

Energy Facility Siting Council  
April 24, 2020  
Agenda Item C – Solar PV Rulemaking  
**Attachment 1: Draft Proposed Rules**

This document provides Staff’s recommendation for proposed rule language to be included in the Council’s Notice of Proposed Rulemaking. The Council may approve, amend, or reject the draft proposed language as it deems appropriate.

Plain text in this document represents existing rule language. Rule additions shown in underline. Deletions are shown in ~~strikethrough~~.

**Definition [NOTE: Markup from OAR 660-033-0130(38)(f)]**

**OAR 345-001-0010: Definitions**

~~(XX) “Photovoltaic solar~~ photovoltaic power generation facility” includes, but is not limited to, an assembly of equipment that converts sunlight into electricity and then stores, or transfers, ~~or both~~, that electricity. This includes photovoltaic modules, mounting and ~~solar~~-tracking equipment, ~~foundations~~posts, electrical cabling, inverters, transformers, collection systems, wiring, ~~storage devices~~ and other components. ~~Photovoltaic solar power generation facilities also include electrical cable collection systems connecting the photovoltaic solar generation facility to a transmission line, all necessary grid integration equipment, new or expanded private roads constructed to serve the photovoltaic solar power generation facility, office, operation and maintenance buildings, staging areas and all other necessary appurtenances.~~

(a) For the purposes of applying the acreage standards of this section, ORS 469.300(11)(a)(D), the land used by a solar photovoltaic power generation facility includes the land occupied by its related or supporting facilities. Related or supporting facilities are not otherwise considered to be components of the solar photovoltaic power generation facility;

(b) A photovoltaic proposed solar photovoltaic power generation facility project may include all existing and proposed facilities on a single tract, as well as be determined to be an expansion of any existing and or proposed solar photovoltaic power generation facilities that is:

(A) Within one mile of the proposed project; and

(B) ~~d~~Determined to be under common ownership with the proposed project. ~~on lands with fewer than 1320 feet of separation from the tract on which the new facility is proposed to be sited.~~ Projects connected to the same parent company or individuals shall will be considered to be in common ownership, regardless of the operating business structure; ~~A photovoltaic solar power generation facility does not include a net metering project established consistent with ORS 757.300~~

Energy Facility Siting Council  
April 24, 2020  
Agenda Item C – Solar PV Rulemaking  
**Attachment 1: Draft Proposed Rules**

~~and OAR chapter 860, division 39 or a Feed-in-Tariff project established consistent with ORS 757.365 and OAR chapter 860, division 84.~~

(c) As used in this rule and OAR 345-001-XXXX, a “proposed solar photovoltaic power generation project” means:

(A) The proposed development of a separate and independent solar photovoltaic power generation facility; or

(B) The proposed expansion or modification of a proposed or existing solar photovoltaic power generation facility.

DRAFT

Energy Facility Siting Council  
April 24, 2020  
Agenda Item C – Solar PV Rulemaking  
**Attachment 1: Draft Proposed Rules**

**Procedural Rule**

**OAR 345-001-XXXX: Solar Photovoltaic Power Generation Facilities**

(1) To determine that a proposed solar photovoltaic power generation project is an expansion of an existing or proposed solar photovoltaic power generation facility as described under OAR 345-001-0010(XXX)(b), the Council must find that the preponderance of the evidence on the record of a declaratory ruling issued under this rule, or other proceeding before the council, supports such a conclusion. In making findings under this section, the Council may consider factors including, but not limited to:

(a) The permitting or operational status of the existing or proposed solar photovoltaic power generation facility;

(b) Whether or not operational and financing decisions for the proposed project would be made independently from the existing or proposed solar photovoltaic power generation facility;

(c) Whether or not the output of the proposed project and the proposed or existing solar photovoltaic power generation facility would be sold under separate power purchase agreements; and

(d) Whether or not the output of the project and the proposed or existing solar photovoltaic power generation facility would be transmitted under separate interconnection agreements.

(2) Any person, including the Department, may petition the Council to issue a declaratory ruling with respect to the applicability of ORS 469.300(11)(a)(D) and section (1) of this rule to a proposed solar photovoltaic power generation project. The Council will review such a petition under the procedures described in OAR 137-002-0010 to 137-002-0060, subject to the following:

(a) A petition under this rule must be submitted to the Department in writing and must include all information required under OAR 137-002-0010, including:

(A) The name of the developer or owner of the proposed solar photovoltaic power generation project;

(B) A specific request for findings that a proposed solar photovoltaic power generation project is either:

(i) An expansion or modification of a proposed or existing solar photovoltaic power generation facility; or

Energy Facility Siting Council  
April 24, 2020  
Agenda Item C – Solar PV Rulemaking  
**Attachment 1: Draft Proposed Rules**

(ii) A separate and independent solar photovoltaic power generation facility;

(C) A detailed statement of facts relevant to the factors described under section (1) of this rule, including sufficient facts to show the petitioner's interest in the outcome of the requested declaratory ruling; and

(D) The name and address of petitioner and of any other person known by petitioner to be interested in the requested declaratory ruling.

(b) Within seven days after a petition is filed under this section, the Department will post an announcement of the petition to the Department's website.

(c) If the Council decides to issue a ruling, the petitioner, the owner or developer of the proposed solar photovoltaic power generation project, and the Department will be parties to the proceeding. Other persons may petition the Council for permission to participate in the proceedings as described in OAR 137-002-0025; and

(d) The Council will not issue a ruling on the petition if the owner or developer of the solar photovoltaic power generation project indicates that it intends to submit a notice of intent to file an application for a site certificate for a facility containing the proposed solar photovoltaic power generation project within 60 days after the petition is filed with the agency. If the NOI is not submitted by the date indicated, the Council will immediately serve notice on the parties under OAR 137-002-0020.

