Supreme Court has already held that EFSC's previous permanent rule revisions to Division 27, which EFSC attempted to adopt in 2017, were "invalid." The Supreme Court's decision reverts the permanent rules to their status before the invalid 2017 rulemaking. I support that outcome, because the rules reinstated by the Supreme Court are transparent, easy to understand, and fair to all stakeholders. In fact, the reinstated rules have been supported by numerous stakeholders, including everyone from Friends of the Columbia Gorge to PGE. The controversial proposal by ODOE staff to (once again) dramatically change these rules is another purported solution in search of a nonexistent problem.

Although the proposed revisions to Division 27 have many flaws, I will briefly summarize a few of them here:

- The proposed revisions would eliminate the public's rights to comment on requested amendments to site certificates early in the process. This rule revision would result in one-sided recommendations from ODOE staff, who will hear only from energy developers in preparing draft proposed orders.

- The proposed revisions would interfere with the Council's discretion to decide whether the public should be allowed a public hearing and the opportunity to request a contested case for specific proposed certificate amendments, and would instead delegate to ODOE staff the authority to make these important decisions. This would reduce transparency and give too much power to agency staff, thus likely leading to arbitrary and capricious decisions that will shut the public out of the process.

- The proposed revisions would eliminate the Council's discretion, when deciding whether to extend deadlines for beginning or completing construction of energy projects, to establish new construction periods shorter than the maximum lengths prescribed by rule. There is no valid reason for eliminating this discretionary authority.

- The proposed revisions would apply retroactively for a period of more than two years. Specifically, the proposed revisions are drafted to expressly apply to all requests for amendment submitted as far back as October 24, 2017. This would be unfair to concerned stakeholders and the public at large. Applications to amend energy projects and site certificates should be subject to the rules in effect at the time the applications were submitted. It is unreasonable and

unfair to retroactively change the rules years later.

In conclusion, the rules reinstated by the Oregon Supreme Court worked just fine for years. There is no reason to dramatically change those rules now, especially not to adopt the rules proposed by ODOE staff, which would decrease opportunities for public participation, impose new onerous hurdles and roadblocks to participate in contested cases, and weaken and narrow the scope of the Council's review of requested certificate amendments. Please reject the proposed "wholesale re-write" of OAR Chapter 345, Division 27.

Regards,
Lara Dunn
1111 Sherman Ave.
Hood River, OR 97031

CLARK Christopher * ODOE

From: Allison Valerio <Allison.Valerio.264277255@p2a.co>
Sent: Tuesday, December 17, 2019 11:15 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

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Regards,
Allison Valerio
52843 Highway 203
Union, OR 97883

CLARK Christopher * ODOE

From: Laura Hanks <Laura.Hanks.220434005@p2a.co>
Sent: Tuesday, December 17, 2019 11:07 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

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Regards,
Laura Hanks
6281 SE Deering Ct
Milwaukie, OR 97222

CLARK Christopher * ODOE

From: Sheila Sands <Sheila.Sands.264139186@p2a.co>
Sent: Tuesday, December 17, 2019 10:16 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

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Regards,
Sheila Sands
1508 2nd St
La Grande, OR 97850

CLARK Christopher * ODOE

From: John Harvey <John.Harvey.264696278@p2a.co>
Sent: Tuesday, December 17, 2019 9:19 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

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Regards,
John Harvey
77647 North Loop Rd-Stanfield OR
Stanfield, OR 97875

CLARK Christopher * ODOE

From: Cynthia Harvey <Cynthia.Harvey.264696278@p2a.co>
Sent: Tuesday, December 17, 2019 9:14 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Cynthia Harvey
77647 North Loop Rd-Stanfield OR
Stanfield, OR 97875

CLARK Christopher * ODOE

From: Scott Hayes <Scott.Hayes.221530377@p2a.co>
Sent: Wednesday, December 18, 2019 5:34 AM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Scott Hayes
623 NW 185th St
Shoreline, WA 98177

CLARK Christopher * ODOE

From: JoAnn Marlette <JoAnn.Marlette.264918127@p2a.co>
Sent: Wednesday, December 18, 2019 2:41 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

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Regards,
JoAnn Marlette
2031 Court Street #8
Baker City, OR 97814

CLARK Christopher * ODOE

From: Marshall Goldberg <Marshall.Goldberg.221503025@p2a.co>
Sent: Wednesday, December 18, 2019 2:44 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

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Regards,
Marshall Goldberg
3080 SW Raleighview Dr
Portland, OR 97225

CLARK Christopher * ODOE

From: Janet Hedgepath <Janet.Hedgepath.264919865@p2a.co>
Sent: Wednesday, December 18, 2019 2:48 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

I am strongly opposed to the proposed revisions to OAR Chapter 345, Division 27. These revisions, if adopted, would dramatically change EFSC's review procedures, amounting to what EFSC and ODOE have previously described as a "wholesale re-write" of Division 27. The proposed rule revisions would reduce transparency, diminish or eliminate opportunities for public participation, and impose unreasonable barriers and burdens for stakeholders if and when they want to request contested case proceedings on specific energy projects.

There is no need to dramatically change the procedures for reviewing site certificate amendments. In fact, the Oregon Supreme Court has already held that EFSC's previous permanent rule revisions to Division 27, which EFSC attempted to adopt in 2017, were "invalid." The Supreme Court's decision reverts the permanent rules to their status before the invalid 2017 rulemaking. I support that outcome, because the rules reinstated by the Supreme Court are transparent, easy to understand, and fair to all stakeholders. In fact, the reinstated rules have been supported by numerous stakeholders, including everyone from Friends of the Columbia Gorge to PGE. The controversial proposal by ODOE staff to (once again) dramatically change these rules is another purported solution in search of a nonexistent problem.

Although the proposed revisions to Division 27 have many flaws, I will briefly summarize a few of them here:

- The proposed revisions would eliminate the public's rights to comment on requested amendments to site certificates early in the process. This rule revision would result in one-sided recommendations from ODOE staff, who will hear only from energy developers in preparing draft proposed orders.

- The proposed revisions would interfere with the Council's discretion to decide whether the public should be allowed a public hearing and the opportunity to request a contested case for specific proposed certificate amendments, and would instead delegate to ODOE staff the authority to make these important decisions. This would reduce transparency and give too much power to agency staff, thus likely leading to arbitrary and capricious decisions that will shut the public out of the process.

- The proposed revisions would eliminate the Council's discretion, when deciding whether to extend deadlines for beginning or completing construction of energy projects, to establish new construction periods shorter than the maximum lengths prescribed by rule. There is no valid reason for eliminating this discretionary authority.

- The proposed revisions would apply retroactively for a period of more than two years. Specifically, the proposed revisions are drafted to expressly apply to all requests for amendment submitted as far back as October 24, 2017. This would be unfair to concerned stakeholders and the public at large. Applications to amend energy projects and site certificates should be subject to the rules in effect at the time the applications were submitted. It is unreasonable and

unfair to retroactively change the rules years later.

In conclusion, the rules reinstated by the Oregon Supreme Court worked just fine for years. There is no reason to dramatically change those rules now, especially not to adopt the rules proposed by ODOE staff, which would decrease opportunities for public participation, impose new onerous hurdles and roadblocks to participate in contested cases, and weaken and narrow the scope of the Council's review of requested certificate amendments. Please reject the proposed "wholesale re-write" of OAR Chapter 345, Division 27.

Regards,
Janet Hedgepath
505 NW 45th St
Vancouver, WA 98660

CLARK Christopher * ODOE

From: Jennifer Miller <Jennifer.Miller.264945983@p2a.co>
Sent: Wednesday, December 18, 2019 4:00 PM
To: EFSC Rulemaking * ODOE
Subject: [Fortimail Spam Detected] EFSC Rulemaking - Rules Governing Requests for Amendments to Site Certificates

Dear Council,

Dear Council:

I am writing to comment on the proposed revisions to EFSC's rules governing the site certificate amendment review processes. As a resident of the Pacific Northwest, and as an advocate for protecting the scenic, natural, cultural, and recreational resources of the Columbia River Gorge, I have a strong interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities.

I am strongly opposed to the proposed revisions to OAR Chapter 345, Division 27. These revisions, if adopted, would dramatically change EFSC's review procedures, amounting to what EFSC and ODOE have previously described as a "wholesale re-write" of Division 27. The proposed rule revisions would reduce transparency, diminish or eliminate opportunities for public participation, and impose unreasonable barriers and burdens for stakeholders if and when they want to request contested case proceedings on specific energy projects.

There is no need to dramatically change the procedures for reviewing site certificate amendments. In fact, the Oregon Supreme Court has already held that EFSC's previous permanent rule revisions to Division 27, which EFSC attempted to adopt in 2017, were "invalid." The Supreme Court's decision reverts the permanent rules to their status before the invalid 2017 rulemaking. I support that outcome, because the rules reinstated by the Supreme Court are transparent, easy to understand, and fair to all stakeholders. In fact, the reinstated rules have been supported by numerous stakeholders, including everyone from Friends of the Columbia Gorge to PGE. The controversial proposal by ODOE staff to (once again) dramatically change these rules is another purported solution in search of a nonexistent problem.

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- The proposed revisions would eliminate the public's rights to comment on requested amendments to site certificates early in the process. This rule revision would result in one-sided recommendations from ODOE staff, who will hear only from energy developers in preparing draft proposed orders.

- The proposed revisions would interfere with the Council's discretion to decide whether the public should be allowed a public hearing and the opportunity to request a contested case for specific proposed certificate amendments, and would instead delegate to ODOE staff the authority to make these important decisions. This would reduce transparency and give too much power to agency staff, thus likely leading to arbitrary and capricious decisions that will shut the public out of the process.

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unfair to retroactively change the rules years later.

In conclusion, the rules reinstated by the Oregon Supreme Court worked just fine for years. There is no reason to dramatically change those rules now, especially not to adopt the rules proposed by ODOE staff, which would decrease opportunities for public participation, impose new onerous hurdles and roadblocks to participate in contested cases, and weaken and narrow the scope of the Council's review of requested certificate amendments. Please reject the proposed "wholesale re-write" of OAR Chapter 345, Division 27.

Regards,
Jennifer Miller
445 SE 9th Dr
Hermiston, OR 97838

CLARK Christopher * ODOE

From: EFSC Rulemaking * ODOE
Sent: Thursday, December 19, 2019 9:08 AM
To: Beverly Bunker; EFSC Rulemaking * ODOE
Cc: Gary Kahn; 'Nathan Baker'; patrick.g.rowe@doj.state.or.us; CORNETT Todd * ODOE
Subject: RE: EFSC Proposed Rulemaking - 2019 Permanent Rules for Site Certificate Amendment Process

Good morning Beverly,

Sorry for the delayed response, but I wanted to confirm that we did receive the comments before the deadline and will provide them to the Council for their consideration.

Thank you,

Christopher M. Clark
Siting Policy Analyst & Rules Coordinator
550 Capitol St. NE | Salem, OR 97301
P: 503-373-1033
P (In Oregon): 800-221-8035

OREGON DEPARTMENT OF ENERGY

Stay connected!

From: Beverly Bunker <beverly@rke-law.com>
Sent: Wednesday, December 18, 2019 4:20 PM
To: EFSC Rulemaking * ODOE <EFSC.Rulemaking@oregon.gov>
Cc: Gary Kahn <gkahn@rke-law.com>; 'Nathan Baker' <Nathan@gorgefriends.org>; patrick.g.rowe@doj.state.or.us; CORNETT Todd * ODOE <Todd.Cornett@oregon.gov>
Subject: [Fortimail Spam Detected] EFSC Proposed Rulemaking - 2019 Permanent Rules for Site Certificate Amendment Process

To Whom It May Concern:

Attached please find comments on the above-referenced matter on behalf of the Commentators listed therein.

Beverly L. Bunker
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REEVES, KAHN, HENNESSY & ELKINS

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December 18, 2019

Oregon Energy Facility Siting Council
c/o EFSC Rules Coordinator
Via email to EFSC.rulemaking@oregon.gov

Re: EFSC Proposed Rulemaking – 2019 Permanent Rules for Site Certificate Amendment Process

Dear Chair Jenkins and Council Members:

The following comments regarding the above-referenced proposed permanent rulemaking are submitted on behalf of Friends of the Columbia Gorge, Northwest Environmental Defense Center, Oregon Natural Desert Association, Oregon Wild, Thrive Hood River, Columbia Riverkeeper, WildLands Defense, Greater Hells Canyon Council, Oregon Coast Alliance, Central Oregon LandWatch, Audubon Society of Portland, and East Cascades Audubon Society (collectively, "Commenters").

Commenters are nonprofit public interest organizations, with more than 65,000 collective members and supporters, with strong interests in responsible energy generation and the proper implementation of state law governing the approval, construction, and modification of large energy facilities in Oregon. Commenter Friends of the Columbia Gorge is a nonprofit organization with approximately 6,500 members dedicated to protecting and enhancing the resources of the Columbia River Gorge. Commenter Northwest Environmental Defense Center ("NEDC") is a nonprofit organization with approximately 500 members. NEDC's mission is to preserve and protect the environment and natural resources of the Pacific Northwest. Commenter Oregon Natural Desert Association ("ONDA") is a nonprofit, public interest organization dedicated to the conservation of eastern Oregon's public lands. ONDA's mission is to protect, defend, and restore Oregon's high desert. ONDA represents more than 10,000 members and supporters. Commenter Oregon Wild represents approximately 20,000 members and supporters who share Oregon Wild's mission to protect and restore Oregon's wildlands, wildlife, and waters as an enduring legacy. The mission of Commenter Thrive Hood River is to protect Hood River County's farms, forests, special wild places and the livability of our urban and rural communities. Thrive Hood River has approximately 325 members. Commenter Columbia Riverkeeper ("Riverkeeper") is dedicated to protecting and restoring the Columbia River and its tributaries. With over 10,000 members and supporters, Riverkeeper and its supporters have an interest in EFSC maintaining a fair and open process for evaluating site certificate amendments for large energy facilities. Commenter WildLands Defense works to inspire and empower the preservation of wild lands and wildlife in the West. WildLands Defense has more than 1,500 members, activists, and supporters. Founded in 1967, Commenter Greater Hells Canyon Council ("GHCC") is a grassroots conservation organization whose mission is to connect, protect, and restore the wild lands, waters, native species and habitats of the Greater Hells Canyon Region, ensuring a legacy of healthy ecosystems for future generations. GHCC has

approximately 1,000 members. The mission of Commenter Oregon Coast Alliance ("ORCA") is to protect the Oregon coast by working with coastal residents for sustainable communities; protection and restoration of coastal and marine natural resources; providing education and advocacy on land use development; and adaptation to climate change. ORCA has approximately 300 members and supporters. Commenter Central Oregon LandWatch ("LandWatch") is a conservation organization with more than 200 members that has advocated for the preservation of natural resources in Central Oregon for more than thirty years. LandWatch plays a vital role in achieving a responsible, balanced approach to planning for and conserving Central Oregon's land and water resources, while recognizing the needs of future generations. LandWatch works to protect and conserve the region's ecosystems and wildlife habitats; to foster thriving, sustainable communities; and to spread the costs and benefits of growth equitably across the community as a whole. Founded in 1902, Commenter Audubon Society of Portland ("Portland Audubon") is a nonprofit conservation organization with more than 15,000 members whose mission is to inspire all people to love and protect birds, wildlife, and the natural environment upon which life depends. Through conservation advocacy, environmental education, and wildlife rehabilitation, Portland Audubon promotes the understanding, enjoyment, and protection of native birds, other wildlife and their habitats. Commenter East Cascades Audubon Society ("ECAS") is a nonprofit organization with approximately 400 members. ECAS is involved in conservation projects throughout Central Oregon and promotes enjoyment of birds, birdwatching, and habitat improvement.

These Comments will refer to four different sets of EFSC rules. First, the "2017 rules" are the permanent, valid rules that were in effect prior to October 2017. Second, the "2018 rules" are the permanent rules adopted in October 2017. On August 1, 2019, the Oregon Supreme Court held that the 2018 rules "are invalid." *Friends of the Columbia Gorge v. EFSC* ("*Friends v. EFSC*"), 365 Or 371, 396, 446 P3d 53 (2019). Third, the "2019 rules" are the temporary rules adopted by EFSC on August 22, 2019. The 2019 rules are currently being challenged in *Friends of the Columbia Gorge et al. v. EFSC*, Oregon Supreme Court No. S066993. The parties are currently awaiting a decision from the Supreme Court regarding the validity of the 2019 rules. Finally, the "Proposed Rules" are the rules proposed by ODOE staff in the current rulemaking proceeding.

Commenters have reviewed the Proposed Rules. Commenters have no concerns with the proposed revisions to OAR Chapter 345, Divisions 15 and 25.

However, Commenters have substantial concerns with the proposed revisions to OAR Chapter 345, Division 27. These revisions, if adopted, would drastically change EFSC's review procedures, amounting to what EFSC and ODOE have previously described as a "wholesale re-write" of Division 27. *Friends v. EFSC*, 365 Or at 374. Among other problems, the proposed revisions to Division 27 would reduce transparency, diminish or eliminate existing opportunities for public participation, impose unreasonable barriers and burdens for stakeholders who seek contested case proceedings on specific energy projects, and narrow or weaken the substantive scope of the Council's review of requested amendments to site certificates.

On August 1, 2019, the Oregon Supreme Court held that the 2018 rules "are invalid." *Id.* at 396. This holding effectively reinstated the 2017 rules as EFSC's only valid set of permanent rules. Commenters support the Supreme Court's reinstatement of the 2017 rules because these rules are transparent, easy to understand, and fair to all stakeholders. For those and other reasons, the 2017

rules have been supported and preferred by not only Commenters, but also certificate holders like PGE. (*See, e.g.*, EFSC Feb. 23–24, 2017 Meeting Minutes at 15 ("Brendan McCarthy, Portland General Electric, . . . expressed his opinion that the discussion is to fix a process that does not appear to be broken. He believes the existing process [under the 2017 rules] works for applicants and for PGE.").)

The revisions to Division 27 now proposed by ODOE staff are nearly identical to the language of the invalid 2018 rules. This controversial proposal by ODOE staff to (once again) drastically change Division 27 is another purported solution in search of a nonexistent problem. The Council should reject the proposed "wholesale re-write" of OAR Chapter 35, Division 27.

Moreover, several of the Proposed Rules would *create* new problems. In many instances as discussed below, the 2017 rules have worked well and need not be revised. Commenters have identified several serious problems with the Proposed Rules. Following is a brief summary of the issues discussed later in this letter.

- The Proposed Rules would eliminate the public's ability to comment on requested amendments early in the process (before ODOE staff prepare a draft proposed order). These revisions would eliminate public participation opportunities, eliminate the opportunity to identify and resolve problems early in the process, and will result in biased (one-sided) draft proposed orders that only take into account energy developers' positions and not any comments from the public. Commenters oppose these revisions. The existing public participation opportunities in the 2017 rules should be retained.

- The Proposed Rules would interfere with and abdicate the Council's discretion to decide whether the public should be allowed a public hearing and an opportunity to request a contested case for specific proposed certificate amendments, and would instead allow site certificate holders to completely bypass these steps by applying for truncated review under the new "Type B" review process, and would delegate to ODOE staff the authority to decide which matters will be processed under the truncated "Type B" review process, with no oversight by the Council over these important procedural decisions. Commenters oppose these revisions; the Council should retain its decision-making authority under the 2017 rules over which matters will be reviewed via contested cases.

- Several narrow references to "Council standards" in the Proposed Rules should be modified to also refer to any other "applicable laws," in order to match similar language elsewhere in the Proposed Rules and comply with applicable law.

- The Proposed Rules would adopt new requirements for requests for contested cases to include detailed information about the requester's interests and whether the requester seeks full or limited party status. This information is largely unnecessary and duplicative of information required later in the process, when the same person or entity would file requests for party status in a contested case. Other information specified in the Proposed Rules would be unnecessary and/or burdensome to produce. Commenters oppose these revisions as unnecessary, duplicative, and unduly burdensome to the public.

- The Council should reject the Proposed Rule language that would require the Council, once it decides to allow a contested case proceeding, to decide "the issues each contested case party may participate on" and that would limit "[t]he issues a party to a contested case proceeding may participate on . . . to those issues that party properly raised in its contested case request." The Council should abide by existing law on this issue, which allows parties in contested case proceedings to respond to all issues properly before the presiding officer.

- The Proposed Rules would in several places narrow the substantive scope of the Council's review of proposed amendments to site certificates. Commenters oppose these changes; the Council should retain or strengthen, rather than narrow or weaken, existing language on the scope of its review of proposed amendments.

- Proposed Rule 345-027-0357(1)(b) would authorize ODOE to approve expansions of site boundaries without any corresponding amendments to site certificates, which would violate the Energy Facility Siting Act. This proposed language should be rejected and replaced with language specifying that any proposal to add area to a site boundary requires a certificate amendment, as was initially proposed by ODOE staff in the 2017 rulemaking proceeding.

- The Proposed Rules would strip from the Council its current discretion, when extending deadlines for beginning or completing construction, to set new construction periods shorter than the maximum lengths prescribed by rule. Commenters oppose this change; the Council should retain its existing discretion on this topic.

- In several places, the Proposed Rules would require specific materials to be placed on ODOE's website, but without providing any public notice to interested persons, nor any opportunities for public comment. Merely posting materials on ODOE's website fails to ensure adequate notice to the public. For any materials posted on the website, the rules should also ensure notice through the Council's standard public notification procedures, and should allow for public comment.

- Proposed Rule 345-027-0311(1) would specify that all proposed revisions to OAR Chapter 345, Division 27 would apply retroactively for a period of more than two years. Commenters oppose this change because it would be unreasonable and unfair to concerned stakeholders and the public at large, and because it would violate the Administrative Procedures Act. Applications to amend energy projects and site certificates should be subject to valid and properly adopted rules in effect at the time the applications were submitted. It would be unreasonable, unfair, unlawful, and contrary to the public interest to retroactively change the rules years later.

Below Commenters will comment on specific provisions and aspects of the Proposed Rules, and will recommend other options for this rulemaking. Commenters' comments and recommendations below will achieve the substantive goals of the rulemaking, while reducing any negative economic impacts of the rules on business. Pursuant to ORS 183.335(3)(e)(C), Commenters request an agency response to each of the specific comments and recommendations below.