(3) The Council will not make a ruling on the applicability of ORS 469.300(11)(a)(D) or section (1) of this rule to any solar photovoltaic power generation facility with a land use permit approved by a local government on or before the effective date of this rule unless a solar photovoltaic power generation project is proposed on lands within one mile of the solar photovoltaic power generation facility.

(4) The developer or owner of a solar photovoltaic power generation facility is not subject to fees under ORS 469.421(1) for the expenses incurred by the Council and Department related to proceedings under section (2) of this rule.

Energy Facility Siting Council  
April 24, 2020  
Agenda Item C – Solar PV Rulemaking  
**Attachment 1: Draft Proposed Rules**

**Implementation of HB 2329**

**OAR 345-001-0010: Definitions**

(18) “Energy facility” ~~means~~includes:

(a) ~~a~~An energy facility as defined in ORS 469.300~~;~~

(b) ~~including a~~ small generating plant for which an applicant must have a site certificate according to OAR 345-001-0210~~;~~ and

(c) A facility for which a developer or governing body has elected to defer regulatory authority to the Council under ORS 469.320(8).

**OAR 345-020-0006: Submission of a Notice of Intent**

(1) The purpose of the notice of intent (NOI) is to notify the Department of Energy and the Council of a proposed facility and to provide information about the site and the characteristics of the facility sufficient for the preparation of the project order described in OAR 345-015-0160. Any person who intends to apply for a site certificate for a facility shall submit an NOI to the Department with the fee required by the fee schedule established under ORS 469.441, payable to the Oregon Department of Energy.

(2) Notwithstanding section (1), an applicant granted expedited review under OAR 345-015-0300 or 345-015-0310 need not submit an NOI.

~~(3) Notwithstanding the definition of “energy facility,” a person may elect to apply for a site certificate for an electric power generating plant with an average electric generating capacity of less than 35 megawatts from wind energy. If such person chooses not to request expedited review under OAR 345-015-0300 or if expedited review is not granted, the person shall submit an NOI to the Department with the fee required by the fee schedule established under ORS 469.441, payable to the Oregon Department of Energy. An election to obtain a site certificate is final upon submission of the application.~~

**345-021-0000: General Requirements**

(1) Except for facilities that the Council has determined exempt as described in OAR 345-015-0350 to 345-015-0370 or for which a separate site certificate is not required according to ORS 469.320(5), a person may not construct or expand a facility unless the Council has granted a site certificate or an amendment to an existing site certificate.

Energy Facility Siting Council  
April 24, 2020  
Agenda Item C – Solar PV Rulemaking  
**Attachment 1: Draft Proposed Rules**

~~(2) As used in this division, “energy facility” includes an electric power generating plant with an average electric generating capacity of less than 35 megawatts produced from wind energy for which a person has elected to apply for a site certificate under ORS 469.320(8).~~

(32) An applicant may not submit an application for a site certificate before the Department has issued a project order for the proposed facility as described in OAR 345-015-0160. The applicant may submit a draft application before the issuance of a project order. The applicant must submit the application before the expiration of the notice of intent.

(43) For an expedited review granted under OAR 345-015-0300 or 345-015-0310, section (3) does not apply and the applicant may submit an application for a site certificate any time after the Department determines the request for expedited review satisfies the requirements for expedited review as described in those rules.

(54) If the applicant submits a written request for waiver or modification of requirements in OAR 345-021-0010 to the Department, the Department may waive or modify those requirements that the Department determines are not applicable to the proposed facility.

(65) For any state or local government agency permits, licenses or certificates proposed by the applicant to be included in and governed by the site certificate, the applicant must include within the site certificate application all information that would otherwise be required by the state or local government agency in an application for such permit, license or certificate.

(76) For any federally-delegated permits that are needed for construction or operation of the proposed facility, the applicant must submit to the Department one copy of each federally-delegated permit application. The applicant may submit the site certificate application before submitting a copy of a federally-delegated permit application if the applicant submits a schedule of the date by which the applicant intends to submit the federally-delegated permit application. The Department may not find the site certificate application to be complete before receiving copies of all federally-delegated permit applications and a letter or other indication from each agency responsible for issuing a federally-delegated permit stating that the agency has received the permit application, identifying any additional information the agency is likely to need from the applicant and estimating the date when the agency will complete its review and issue a permit decision.

(87) If the proposed facility is a non-generating facility for which the applicant must demonstrate need under OAR 345-023-0005, in addition to the application for a site certificate described in 345-021-0010, the applicant must submit, to the Department, two copies of each energy resource plan or combination of plans on which the applicant relies to demonstrate need under OAR 345-023-0020, unless the applicant chooses to incorporate copies of the plans as part of the application for a site certificate. The applicant must submit the plans to the Department with the site certificate application. The Department may not find the site

Energy Facility Siting Council  
April 24, 2020  
Agenda Item C – Solar PV Rulemaking  
**Attachment 1: Draft Proposed Rules**

certificate application to be complete before receiving copies of the plans. The plans described in this section are part of the decision record for the Department's proposed order, described in OAR 345-015-0230.

(~~98~~) The applicant must submit an application for a site certificate to the Department with 25 percent of the fee the Department determines necessary for review of the application under ORS 469.421(3), payable to the Oregon Department of Energy. The applicant must pay the balance of the fee periodically, as specified by the Department.

(~~109~~) Until the Department determines the application to be complete as described in OAR 345-015-0190 or 345-015-0310, it is a preliminary application. For the purpose of determining the applicable substantive criteria under ORS 469.504(1)(b)(A), the date the preliminary application is received by the Department is the date the application is submitted.

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