1. The Council should retain existing rule provisions that allow for early public participation opportunities on requested amendments to site certificates.

The Council's existing permanent rules (*i.e.*, the 2017 rules) allow for early public participation on requested amendments to site certificates in two important ways. First, when ODOE receives a requested amendment to a site certificate, it must notify the public of the requested amendment and must solicit comments from the public. OAR 345-027-0070(1)(a), (b) (2017). Second, ODOE "may hold one or more public meetings during the review of a request for amendment of the site certificate." OAR 345-027-0070(3) (2017).

The proposed rule revisions would completely eliminate these existing early public participation opportunities. Commenters oppose such revisions, which would reduce, rather than enhance, opportunities for public participation. The current process, as specified in the 2017 rules, is designed to allow the public to meaningfully participate in the early stages of review. This benefits ODOE, the certificate holder, and ultimately the Council, by allowing for the identification of any potential problems with a request for amendment at the outset, and allowing the certificate holder and/or ODOE to address such issues prior to any hearings or contested cases. The current process (specified in the 2017 rules) works well.

Commenters disagree with the proposal to force the public to wait to comment until after ODOE staff have issued a draft proposed order. *See* Proposed Rule 345-027-0367. It makes no sense to change the current process by depriving the public of its early opportunity to participate and by depriving ODOE staff of public comments during ODOE's preparation of a draft proposed order. The result would be to make the initial process completely one-sided, because ODOE would hear only from the certificate holder (and not the public) when analyzing the application and drafting a proposed order. Such a one-sided process will inevitably bias the draft proposed order in favor of energy developers. ODOE should continue to hear from interested persons during its initial review of requested amendments, as required by existing law.

The Council should preserve existing early public participation opportunities and should reject ODOE's proposed revisions on this topic.

Recommendation: Retain the existing early public participation opportunities at OAR 345-027-0070(1)(a), (b) (2017), and OAR 345-027-0070(3) (2017), which allow the public to comment on, and authorize ODOE to hold one or more public meetings on, requests for amendments to site certificates.

2. The Council should retain its existing decision-making authority over which matters are potentially subject to public hearings and contested cases, rather than delegating that authority to site certificate holders and ODOE staff.

The Proposed Rules would take three existing categories of amendments to energy site certificates (standard amendments, expedited amendments, and transfer amendments) and expand them into four separate categories: transfer amendments plus three new categories of amendments called "Type A," "Type B," and "Type C." *See, e.g.*, Proposed Rule 345-027-0351.

For Type B review, there would be no Council hearing and no opportunity to request a contested case. *See* Proposed Rules 345-027-0367, -0368, -0369. Thus, Type B would be a much more cursory process than Type A, with fewer opportunities for public participation.

Other than those distinctions, the three proposed new categories ("Type A," "B," and "C") are not in any way defined. For example, Proposed Rule 345-027-0357(3) says that the "type B review process [is] described in [OAR] 345-027-0351(3)." But Proposed Rule 345-027-0351(3) does not "describe" the Type B process. Rather, it merely lists the rule sections that would apply to Type B review, and, in circular fashion, points back to Proposed Rule 345-027-0357: "The type B review process . . . applies to the Council's review of a request for amendment that the Department or the Council approves for type B review under [OAR] 345-027-0357." But Proposed Rule 345-027-0357 likewise contains no definition nor description of the proposed Type B process, nor any binding criteria explaining when the Type B process must be applied. Instead, Proposed Rules 345-027-0357(3) and (7) merely state that "the certificate holder may submit an amendment determination request to the Department for a written determination of whether a request for amendment justifies review under the type B review process described in [OAR] 345-027-0351(3)" (again, in circular fashion, pointing back to a rule where the Type B process is not actually described) and that "[t]he Department must, as promptly as possible, issue a written determination to the certificate holder."

In other words, the Proposed Rules would leave it solely in the discretion of the certificate holder whether or not to apply for Type B review, and solely in the discretion of ODOE (not the Council) whether to allow a Type B review. Although Proposed Rule 345-027-0357(8) includes a non-exclusive list of "factors" that ODOE "may consider" in determining whether to allow Type B review, the determination still remains completely up to ODOE, and the listed "factors" are non-exclusive and non-binding. The Proposed Rules are arbitrary and capricious on their face because they would allow for case-by-case, subjective decisions about which procedures to use for each application. In addition, although Proposed Rule 345-027-0351(2) refers to the "Type A" process as "the default review process," the use of this phrase here is effectively meaningless, because certificate holders would still decide whether and when to apply for Type B review, and ODOE staff would still be given delegated authority to use the Type B process whenever they wish, under any factors or criteria they deem appropriate.[1]

In addition, under the Proposed Rules, the Council would not be allowed any oversight over ODOE's determinations of which matters will be reviewed under the more truncated "Type B" process. The only circumstance under which ODOE would ever refer to the Council an ODOE determination that the Type B review process will or will not be applied is "[a]t the request of the certificate holder." Proposed Rule 345-027-0357(7). If a Council member,[2] an interested member of

[1] Given that Type B review would allow certificate holders to effectively cut the public out of the site certificate amendment review process by completely avoiding any public hearing and the possibility of a contested case, it is reasonable to expect that certificate holders would pursue Type A review as often as possible. Indeed, under the 2018 and 2019 rules, certificate holders routinely sought Type B review, and more often than not, their requests for Type B review were granted by ODOE. Thus, Type B has, in effect, become the default review process.

[2] Although OAR 345-001-0080(5) allows "[a]ny Council member [to] move for reconsideration of a final order in other than a contested case" and authorizes the Council to decide, by majority vote, whether to grant

the public, or even ODOE itself wishes to refer such questions to the Council, that would not be allowed under the Proposed Rules. Nor would the Proposed Rules allow any comments from the public on whether a Type A or Type B review process should be applied. In these ways, the Proposed Rules would completely insulate from the public the decision-making process of which type of review process to apply.

Thus, the Proposed Rules would efffectively make ODOE staff the gatekeepers who would decide which applications receive Type B review versus Type A review, and therefore which applications have hearings and which might be subject to contested cases. The Council should not delegate such important decision-making authority to staff. Although the Oregon Supreme Court held in *Friends v. EFSC* that it not illegal for the Council to delegate these powers to ODOE, 365 Or at 390–94, whether the Council *should* do so is an entirely different question. Here, the Council should retain its authorities rather than delegating them to the whims of the ODOE staff.

The processing of the Summit Ridge Wind Farm Amendment #4 (pursuant to the 2018 rules) is a case in point that illustrates the problems with the Council delegating its decision-making authority to ODOE staff. In that matter, the site certificate holder, Pattern Energy, in an effort to avoid a public hearing and to prevent interested stakeholders from requesting a contested case, sought "Type B" review. On August 23, 2018, ODOE issued a written determination that Pattern's request for amendment would instead be processed under the "Type A" review procedures. But then, on September 5, 2018, Pattern submitted to ODOE a written request that ODOE "reconsider" and reverse its Type A Review Determination. No applicable rule authorized ODOE to reconsider or reverse its decision. Yet ODOE did exactly that. On November 28, 2018, ODOE issued a new order reconsidering and reversing its prior order and determining that Pattern's request would no longer be processed under the "Type A" review procedures, but instead would be processed under the "Type B" review procedures. It took a lawsuit filed by Friends of the Columbia Gorge and Oregon Wild challenging ODOE's unlawful determination (*Friends of the Columbia Gorge v. ODOE*, Multnomah County Circuit Court No. 19CV03850) before Pattern and ODOE again reversed course (back to ODOE's original approach) and agreed to process Pattern's request for amendment under the Type A procedures. ODOE's constantly shifting determinations in the Summit Ridge matter illustrate that the proposed Type A/B/C framework (with nearly complete delegation of decision-making authority to ODOE, with no binding criteria governing ODOE's determinations) is inherently arbitrary and capricious, and subject to the whims of ODOE staff. The Council should *not* delegate its important decision-making powers and authorities to ODOE staff.

As for the proposed "Type C" review, this would apparently effectively replace the current rules for expedited amendments. *Compare* OAR 345-027-0080 (2017) *with* Proposed Rule

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reconsideration, this rule would only apply to ODOE determinations to apply "Type B" review procedures if the Council concludes that such determinations are "final orders." But in recent litigation involving the Summit Ridge Wind Farm, counsel for ODOE asserted that such ODOE determinations are *not* final orders—nor even orders—and that such determinations cannot be challenged at all under the Oregon Administrative Procedures Act. (*See* Feb. 1, 2019 Email from Patrick Rowe, Oregon Department of Justice, to Gary Kahn and Nathan Baker.) If counsel for ODOE is correct, this means that under the Proposed Rules, ODOE determinations to apply "Type B" review procedures would not be reviewable by anyone—not by the Council, nor by reviewing courts. This is yet another reason why the Council should decline to wholly delegate its decision-making powers and authorities to ODOE staff.

345-027-0380. However, the proposed Type C review still contains significant flaws. First, an application processed under Type C review would apparently still undergo Type A or Type B review after Type C review is completed. *See* Proposed Rules 345-027-0380(7), (8), (9), (11), (12). The same problems discussed above, involving the lack of binding criteria for which types of applications would undergo Type A review versus Type B review, would thus still apply.

Second, Proposed Rule OAR 345-027-0380 would strip all the public process opportunities currently found in OAR 345-027-0080 (2017), such as the ability for the public to comment on the application prior to the proposed order and the ability for the public to request a contested case after a temporary order is issued. *See* OAR 345-027-0080(3)(b), (8) (2017). Such changes would, once again, decrease, rather than increase, public participation opportunities.

Third, as with Type B review discussed above, Proposed Rule 345-027-0380(5) would only allow the certificate holder (and not the public, a Council member, or ODOE staff itself) to refer to the Council a staff determination that Type C review should be applied to the application. This unfairly tips the scales in favor of the certificate holder, depriving the public of any opportunity to argue against a staff determination that Type C review is appropriate, and depriving the Council of its oversight powers.

In all, the proposed scheme for Type A, Type B, and Type C reviews is severely flawed and inappropriate policymaking. The proposed scheme should not be adopted. If the Council still wishes to revise the rules for amendments to site certificates, it should reinstate ODOE's original proposal (articulated at the beginning of the 2017 rulemaking process) to require a public hearing on all applications for amendments to site certificates, and to retain the provisions in the current rules that allow interested persons to request contested cases for all proposed amendments. In the alternative, the Council should use its statutory authority to focus on preparing objective criteria for which types of amendment applications warrant expedited review, which warrant hearings, and which warrant contested cases. *See* ORS 469.405(1) ("The council may establish by rule the type of amendment that must be considered in a contested case proceeding."). Objectivity and bright-line criteria should be favored over vague rules delegating important decisions to staff on a case-by-case, discretionary basis. In addition, if Proposed Rule 345-027-0357(7) is adopted, it should be revised to allow not only the certificate holder, but also allow ODOE staff, any member of the Council, or any interested person to request that ODOE "refer its determination to the Council for concurrence, modification, or rejection." It makes little sense to only allow the certificate holder to make such requests. Either way, as stated in the previous section of this letter, the Council should retain the provisions of current law that allow for early public participation opportunities on applications for certificate amendments (*e.g.*, allowing early public comments on the application and allowing for the possibility of early public meetings on applications).

Recommendation: Reject the proposed scheme for Type A/B/C review. If the Council still wishes to revise the rules for amendments to site certificates, then the Council should reinstate ODOE's original 2017 proposal to require a public hearing on all proposed amendments to site certificates and to retain the current rules that allow interested persons to request contested cases for all proposed amendments. In the alternative, the Council should adopt objective criteria defining which types of amendments will have hearings, which ones will be considered in contested cases, and which ones will be considered in expedited review. Focus on adopting objective, bright-line criteria

governing which processes would apply to which types of proposed amendments, rather than allowing subjective, discretionary decisions made on a case-by-case basis by staff in the absence of any binding criteria. In addition, if Proposed Rule 345-027-0357(7) is adopted, it should be revised to allow not only the certificate holder, but also allow ODOE staff, any member of the Council, or any interested person to request that ODOE "refer its determination to the Council for concurrence, modification, or rejection." Regardless of which of these approaches is pursued, retain the early public participation opportunities currently in the rules.

3. Several references to "Council standards" in the Proposed Rules should be modified to also refer to any other "applicable laws," in order to match similar language elsewhere in the Proposed Rules and comply with applicable law.

Several of the Proposed Rules would narrowly require review only under "Council standards," thus ignoring or omitting other applicable laws. *See, e.g.*, Proposed Rules 345-027-0350(4)(a) ("a Council standard"); 345-027-0360(3) ("any Council standard"), 345-027-0380(2)(e) ("Council standards"), 345-027-0380(6)(f) ("the Council's standards"). If these Proposed Rules are adopted, the narrow references to "the Council's standards" and "Council standards" should be modified to also refer to any other "applicable laws," in order to match similar language elsewhere in the Proposed Rules. *See, e.g.*, Proposed Rules 345-027-0360(1)(e), 345-027-0375.

In reviewing proposed amendments to site certificates, the Council must apply not just its standards, but also other applicable federal, interstate, state, and local laws. *See* Atty Gen Letter of Advice dated Nov. 4, 1991, to David Stewart-Smith, Dept. of Energy, 1991 WL 634941 (OP-6428); Atty Gen Letter of Advice dated Mar. 26, 1985, to Bill Dixon, Dept. of Energy, 1985 WL 199961 (OP-5796); EFSC Order Approving Amendment No. 4 to the Site Certificate for the Mist Underground Natural Gas Storage Facility at 6 (July 21, 1997) ("[W]e must make the same determination on compliance for an amendment to a site certificate that we must make for initial issuance of a site certificate. We must determine whether the facility—or the amended facility—complies with the standards, *statutes and rules applicable to the siting decision*. That includes *statutes and rules* governing the decisions on other agency permits. We must then impose conditions in the amended site certificate to ensure compliance with the applicable standards, *statutes and rules*.") (emphasis added). Here, limiting consideration by rule to only "Council standards," and not other applicable laws, would be unlawful.

Recommendation: If Proposed Rules 345-027-0350(4)(a), 345-027-0360(3), 345-027-0380(2)(e), and 345-027-0380(6)(f) are adopted, the narrow references to "Council standards" in these rules should be modified to also refer to any other "applicable laws."

4. The Council should reject as unnecessary, duplicative, and unduly burdensome the proposal to adopt new requirements for requests for contested cases to include detailed information about the requester's interests.

ODOE proposes new rules that would require persons seeking contested cases on proposed site certificate amendments to submit a variety of information, including "[a] detailed description of the person's interest in the proceeding and how that interest may be affected by the outcome of the

proceeding," "[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," "[i]f 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]f 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 "[a] statement of the reasons why others who commented on the record of the public hearing cannot adequately represent the interests identified in [the prior proposed rule subsections]." Proposed Rules 345-027-0371(6)(e), (g), (h), (i), (j).[3]

Commenters oppose these new requirements because they involve issues that should be decided by the Hearing Officer in commencing and adjudicating a contested case, not by the Council in deciding whether to allow a contested case. The Proposed Rules are unnecessary and potentially burdensome to interested members of the public. In addition, the proposed new rules do not include any provisions specifying what the Council should or could do with the information that would be supplied under these new Proposed Rules. Moreover, these Proposed Rules would duplicate information that must already be submitted in subsequent requests for party status pursuant to the Council's existing rules. *See, e.g.*, OAR 345-015-0016(2), (5)(d) (authorizing interested persons who have an interest or represent a public interest to request full party status or limited party status, and requiring petitions for party status to include detailed descriptions of the petitioner's interest and how that interest may be affected by the outcome of the proceeding). There is no reason to duplicate existing law and require this information at an earlier stage, especially given that the Council would apparently not do anything with the information except to pass it on to the Hearing Officer. In the 2017 rulemaking proceeding, the Council and ODOE gave assurances that they were not intending to propose "any changes to how the Council considers and evaluates [contested case] requests to determine whether to grant a [contested case] for a [request for amendment]." (EFSC Mar. 1, 2017 Rulemaking Notice at 3.) Given these assurances, the proposed new requirements at Proposed Rules 345-027-0371(6)(e), (g), (h), (i), and (j), which would require interested persons to submit various unnecessary items, should be deleted from the Proposed Rules. In determining whether to allow a contested case, the Council's sole focus should be to determine which "issue[s] justif[y] a contested case." Proposed Rule 345-027-0371(9); *see also* OAR 345-027-0070(8) (2017) ("The Council shall determine whether any issue identified in a request for a contested case proceeding justifies a contested case proceeding."). The proposed additional requirements in the Proposed Rules are unnecessarily, duplicative, and unduly burdensome.

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[3] Proposed Rule 345-027-0371(6)(j) is particularly problematic. That rule would require persons requesting a contested case to provide "[a] statement of the reasons why others who commented on the record of the public hearing cannot adequately represent the [requester's] interests." However, it would be difficult for an interested person requesting a contested case to know which other interested persons may have previously commented and which issues they may have raised. Moreover, there is no way for a person requesting a contested case to know which other persons may also request the Council to initiate a contested case, or once a contested case is initiated, which other interested persons may request party status. Proposed Rule 345-027-0371(6)(j) serves no apparent purpose. If the concern is duplication or repetition of issues in a contested case by multiple parties, the Council's existing rules allow the Hearing Officer to address such concerns as part of the contested case. *See* OAR 345-015-0018, -0022, -0023, -0083.

Recommendation: Delete the proposed new requirements for persons requesting contested cases to include information in their request about their interests, how those interests are affected, why other persons cannot represent those interests, and whether they are seeking full party status or limited party status. (*See, e.g.*, Proposed Rules 345-027-0371(6)(e), (g), (h), (i), (j).) Retain existing law on these matters; existing law already authorizes and requires the majority of these items to be raised and decided as part of the contested case proceeding.

5. The Council should reject the proposed rule language that would require the Council to "identify the issues each contested case party may participate on" and that would limit "[t]he issues a party to a contested case proceeding may participate on . . . to those issues that party properly raised in its contested case request."

Proposed Rule 345-027-0371(10)(a) includes language that would limit the issues each party to a contested case may participate on: "The Council must identify . . . the issues each contested case party may participate on. . . . The issues a party to a contested case proceeding may participate on must be limited to those issues that party properly raised in its contested case request that the Council found sufficient to justify a contested case . . . ." This language is inconsistent with applicable law and Oregon Supreme Court precedent. Accordingly, the Council should reject this language and delete it from Proposed Rule 345-027-0371(10)(a).

The proposed new requirement to limit each party's participation to only the issues previously raised by that specific party violates the Oregon Administrative Procedures Act ("APA"). ORS 183.417(1), a provision of the APA, unequivocally provides that "[i]n a contested case proceeding, the parties may elect . . . to *respond and present evidence and argument on all issues* properly before the presiding officer in the proceeding" (emphasis added). *See also Fairbanks v. Bureau of Labor & Indus.*, 323 Or 88, 913 P2d 703 (1996) ("[U]nder the APA's contested case provisions, [the] right to a 'hearing,' . . . includes . . . the right . . . to present evidence and argument on *all issues* . . . .") (emphasis added) (citing ORS 183.415(3) (1996)); *Hodges v. Real Estate Div., Dep't of Commerce*, 45 Or App 753, 609 P2d 421 (1980) (remanding agency decision because party was not afforded an opportunity, as required by the APA, to "present . . . argument on *all issues involved*") (emphasis added) (quoting ORS 183.415(3) (1980)).

Pursuant to ORS 183.417(1), if an issue is properly raised by a party in the contested case (or raised by ODOE or the presiding officer in the contested case), the other parties have the statutory right to "respond and present evidence and argument" in response. ORS 183.417(1). This APA provision does *not* say that *only the applicant* can respond to all issues in the case, which is apparently the rule that ODOE would prefer. Rather, "the parties," *i.e.*, *all* parties, may respond. *Id.*; *see also* OAR 345-015-0023(3) (requiring the Hearing Officer to "explain the issues involved in the hearing and the matters that *the parties* must either prove or disprove") (emphasis added).[4]

[4] Although OAR 345-015-0083(2) does authorize the Hearing Officer to "limit[] parties to those issues they raised on the record of the public hearing," this rule must be interpreted, in light of the Oregon APA provision discussed above (ORS 183.417(1)), as limiting parties' ability to *raise* issues in the contested case, not parties' ability to *respond* to issues raised by other parties.

The proposed new requirement to limit each party's participation to only the issues raised by that party also conflicts with an Oregon Supreme Court decision involving EFSC. In a prior appeal of a Council decision, the Oregon Supreme Court addressed a similar question and resolved it in favor of the parties' rights to fully participate in an EFSC contested case and any appeal thereof:

> Respondent PGE contends that . . . the court's scope of review is limited to rulings made against [Petitioner Marbet] . . . .
>
> . . . .
>
> It does not follow that each intervenor has standing to seek judicial review only of issues arising from his individual intervention. Such a rule could preclude a person who intervenes from securing review of the legality of the final order on issues that the agency in fact decided on someone else's initiative. No rule compels that result. *See, e.g.*, *Hennesey v. SEC*, 285 F.2d 511, 515 (3d Cir. 1961).

Marbet v. PGE, 277 Or 447, 453, 455, 561 P.2d 154 (1977) (footnote omitted).

The *Hennesey* case, cited in *Marbet*, explains the rationale behind allowing parties in an agency's contested case to address each other's issues:

> The principal purpose of the doctrine under consideration is to make sure that it is the agency and not the courts which passes first on the contention of the participants. . . . This purpose is advanced so long as the contentions and exceptions raised on review have been in fact effectively and meaningfully raised before the regulatory agency. This is true regardless of whether the person who appeals the agency decision or some other person aggrieved by the decision happens to have raised the points before the agency.

Hennesey, 185 F.2d at 515.

The Energy Facility Siting Act also embodies the same proposition as in *Marbet*: so long as one party raises an issue, any other party may appeal on that issue to the Oregon Supreme Court: "Issues on appeal shall be limited to those *raised by the parti*es to the contested case proceeding before the council." ORS 469.403(2) (emphasis added). This statutory language does *not* limit the issues that each party may raise on appeal to only the issues unique to that party. Thus, under *Marbet* and ORS 469.403(2), if the Council commits error in deciding a contested issue, that error may be appealed by any party to the contested case, regardless of whether the appealing party was the first to raise the issue.

Under all of these authorities, parties to a contested case may respond to each other's properly raised issues with evidence and argument of their own, and may appeal to the Oregon Supreme Court on issues raised by other parties. The purpose behind this rule, as articulated in *Marbet* and *Hennesey*, is to allow issues to be fully vetted at the administrative level, prior to any judicial review.

Not only would the identified language in Proposed Rule 345-027-0371(10)(a) violate the applicable law, it would also be bad policy. It is not difficult to imagine scenarios where the Council would benefit from full participation by all parties during the contested case. For example, a party to a contested case may, as part of the contested case, challenge specific analysis or conditions of approval proposed by ODOE staff. Meanwhile, other parties may have *supported* ODOE's proposed analysis or conditions all along, and thus would have had no reason to raise such issues for the contested case. Yet under the Proposed Rules, these other parties would be prohibited from responding (and thereby supporting ODOE's recommendations) in the contested case, and the Hearing Officer and Council would thus not benefit from these parties' participation, and may reverse or modify ODOE's recommendations. The net result would be that such parties who supported ODOE all along would be forced to remain silent during the contested case, wait for any adverse decision by the Council, and then appeal it to the Oregon Supreme Court. Such an outcome is not only a blatant violation of ORS 183.417(1), it is also inefficient, unreasonable, bad policy, and in contravention of prior appellate court decisions. *See Forelaws on Board v. EFSC*, 306 Or 205, 216, 760 P2d 212 (1988) (EFSC had authority to interpret a statute in a contested case order, but only "[s]o long as *the parties* had an opportunity to present evidence that addressed [the statute] as interpreted by EFSC.") (emphasis added); *Martini v. Oregon Liquor Control Comm'n*, 110 Or App 508, 823 P2d 1015 (1992) ("[W]hen there is an established interpretation [of a statute or rule] that the agency alters to a significant degree in the course of a proceeding, *the parties* are entitled to be heard under the new standards.") (emphasis added) (citing ORS 183.415(3) (1992)).

In conclusion, the Council should reject the proposal to adopt the proposed language in Proposed Rule 345-027-0069(10)(a) that would improperly limit each party's participation in a contested case to only the issues raised by that party. Instead, the Council should abide by existing law, which allows parties in contested cases to respond to all issues properly before the presiding officer, even if the issues were raised by other parties.

Recommendation: Delete the identified language in Proposed Rule 345-027-0069(10)(a) that would limit parties' participation in a contested case to only the issues specifically raised by that party. Abide by existing law on this issue, in particular ORS 183.417(1), which allows parties to contested cases to respond to all issues properly before the presiding officer.

6. The Council should reject all requests to narrow or weaken the substantive scope of the Council's review of requested certificate amendments.

In this rulemaking, ODOE is recommending several proposed rule revisions that would narrow or weaken the substantive scope of the Council's review of requested amendments to site certificates. Commenters oppose these changes; the Council should reject them and should instead retain or strengthen existing language on the scope of its review of proposed amendments.

First, Commenters oppose the proposed language in Proposed Rule 345-027-0375 that would impermissibly limit the scope of the applicable laws that would be reviewed by the Council. Proposed Rules 345-027-0375(2)(a) and (b) would limit the scope of review only to whether the proposed amendment "complies with all laws and Council standards *applicable to an original site certificate application*" (emphasis added). There is no reason to limit the scope only to the laws that applied to the original site certificate application. If new applicable laws have been adopted, they must be

applied to the request for amendment, whether or not they would have applied to the original application for a site certificate.[5] The best way to correct this problem would be to revise the language "all laws and Council standards applicable to an original site certificate application" in Proposed Rules 345-027-0375(2)(a) and (b) to read "all applicable laws and Council standards."

Second, the proposed rule language regarding the date of the applicable laws and standards has been changed from the proposed language two years ago, raising further questions. In the 2018 rules, the proposal was to apply "all other applicable laws and Council standards" in effect on "*the date the Council issues the amended site certificate*." OAR 345-027-0075(3)(b) (2018) (emphasis added). In contrast, in the Proposed Rules, this date has been changed to "the date the Council [*sic*] the amended site certificate is executed." Proposed Rule 345-027-0375(3)(b). Aside from the obvious typographical error, this new language invites questions about why the date of execution of any amended site certificate is preferred over the date of the Council's final order (or the date the amended site certificate is issued), and what procedures the Council will employ to implement any changes in law that occur after the Council's final order but before execution of the certificate. Also, the typographical error itself raises questions: does "execution" in Proposed Rule 345-027-0345(3)(b) mean execution by the Council, or full execution by *both* the Council and the certificate holder?[6] If the latter is intended, what happens if the certificate holder purposely delays execution by several months, or even years?[7] Finally, the proposed language in Proposed Rule 345-027-0345(3)(b) is inappropriate, because it presupposes that the Council will in fact decide to approve the certificate holder's requested amendments, by referring to "the date . . . *the* amended site certificate *is executed*" (emphasis added). This language, as drafted, does not allow for the possibility that the Council will choose to *deny* the requested amendments and decline to execute any amended site certificate. The existing language in the 2017 rules is preferable, because it refers to "a decision to grant *or deny* issuance of an amended site certificate" and "the date the Council *makes its decision*." OAR 345-027-0070(10) (2017) (emphasis added); *see also* OAR 345-027-0080(6) (2017) (referencing "a decision *whether* to issue a temporary order") (emphasis added).[8]

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[5] Proposed Rule 345-027-0075(2)(b) awkwardly attempts to correct this problem by including language that the Council must "consider[] any changes in . . . law since the date the current site certificate was executed." However, the latter language merely requires the Council to "consider" any changes in law, while the former language expressly limits the Council's ultimate decision of compliance to "all laws and Council standards applicable to an *original* site certificate application" (emphasis added). In addition, the language requiring consideration of "changes in . . . law" is only in Proposed Rule 345-027-0075(2)(b), and *not* in Proposed Rule 345-027-0075(2)(a).

[6] After all, an "amended site certificate . . . is effective upon execution by [both] the Council Chair and by the applicant." OAR 345-027-0070(8)(c), OAR 345-027-0070(9), 345-027-0080(9)(b), 345-027-0080(10), 345-027-0100(10), 345-027-0100(11) (2017).

[7] Although this scenario may seem unlikely, it has in fact previously occurred, for a wind project proposed in neighboring Washington State. For the Whistling Ridge Wind Project, Governor Christine Gregoire executed a Site Certification Agreement ("SCA") for the project on March 5, 2012, but the applicant purposely withheld its execution of the SCA for more than twenty months, until November 18, 2013.

[8] Commenters do support the proposed revision of "all other state statutes, administrative rules, and local government ordinances" at OAR 345-027-0070(10) (2017) to "all other applicable laws and Council standards" at Proposed Rule 345-027-0075(3)(b). The latter, broader phrase is more legally correct because it would include federal and interstate statutes and rules, which are omitted from the current language at OAR 345-027-0070(10) (2017).

Third, Commenters oppose the proposal to limit the geographic scope of the Council's review only to whether "the portion of the facility within the area [proposed to be] added to the site" complies with the applicable law and standards. Proposed Rule 345-027-0375(2)(a). There is no reason to so limit the scope of the inquiry. If the facility as a whole, including both the previously approved portions and any proposed expansions of the project site, would fail to meet the applicable law or standards, then the proposed expansion should be denied. For example, if a developer proposes to expand the size of an approved wind energy facility, the Council should be required to evaluate whether the full facility, taking into account both previously approved components and new proposed components, complies with applicable noise, scenic, wildlife, and other standards. The existing law contains no such geographic limitation on the substantive scope of the Council's inquiry; instead, existing law plainly requires a review of "the facility." OAR 345-027-0070(10)(a) (2017). The Council should reject ODOE's invitation to weaken the rules with the proposed new geographic limitation, which is more likely to lead to adverse impacts to protected resources.

Fourth, Commenters oppose the proposed language to limit the scope of the laws that would be applied during the Council's review to only the laws or standards "that protect a resource or interest that could be affected by the proposed change." Proposed Rule 345-027-0375(2)(c). No such limitation on the scope of review appears in existing law, nor is there any reason to adopt such a limitation. In addition to laws that expressly protect resources, other laws that apply to a requested amendment might have been changed since the original approval as well, such as procedural or financial requirements. Applicants for requested amendments should be required to comply with *all* laws and standards in effect at the time of the Council's decision.

Recommendation: Delete the proposed language in Proposed Rule 345-027-0375 that would impermissibly limit the scope of the Council's review only to the laws and standards "applicable to an original site certificate application." (*See, e.g.*, Proposed Rules 345-027-0375(2)(a), (b).) Delete the proposed language in Proposed Rule 345-027-0375(3)(b) referring to "the date the Council [*sic*] the amended site certificate is executed," and replace it with existing language from the 2017 rules referring to "a decision to grant or deny issuance of an amended site certificate" and "the date the Council makes its decision." (*See, e.g.*, OAR 345-027-0070(10)(2017).) Delete the proposed language in Proposed Rule OAR 345-027-0375(2)(a) that would impermissibly limit the geographic scope of the Council's review only to whether "the portion of the facility within the area [proposed to be] added to the site" complies with the applicable law and standards. Delete the proposed language in Proposed Rule 345-027-0375(2)(c) that would limit the scope of the laws that would be applied during the Council's review to only the laws or standards "that protect a resource or interest that could be affected by the proposed change."

7. The Council should reject the proposed rule language that would authorize ODOE to approve expansions of site boundaries without any corresponding amendments to site certificates, and replace it with language specifying that any proposal to add area to a site boundary requires a certificate amendment.

Proposed Rule 345-027-0357(1)(b) would authorize ODOE to approve expansions of site boundaries without any corresponding amendments to site certificates. This Proposed Rule would violate the Energy Facility Siting Act, which prohibits any "facility" from being "constructed or

expanded *unless a site certificate has been issued for the site thereof* in the manner provided in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992." ORS 469.320(1) (emphasis added). This provision of the Siting Act expressly requires a "site certificate" to be issued "for the site thereof" for any "facility," before the facility may be constructed or expanded. *Id.*

Many of the terms used in ORS 469.320(1) are further defined by the Siting Act. "Facility" is defined to mean "an energy facility together with any related or supporting facilities." ORS 469.300(14).

"Related or supporting facilities" is defined to mean "any structure, proposed by the applicant, to be constructed or substantially modified in connection with the construction of an energy facility, including associated transmission lines, reservoirs, storage facilities, intake structures, road and rail access, pipelines, barge basins, office or public buildings, and commercial and industrial structures." ORS 469.300(24).

"Site" is defined to mean "any proposed location of an energy facility and related or supporting facilities." ORS 469.300(25).

"Site certificate" is defined to mean "the binding agreement between the State of Oregon and the applicant, authorizing the applicant to construct and operate a facility *on an approved site*, incorporating all conditions imposed by the council on the applicant." ORS 469.300(26) (emphasis added).

"Applicant" is defined to mean "any person who makes application for a site certificate in the manner provided in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992." ORS 469.300(1).

Finally, "application" is defined to mean "a request for approval of *a particular site or sites* for the construction and operation of an energy facility or the construction and operation of an additional energy facility upon a site for which a certificate has already been issued, filed in accordance with the procedures established pursuant to ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992." ORS 469.300(2) (emphasis added).

Under all of these authorities, there must be a site certificate defining the exact site for each facility before the facility (including any related or supporting facilities) may be constructed or expanded. Each facility must be covered by a site certificate, which, in turn, must expressly cover a particular "site thereof." ORS 469.320(1). Accordingly, any proposal to expand the boundaries of such a site inherently requires amendment of the site certificate, in order to modify the previously approved site or sites.

In short, Proposed Rule 345-027-0357(1)(b) violates the Siting Act, because it would authorize ODOE to approve expansions of site boundaries without any corresponding amendments to site certificates. Whenever an applicant seeks to expand a site boundary, a certificate amendment is required in order to redefine the approved site(s). Proposed Rule 345-027-0357(1)(b) is unlawful and should be rejected.

Indeed, the 2017 rulemaking proceeding began with a proposal to "require an amendment to the site certificate for changes proposing to add any quantity of area to the site boundary." (EFSC Notice of Proposed Rulemaking Hearing at 2 (Jan. 13, 2017).)[9] Commenters have always supported that laudable goal for the Council's rules. Unfortunately, that stated goal was apparently abandoned toward the end of the 2017 rulemaking proceeding, and now the Proposed Rules would do the exact opposite of what was originally intended in 2017. Commenters urge the Council to reject the unlawful rule language at Proposed Rule 345-027-0357(1)(b) and replace it with language clarifying that any proposals to expand approved site boundaries always requires amendment of the site certificate. The language initially proposed by ODOE in 2017 (which would have been added to OAR 345-027-0050 (2017)) succinctly and sufficiently captures this concept: "[A]n amendment to a site certificate is required to . . . [a]dd area to the site boundary." This language should be added to the Council's rules.

Recommendation: Delete the proposed language in Proposed Rule 345-027-0357(1)(b) that would authorize ODOE to approve expansions of site boundaries without any corresponding amendments to site certificates. Replace this with rule language specifying that "an amendment to a site certificate is required" in order to "add area to the site boundary," just as was initially proposed by ODOE in 2017.

8. The Council should retain its current discretion, when extending deadlines for beginning or completing construction, to set new construction periods shorter than the maximum lengths prescribed by rule.

Under the Council's current permanent rules, the Council has authority to extend deadlines for beginning and completing construction of energy facilities, and in the italicized language below, the Council has discretion to set new construction periods shorter than the maximum lengths prescribed by rule:

> If the Council grants an amendment under this rule, the Council shall specify new deadlines for beginning or completing construction that are *not more than* two years from the deadlines in effect before the Council grants the amendment.

OAR 345-027-0030(4) (2017) (emphasis added).

In the Proposed Rules, ODOE proposes several changes to the provisions for extending deadlines. Of most concern to Commenters is the proposed removal of the "not more than" language from the above-quoted provision. This change would strip from the Council its current discretionary authority to set new construction periods shorter than the maximums prescribed by rule. *See* Proposed Rule 345-027-0385(3). In addition, the current two-year limit per extension would be increased to three years. *See id.* The net result is that the Council's current discretion to approve extensions of *up to two years* would be replaced with a one-size-fits-all rule authorizing the Council to only approve extensions of *exactly three years*. Commenters object to these proposed revisions. There is no reason for the Council to abandon its discretion to allow extensions shorter than the maximum length

[9] ODOE and EFSC continued to state this as a rulemaking goal as late as August 2017 (just two months before the 2018 rules were adopted). (*See, e.g.*, EFSC Notice of Rulemaking at 1–2 (Aug. 10, 2017).)

prescribed by rule, and this discretion becomes all the more important when coupled with the proposal to increase the prescribed extension length from two years to three years.

It is not difficult to imagine scenarios where a shorter length of time than two years (or shorter than three years) would be appropriate for a construction extension, which is why EFSC has traditionally given itself discretion to approve such extensions. For example, EFSC may be expecting an imminent listing decision on a wildlife species that may be listed as threatened or endangered in the near future. Under such circumstances, the Council may wish to approve only a short construction extension, which could be revisited after the listing decision if any further extensions are sought. Or the certificate holder itself may only desire a short extension of a few months for any number of reasons—perhaps involving construction schedules, subcontracts, power purchase agreements, or some other reason. In such scenarios, a certificate holder may wish to only seek a short extension, rather than risk an all-or-nothing decision on a three-year extension that may be more likely to meet with opposition from interested stakeholders.

The Council should retain its discretion to approve shorter extensions, which is in the public interest and in the best interest of all stakeholders. Proposed Rule 345-027-0385(3) should be modified to retain the Council's current discretion to approve extensions less than the maximum lengths prescribed by rule.[10]

Finally, Proposed Rules 345-027-0385(1), (2), and (5) would treat facilities approved prior to October 24, 2017 differently from facilities approved after that date. ODOE and EFSC have not articulated a rational basis for including this specific date in the rules. October 24, 2017 was the date that the Council attempted to adopt permanent rules, but those rules "are invalid," *Friends v. EFSC*, 365 Or at 396, and that date has no other significance. Accordingly, Proposed Rules 345-027-0385(1), (2), and (5) should be rejected. In the alternative, if these rules are adopted, the October 24, 2017 date in Proposed Rule 345-027-0385(5) should be replaced with the date that Proposed Rule 345-027-0385 is adopted and effective.

Recommendation: Modify Proposed Rule 345-027-0385(3) to retain the Council's current discretion to approve new construction periods less than the maximum lengths prescribed by rule. In addition, modify Proposed Rule 345-027-0385(4) to establish a limit on the total cumulative *length* of extensions, rather than a limit on the *number* of extensions. Either reject Proposed Rules 345-027-0385(1), (2), and (5), or replace the October 24, 2017 date in Proposed Rule 345-027-0385(5) with the date that Proposed Rule 345-027-0385 is adopted and effective.

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[10] Commenters are mindful of the proposed rule revisions that "the Council shall not grant more than two amendments to extend the deadline for beginning construction of a facility or a phrase of a facility." Proposed Rule 345-027-0385(4). This proposed language could be modified to establish a limit on the total cumulative *length* of extensions (*e.g.*, no more than six years), rather than a limit on the *number* of extensions.

9. For any materials that would be posted on ODOE's website under these rules, the Council should ensure that the rules also require public notice of the posted materials and opportunities for public comment.

In several places, the Proposed Rules would require specific materials to be placed on ODOE's website, but without providing any public notice to interested persons, nor any opportunities for public comment. Such materials would include amendment determination requests, ODOE written determinations on amendment determination requests, preliminary requests for amendments to site certificates, requests for amendments to site certificates, requests for "Type C" review, ODOE written determinations on requests for "Type C" review, and ODOE draft temporary orders on pre-operational requests for amendment under "Type C" review. *See, e.g.*, Proposed Rules 345-027-0357(5), (6), 345-027-0360(2), 345-027-0365(1)(b), 345-027-0380(3), (4), (7).

Merely posting materials on ODOE's website fails to ensure adequate notice to the public. ODOE and the Council should not expect potentially affected persons to have to check ODOE's website on a daily basis for possible proposed changes to energy projects. For any of the above-listed materials posted on ODOE's website, the rules should also include the Council's standard public notification procedures (*e.g.*, public notice through the Council's general mailing list, through any special mailing list established for the facility, to reviewing agencies, and to nearby property owners). (*See, e.g.*, Proposed Rules 345-027-0110(6), 345-027-0371(2), 345-027-0372(2), 345-027-0400(6).) Notice is particularly important for ODOE determinations, in the event that interested persons may desire to seek judicial review of such determinations. In addition, the Council should allow for public comment on the above-listed materials. Ensuring adequate notice of these materials and allowing for public comment will promote public participation opportunities, which EFSC and ODOE stated in 2017 was one of their goals for the rules in OAR Chapter 345, Division 27.

Recommendation: For all materials that would be posted on ODOE's website under Proposed Rules 345-027-0057(5), (6), 345-027-0060(2), 345-027-0065(1)(b), 345-027-0080(3), (4), and (7), require public notice of the posted materials to the Council's general mailing list, any special mailing list established for the facility, reviewing agencies, and nearby property owners. In addition, allow for public comment on the posted materials.

10. The Council should reject the proposal to make any new rules at OAR Chapter 345, Division 27 retroactively applicable for a period of more than two years.

Proposed Rule 345-027-0311(1) would make all rules at OAR Chapter 345, Division 27 retroactively applicable for a period of more than two years, and would specify that certificate holders whose requests were processed under the invalid 2018 or 2019 rules are not required to "resubmit the request or to repeat any steps taken as part of the request":

> The rules in this division apply to all requests for amendment to a site certificate and amendment determination requests for facilities under the Council's jurisdiction that are submitted to, or were already under review by, the Council on or after the effective date of the rules. The Department and Council will continue to process all requests for amendment and amendment determination requests submitted on or after October 24, 2017 for which Council has not made a final decision prior to the effective date of

> these rules, without requiring the certificate holder to resubmit the request or to repeat any steps taken as part of the request prior to the effective date of these rules.

Proposed Rule 345-027-0311(1).

Commenters oppose this change because it would be unfair to concerned stakeholders and the public at large, and because it would violate the Administrative Procedures Act. Applications to amend energy projects and site certificates should be subject to valid and properly adopted rules in effect at the time the applications were submitted. It would be unreasonable, unfair, unlawful, and contrary to the public interest to retroactively change the rules years later.

Agency rules cannot be applied retroactively if to do so would be unreasonable or unfair, and this requires an evaluation of the potential prejudice to interested persons. *See Gooderham v. Adult & Family Servs. Div*, 64 Or App 104, 109–11, 667 P2d 551 (1983). Here, the proposed language at Proposed Rule 345-027-0311(1) would make the Proposed Rules, which EFSC and ODOE themselves have described as a "wholesale re-write" of the applicable rules, retroactively applicable in excess of two years. It would be completely unfair and improper to retroactively change and apply the rules for reviewing site certificate amendments two years or more after they are submitted, and to do so would substantially prejudice interested persons and the public at large, who have a right to rely on the Administrative Procedure Act's mandatory rulemaking requirements and to insist that the Council abide by the APA's requirements in adopting new rules *before* the rules are implemented.

For example, EFSC failed to adopt valid rules that would have subjected the public in 2018 to the new "Type A/B/C" framework for processing amendment determination requests and requests for amendments to site certificates. To adopt such rules now, and to make such rule changes retroactively applicable for more than two years (all the way back to October 24, 2017), would unfairly prejudice Commenters and the public at large.

Moreover, the offending language at Proposed Rule 345-027-0311(1), including its language that site certificate holders with requests previously submitted under the invalid 2018 rules are not required to "repeat any steps" previously taken under the 2018 rules, is a blatant attempt to retroactively legitimize the 2018 rules, which rules are and always have been "invalid," as determined by the Oregon Supreme Court. *Friends v. EFSC*, 365 Or at 396. The exact approach proposed in Proposed Rule 345-027-0311(1) was rejected in *Gooderham*, in which the Court of Appeals held that a "new regulation merely attempted to legitimize the action that had already been taken" under prior invalid rules, and that "[t]he retroactive application of the [new] regulation is clearly prejudicial and unreasonable when viewed in that light." 64 Or App at 110–11. To legitimize the invalid 2018 rules through retroactive application of new rules (adopted in 2020) would substantially prejudice Commenters and other stakeholders, and is thus not allowed.

In the alternative, the language of Proposed Rule 345-027-0311(1) is invalid because it violates the Administrative Procedures Act. Pursuant to ORS 183.355(3) and (3)(a), permanent rules may be effective only "upon filing," or beginning at a date later than filing if "required by statute or specified in the rule." The APA does *not* allow agencies to make their rules effective *earlier* than the filing date. Yet Proposed Rule 345-027-0311(1) purports to do exactly that, by stating that the

Proposed Rules will apply, retroactively, to applications submitted as far back as October 24, 2017. This approach violates ORS 183.355(3) and (3)(a), and therefore should be rejected.[11]

The Council should reject the proposal to make any new rules at OAR Chapter 345, Division 27 retroactively applicable for a period of more than two years. Instead, the Council should adopt the following language, which is modeled after the language in OAR 345-027-0011 (2018), and which would properly apply the valid 2017 rules to any applications pending as of the date of the adoption of the Proposed Rules:

> The rules in this division apply to all facilities under the Council's jurisdiction, except that rules OAR 345-027-0050 through 345-027-0100 that were in effect prior to October 24, 2017 apply to all requests for amendment to site certificates and amendment determination requests that were received by the Department prior to [the effective date of the Proposed Rules[12]].

Recommendation: Reject the language at Proposed Rule 345-027-0311(1) would make all rules at OAR Chapter 345, Division 27 retroactively applicable. Replace this with alternative language modeled after OAR 345-027-0011 (2018), which would apply the Proposed Rules to any newly submitted applications, and which would apply the 2017 rules to any applications submitted prior to the effective date of the Proposed Rules (if the Proposed Rules are adopted).

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[11] Commenters are aware that a similar argument under ORS 183.355(3) was recently rejected by the Oregon Court of Appeals in a brief footnote in *Hessel v. Dep't of Corr.*, 280 Or App 16, 21 n 4, 380 P3d 1048 (2016), *rev den*, 361 Or 350, 393 P3d 1181 (2017). However, Petitioners believe that the Court of Appeals' summary holding in footnote 4 in *Hessel* was wrongly decided. In addition, neither the Petition for Review nor the supplemental briefing at the Oregon Supreme Court in the *Hessel* case specifically challenged the Court of Appeals' holding in footnote 4.

[12] The bracketed portion should be replaced with the actual effective date of the Proposed Rules (if the Proposed Rules are adopted).

11. Conclusion

Commenters support the 2017 rules in OAR Chapter 345, Division 27, which rules were effectively reinstated by the August 1, 2019 decision of the Oregon Supreme Court. There is no reason to drastically change those rules now—especially not to adopt the Proposed Rules, which, among other problems, would decrease opportunities for public participation, impose new onerous hurdles and roadblocks to participate in contested cases, and weaken and narrow the scope of the Council's review of requested certificate amendments. Please retain the 2017 rules and reject the proposed "wholesale re-write" of OAR Chapter 345, Division 27.

Thank you for your time and consideration.

Sincerely,

REEVES, KAHN, HENNESSY & ELKINS

Gary K. Kahn, OSB No. 814810
Of Attorneys for Commenters Friends of the Columbia Gorge, Northwest Environmental Defense Center, Oregon Natural Desert Association, Oregon Wild, Thrive Hood River, Columbia Riverkeeper, WildLands Defense, Greater Hells Canyon Council, Oregon Coast Alliance, Central Oregon LandWatch, Audubon Society of Portland, and East Cascades Audubon Society

GKK/blb
cc (via email): Clients
Patrick Rowe, Oregon Department of Justice
Todd Cornett, Oregon Department of Energy

CLARK Christopher * ODOE

From: EFSC Rulemaking * ODOE
Sent: Wednesday, December 18, 2019 4:53 PM
To: 'Irene Gilbert'
Cc: Fuji Kreider; Jim Kreider; Lois Barry; Charlie Gillis; Albert J. Farmer
Subject: RE: Resubmission of comments provided during the 2017 rulemaking for these same rules

Hello Irene,

We have received your comments and they will be included in the rulemaking record. I will also provide the comments to the Council for consideration along with the other materials for this Friday's meeting.

Thank you,

Christopher M. Clark
Siting Policy Analyst & Rules Coordinator
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OREGON DEPARTMENT OF ENERGY

Stay connected!

From: Irene Gilbert <ott.irene@frontier.com>
Sent: Wednesday, December 18, 2019 4:37 PM
To: EFSC Rulemaking * ODOE <EFSC.Rulemaking@oregon.gov>
Cc: Fuji Kreider <fkreider@campblackdog.org>; Jim Kreider <jkreider@campblackdog.org>; Lois Barry <loisbarry31@gmail.com>; Charlie Gillis <charlie@gillis-law.com>; Albert J. Farmer <farmer4342@gmail.com>
Subject: Resubmission of comments provided during the 2017 rulemaking for these same rules

Please include these comments with the others provided as the issues identified continue to be problems with the rules you intend to implement. These comments were all submitted when the department was developing these rules initially in 2017. The issues remain unaddressed and no justification was ever provided regarding the failure to incorporate any of the recommendations I made. Since the problems continue to exist in the rules scheduled to be adopted, these comments are being resubmitted for consideration.

Energy Policy Analyst
Oregon Department of Energy
550 Capitol St. NE
Salem Oregon 97301
Email: Jason.Sierman@oregon.gov

March 20, 2017

DEPARTMENT OF ENERGY PLANNED AMENDMENT RULES SPECIFIC RECOMMENDATIONS

Recommendation Number One:
Make no changes to the rules as the proposed rules do not address problems, but simply complicate the procedures.

Recommendation Number Two:
Limit the types of changes that can be processed as amendments as follows:
Any change in the type of energy generation proposed must be processed as a new application, not an amendment.
Changes which increase the size or output of the development by more than 10% require a new application.

Recommendation Number Three:
Turn the decision process regarding who is allowed a contested case over to the Oregon Department of Justice as there is a need for a neutral decision maker regarding the legitimacy of requests. The agency making the decisions should not be determining whether or not to allow the public access to due process to determine if the agency decision is correct. The problem with continuing this method is supported by the historical data showing all but one of the public requests for contested cases on amendment issues have been denied.

Recommendation Number Four:
Include in the rule objective criteria for when a contested case will be allowed which results in a yes/no decision process absent the current subjective decisions which supports denial of all contested case requests.

Recommendation Number Five:
Adopt the decision process language included in the Oregon Model Contested case rules in their entirety absent additional requirements for making a determination regarding the right to a contested case. The proposed rules add multiple arbitrary requirements that the public must meet beyond what the state has established as reasonable requirements in a quasi-legal proceeding.

Recommendation Number Six:
The rules should include all special advisory groups in the notice of an opportunity to review an Amendment request. The special advisory groups are in the best position to determine if they have relevant input to provide regarding the amendment. Since the public is not allowed to comment on the completeness of the application, they are the only ones allowed to do a third party review of the application. It is important to maintain the broadest possible pool of groups doing this review.

Recommendation Number Seven:

The rules needs to require review of the entire development as part of an amendment request to increase the size of a development. ORS 469.300(14) and ORS 469.407 state that an increased capacity requires the enlarged facility meets all council standards. There is no statute supporting a review of only the area added.

Recommendation Number Eight:
The rules remove the requirement that notice be sent to those requesting a contested case when they are denied standing including their legal recourse. This should be added back into the rules. Citizens need to receive legal notice of the outcome of their contested case request and their legal options.

Recommendation Number Nine:
The previous rules allow for start dates to be approved for 2 years at a time. The timeframes for start dates and amendments to start dates should continue to be 2 years with the designated limit of two amendments to extend the start dates. A developer should not be making application for a site certificate absent a serious intent to build. Allowing up to 6 years to start the development is more than reasonable. This would also be a cost saving action as developers would not make requests that they are only processing in the hopes that there will be change resulting in a need for more energy than is currently predicted to be needed. Developers should not be applying for a site certificate that they do not plan to build within 6 yearst. Letting these site certificates linger on for years leaves people who will be impacted by the development in a state of limbo. The Oregon Department of Energy has issue site certificates for over 2,000 Mw of wind energy which has not been built. Oregon's statute exempting wind and solar from a showing of need has resulted in a glut of site certificates with no customers for their energy.

Recommendation Number Ten:
This amendment should say that adding area to the site boundary requires that people and resources that are newly impacted as a result of the change would have an opportunity to have a contested case heard. The proposed rule adds so many criteria including a determination of what is "significant" that the standard will make it impossible for anyone to actually get a contested case.

Recommendation Number Eleven
ORS 469.320(2)(a) talks to the fact that a site certificate is not required if the site is not enlarged and ORS 469.320(5)(c) talks to the fact that an amendment is not required when an expansion occurs within the site or within the energy generation area of a facility for which a site certificate has been issued, if the existing site certificate has been amended to authorize the expansion. It is clear that either an increase in capacity or an increase in the area of a facility requires an amendment according to the Oregon statutes. The rules need to reflect this.

Recommendation Number Twelve
This amendment provides multiple new situations where no amendment request is required, and thus there is no opportunity for public review, comment or objection. The exceptions allowable are defined by statute and the rules should reflect the statutory limits on changes exempted from an amendment.

Recommendation Number Thirteen:
The rules change the area that must be included in the analysis of impacts of the development. Currently, the area is the larger of the study areas defined in OAR 345-00l-0000(59) or the area described in the project order. The amended rule adds UNLESS OTHERWISE APPROVED BY THE

DEPARTMMENT IN WRITING FOLLOWING A CONFERENCE. This language should be removed.

This is important because section 59 lists minimum analysis areas for things such as the area that must be reviewed for habitat damages, protected areas, etc. Allowing the Department of Energy the ability to allow reduced areas to be reviewed is not going to provide for protection of the resources protected by this definition.

Recommendation Fourteen:

This rule states that comments must be receive by the department befor the close of the record of the public hearing. This is confusing to the public due to having different closing times for every hearing. This is one of those "procedural" roadblocks that serves no purpose other than to confuse the public and make people ineligible to be granted a contested case. This section should be changed to allow public comments that are post marked on the day the public hearing is held.

Recommendation Fifteen:

This rule requires that in order to meet the standard of being "specific", the person must present facts on the record that support the person's position. This section requires an unreasonable amount of information to be included in the contested case request.
The statute ORS 469.370 (3) only requires the issue to be raised specifically enough so that it can be responded to. This does not require a presentation of facts to support the issue. This should be provided during a contested case hearing.

Recommendation Sixteen:
OAR 345-027-0069 THIS SECTION PROVIDES PIT FALL AFTER PIT FALL THAT DENIES CITIZENS ANY ACCESS TO CONTESTED CASES. The Statute does not impose these requirements and this section should be removed. There is no value added by the addition of these requirements, and in fact, it places the public at an even greater disadvantage as at least with the current rules the department hears from the public prior to completing the draft proposed order. It also serves to make the public aware of the pending development. This entire section should be removed.

Recommendation Seventeen:
This section limit contested cases to the standards in Div 22, 23, and 24. Errors can occur in the application of any of the Energy Facility Sitjng Council rules which relate to energy development. Contested cases may be necessary related to information in virtually all of their Divisions.

Recommendation Eighteen:
These rules states the judicial review of the council's final order is provided by ORS 469.403.

This is not correct. ORS 469.403 Identifies the Oregon Supreme Court as the Court to hear appeals from "any party to a contested case". The proposed rules ignore the fact that the contested case only goes to the Oregon Supreme Court for "parties to a contested case". When individuals are denied standing, they do not appeal to the Oregon Supreme Court as they are forbidden to do so by statute. The statutes limit supreme court review to parties to a contested case. In addition, Supreme Court review is limited to the contested case file. The court has spoken to the issue of amendments to site certificates in Emerald PUD v Energy Facility Siting Council, 321 Or 562, 902 P2d 1134 (1995), where it was determined that the Supreme Court authority to review applications for initial site certificates

does not extend to site certificate modifications. This ruling effectively brings into doubt whether the Oregon Supreme Court is even the appropriate remedy for parties to contested cases on amendments. The Department of Energy is well aware of the fact that this rule is not consistent with the law. Mike Kaplan, Director of the Department of Energy, provided written and verbal testimony before the Joint Legislative Oversight Committee addressing problems with the Department of Energy. Mr. Kaplan stated that he did not know what court these appeals should go to. What is certain, is that it would not be the Oregon Supreme Court as is indicated in the proposed rules. It appears that it would be the county courts.

These rules make no changes that would increase the opportunity for the public being granted a contested case. Is it the intent of the legislature that no one be allowed a contested case on amendment requests? Is it the intent that due process is only allowed on initial site certificates? Is it legal for the Department of Energy and Energy Facility Siting Council to create the expectation that there is an opportunity to access due process, create multiple additional barriers which assure a continuation of 100% denial of all requests,

This rule change will ensure the public will have no remedy for incorrect decisions on the part of the Department of Energy and Energy Facility Siting Council. It adds confusing and costly procedures which will reduce the public access to the contested case process. It will also reduce the opportunity for the public to have meaningful input prior to the development of the draft proposed order.

There is no reason to promulgate a rule that complicate the procedures but does not change to the process. This entire rule should be withdrawn.

Thank you for considering comments from the Friends of the Grande Ronde Valley.

Irene Gilbert, Legal Research Analyst
Friends of the Grande Ronde Valley
2310 Adams Ave.
La Grande, Oregon 97850
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Page 4

INTRODUCTION

In order to make this easier to follow, I am italicizing my comments, and highlighting in red areas of the statutes and rules which apply to the situation where no site certificate is being issued, but the public is not notified or allowed a contested case.

It is important to note that in 345-027-0071 the new rules deny the public any opportunity to request a contested case on an action that is not covered by Division 22, 23 or 24. The Council will not allow a contested case on the procedures or decisions resulting from this Division 27 rule.

345-027-0071 (9) states: "After identifying the issues properly raised the Council shall 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 chapter 345 Divisions 22 23 and 24. If the Council does not have jurisdiction over the issue raised in the request, the Council must deny the request."

Another conflict with state statutes is the fact that the statute ORS 469.320(4) quoted below states the public can appeal a decision to not require a site certificate, however, there is no official public notice that an exception was granted or that there is a right to appeal that decision. It just appears on the ODOE web site.

REQUIREMENTS OF STATE STATUTES

The statute requires an amendment to add area to a site unless there is an existing site certificate that has already authorized it.

ORS 469.320 **Site certificate required; exceptions** (l) "Except as provided in subsections (2) and (5) of this section, no facility shall be constructed or expanded unless a site certificate has been issued for the site thereof in the manner provide in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992. No facility shall be constructed or operated except in conformity with the requirements of ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992."

ORS 469.320 continues with the specific times and conditions when a site certificate is not required which is outlined in ORS 469.320(2) through ORS 469.320(3), but none of these situations apply to adding land to a site.

ORS 469.320(4) states "Any person who proposed to construct or enlarge an energy facility and who claims an exemption under subsection (2) (a), (c), (f) or (g) of this section from the requirement to obtain a site certificate shall request the Energy Facility Siting Council to determine whether the proposed facility qualifies for the claimed exemption. The council shall make its determination within 60 days after the request for exemption is filed. An appeal from the council's determination on a request for exemption shall be made under OR 469.403, except that the scope of review by the Supreme Court shall be the same as a review by a circuit court under ORS 183.484. The record on review by the Supreme Court shall be the record established in the council proceeding on the exemption."

ORS 469.320(5) provides 3 additional instances when a site certificate is not required. None of these situations apply here.

NEW AMENDMENT RULES CONFLICT WITH STATUTE

Following the convoluted process contained in the "new" amendment rules, you find that in order to avoid doing an amendment when a developer adds land to a site, the applicant needs only to make a request to the Oregon Department of Energy. The ODOE will be able to decide that the negative impacts are not significant, that they already considered them, or the impacts are not covered by one of the standards in Division 22, 23 or 24 in which case they can decide that there is no need for an amendment, and thus no public notice, no public input, and no public contested case or appeal.

"345-027-0057 **Amendment Determination Request**

(l) For a proposed change that would add area to the site boundary, the certificate holder must either;

(a) submit a request for amendment to the Department of Energy; or

(b) submit an amendment determination request to the Department for a written determination of whether the proposed change requires an amendment under OAR 345-027-0050 and is not exempt under 345-07-0053"

"345-027-0050 **Changes Requiring an Amendment**

Except for changes allowed under OAR 345-027-0053 of this rule, an amendment to a site certificate is required to:"

"(4) Design, construct or operate a facility in a manner different from the description in the site certificate if the proposed change:

(a) Could result in a significant adverse impact that the Council has not addressed in an earlier order and the impact affects a resource or interest that the Council has not addressed in an earlier order and the impact affects a resource or interest protected by a Council standard;

(b) Could impair the certificate holder's ability to comply with a site certificate condition; or

(c) Could require a new condition or a change to a condition in the site certificate."

The rule below would not apply to an addition of land to an energy site, but could end up with a developer replacing old wind generators with ones that could be 200 feet taller without having to go through an amendment process, as if that would not change the impacts.

345-027-0053 **Changes Exempt from Requiring an Amendment**

"An amendment to a site certificate is not required if the proposed change in the design, construction or operation of a facility is in substantial compliance with the terms and conditions of the site certificate, and is a change:

(l) To an electrical generation facility that would increase the electrical generating capacity and would not increase the number of electric generators at the site, change fuel type, increase fuel consumption by more than 10 percent or enlarge the facility site;

DEPARTMENT OF ENERGY PLANNED AMENDMENT RULES FURTHER DENY PUBLIC ACCESS TO CONTESTED CASE PROCESS:

The Department of Energy uses amendments to make multiple significant changes in site certificates, but has never allowed a contested case to be heard on an amendment request. Concern regarding this outcome came to a head in 2011 when Helix Wind development doubled it's size with an amendment and no contested case requests were allowed. The Department of Energy was asked to promulgate the rules to address the resulting concerns. Six years later, you are being asked to promulgate rules that are introduced by the following statement: "This rulemaking is not intended to alter the substantive aspects of how the Council's rules and standards apply to the Council's review of a request for an amendment to a site certificate. The scope of this rulemaking is intended to be strictly procedural in nature and effect." This statement clearly does not meet the purpose of the rule changes requested, and the procedural changes make it even less likely that any contested cases on amendment requests will ever be allowed.

I provided specific references and changes of concern in writing, however, some of the concerns we have and which were voiced by others include:

CONCERNS WITH THE IMPACT OF THE PLANNED RULE CHANGES:

--The Department of Energy and Energy Facility Siting Council will continue to have total control over who is allowed a contested case hearing.
--The Department of Energy will have additional procedural barriers which will further confuse the process and provide additional procedural justifications for 100% denials of contested case requests.
--The time required to process Amendment requests will increase.
--The cost to developers of processing amendment requests will increase.
--The Department of Energy will be able to hire additional staff to deal with the new process and the developers will have to pay for them.
--The final decision process is based upon the same subjective decisions that

have resulted in a 100% denial rate on every contested case request on amendments to date.
--Not all special advisory groups will be included when amendment requests are being reviewed.
--The Department of Energy will no longer be required to evaluate the impacts of the entire development as is required by the statutes when processing amendment requests to increase the size of the facility.
--No notice will go to those denied standing for a contested case that they have been denied and what their options are.
--There continues to be no objective criteria for establishing situations where the public will have a right to a contested case on amendment requests based upon the impacts the amendment will have.

The Department of Energy budget relies upon their ability to charge developers for staff time used in managing site certificates and amendments. The more they can complicate and prolong the process, the more money they are able to collect and the more staff they are allowed to hire. The current rule is approximately 8 pages long. This change creates over 27 pages of new and changed rule language including an entirely new division. The explanation of the changes is 31 pages long. Adding additional "hearings" and requirements only serves to frustrate and intimidate people but provide no chance of accessing a third party review of any decisions. This rule has so many problems it should be withdrawn in it's entirety.

CLARK Christopher * ODOE

From: EFSC Rulemaking * ODOE
Sent: Wednesday, December 18, 2019 5:02 PM
To: 'Irene Gilbert'
Cc: Fuji Kreider; Jim Kreider; Lois Barry; Charlie Gillis; Nathan Baker
Subject: RE: Type B Site Certificates comment regarding Amendment Rules

Hello Irene,

We received this comment before the deadline and it will be included in the rulemaking record. I will also provide the comment to the Council for consideration along with the other materials for this Friday's meeting.

Thank you,

Christopher M. Clark
Siting Policy Analyst & Rules Coordinator
550 Capitol St. NE | Salem, OR 97301
P: 503-373-1033
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OREGON DEPARTMENT OF ENERGY

Stay connected!

From: Irene Gilbert <ott.irene@frontier.com>
Sent: Wednesday, December 18, 2019 4:57 PM
To: EFSC Rulemaking * ODOE <EFSC.Rulemaking@oregon.gov>
Cc: Fuji Kreider <fkreider@campblackdog.org>; Jim Kreider <jkreider@campblackdog.org>; Lois Barry <loisbarry31@gmail.com>; Charlie Gillis <charlie@gillis-law.com>; Nathan Baker <nathan@gorgefriends.org>
Subject: Type B Site Certificates comment regarding Amendment Rules

Energy Facility Siting Council:

An additional comment as the deadline is about to occur:

The rules allowing Type B process for determining whether to approve a site certificate amendment denies the public access to a reasonable resource for resolving issues with decisions of the council.

For example, the just issued amendment for Shepherd Flatts Wind development includes multiple issues which change the impacts of the development and they should be issues that could be contested. The amendment increases the height of the turbines, decreases the ground clearance, increases the area of impact of the rotors due to increasing their length and includes several other changes to the site certificate conditions. The public is denied any opportunity to request a contested case on these significant new impacts. In addition, there are turbine blades being dumped on private property in Umatilla County from a development that is being repowered. All these issues are significant.

When there are changes to a site certificate that change the impacts of the development, the public should be provided an opportunity to obtain a contested case.

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