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To: Energy Facility Siting Council

From: Christopher M. Clark, Rules Coordinator

Date: April 10, 2020

Subject: Agenda Item D (Action Item):
2020 Carbon Offset Rate Update (R203) - Council Initiation of Rulemaking for the April 24, 2020 EFSC Meeting

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STAFF RECOMMENDATION

Staff recommends Council initiate rulemaking to update the Monetary Offset Rate in OAR 345-024-0580. Staff's preliminary recommendation is to increase the rate to $2.85, the maximum increase allowed by statute. Staff Recommends Council appoint an advisory committee to provide input on the potential fiscal impacts and economic achievability of this recommended rate increase. Staff further recommends Council expedite this rulemaking to the extent possible, consistent with Governor Brown's Executive Order 20-04 directing state agencies to take actions to reduce and regulate greenhouse gas emissions.

BACKGROUND

In its 2020-2022 Rulemaking Schedule, Council approved a rulemaking project to evaluate whether an update to the monetary offset rate for carbon dioxide emissions under OAR 345-024-0580 is needed to address historic changes in offset costs.[1] This report will provide the results of Staff's preliminary research on this project and will make recommendations to Council for the conduct of the rulemaking process. Specifically, this report will discuss:

- The recommended scope and objectives for the rulemaking project, including the policy issues the project will address;
- The need and authority to adopt rules;
- The potential impacts on stakeholders and recommended method for obtaining stakeholder input; and
- The recommended procedural timeline for the rulemaking process.

The report will conclude with a request for Council to initiate the informal phase of the rulemaking process. Please note that the Council is not being asked to consider proposed rule amendments or the adoption of permanent rules at this time.

[1] November 21-22, 2019 EFSC meeting, Agenda Item L.

Need and Authority for Rules

To issue a site certificate to a fossil-fueled power plant, or certain carbon dioxide emitting nongenerating facilities, the Council must determine that the preponderance of the evidence on the record supports a conclusion that the proposed energy facility complies with any applicable carbon dioxide emissions standard adopted by council or enacted by statute.[2] Most proposed facilities must reduce the net carbon dioxide emissions the facility will produce over an assumed 30-year life span by avoiding, displacing, or sequestering a sufficient amount of carbon dioxide or certain other greenhouse gasses.[3]

The applicant may reduce its net carbon dioxide emissions by: (1) displacing emissions through cogeneration technology, (2) implementing carbon dioxide emissions offset projects itself or through a third party, (3) agreeing to provide funds to a qualified organization in an amount deemed sufficient to produce any necessary reduction in greenhouse gas emissions, or (4) any other means the Council adopts by rule. Most applicants have elected to use option (3), which is also referred to as the "monetary pathway."

The monetary pathway uses an assumed monetary offset rate to determine the amount of funds that is sufficient to produce the equivalent of a one ton reduction in carbon dioxide emissions.[4] When the legislature enacted the Standard in 1997, it set the rate at 57 cents per short ton of carbon dioxide. The legislature authorized the Council to increase or decrease the rate by up to 50 percent in any two-year period starting in 2000. As shown in Figure 1, the Council has increased the rate three times, most recently on October 23, 2017 when the Council set the current rate of $1.90 per ton of carbon dioxide.

Because more than two years have passed since the last change in the rate, the Council may increase or decrease the monetary offset rate by up to 50 percent. Any change in the rate must be based on empirical evidence of the cost of offsets and the council's finding that the standard will be economically achievable with the modified rate for natural gas-fired power plants.[5] These requirements are discussed further below.

Empirical Evidence on the Costs of Offsets

The graph below shows the monetary rate set by Council in comparison to the average price The Climate Trust (TCT), the qualified organization which administers monetary offset funds

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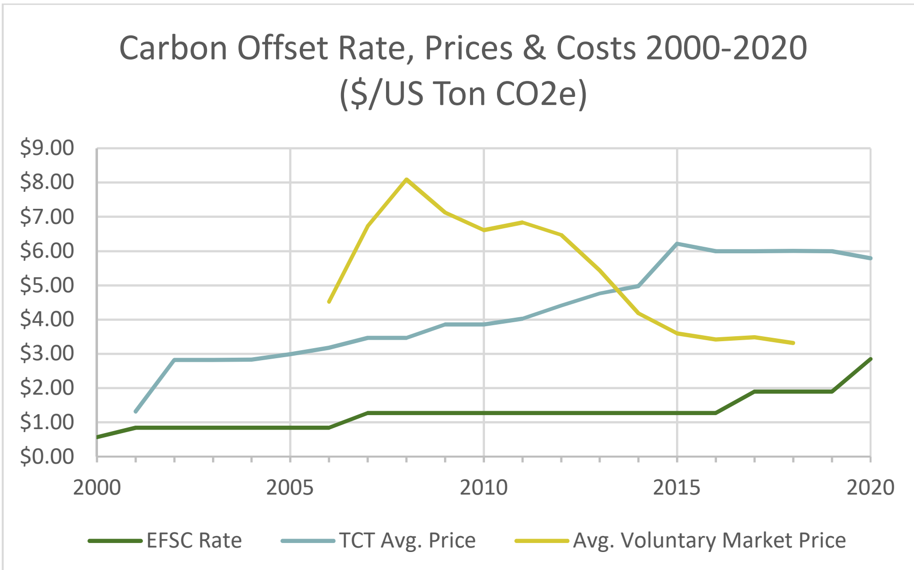
[2] ORS 469.503(2) provides the methodology that Council must use to establish the carbon dioxide emissions standard applicable to base load gas plants, and guidelines for adopting standards applicable to other types of fossil-fueled power plants. ORS 469.501(1)(o) authorizes the council to adopt standards to address the impacts of carbon dioxide emissions on other types of energy facilities that emit carbon dioxide. The Council has adopted standards for these types of facilities under OAR 345-024-0550; 345-024-0590; and 345-024-0620.

[3] Specifically, methane and nitrous oxide. See ORS 469.503(2)(e)(G).

[4] In discussion of reductions in emissions throughout this document, a "carbon dioxide emissions" should be understood to also include reductions in methane and nitrous oxide converted to carbon dioxide equivalent using the equivalency values associated with the applicable standard. Currently, all standards consider one ton of methane to be equivalent to 25 tons of carbon dioxide and one ton of nitrous oxide to be equivalent to 298 tons of carbon dioxide. See OAR 345-024-0550(2); 345-024-0590(2); and 345-024-0620(2).

[5] See ORS 469.503(2)(c)(C).

provided by certificate holders, negotiated to secure one ton of carbon dioxide equivalent (CO_2e) in Emissions Reduction Purchase Agreements since 2000. As shown in the graph, the average negotiated price of offsets negotiated by TCT as of December 31, 2019 was $6.00 per ton of CO_2e. If the monetary offset rate were increased to $2.85 per ton of CO_2e in 2020, the maximum increase allowed by statute, the rate will still be less than half of the average price negotiated by TCT. The rate would also be below the average price in the global voluntary market, which was $3.32 per ton of CO_2e in 2018.[6]



Staff recommends that these data provide sufficient empirical evidence to support the recommended increase. If current trends continue and the carbon standard remains in place, the offset rate and the average TCT price could approach parity within the next decade.

Economic Achievability
ORS 469.503(2)(c)(C) requires the Council to find that the Carbon standard is attainable and economically achievable with the modified monetary offset rate. In previous updates to the monetary offset rate, the Council based its findings of economic achievability on the estimated increase in costs of compliance for an energy facility would be, using cost data from an energy facility that had already been issued a site certificate.

The recommended increase would increase costs of compliance for a fossil-fueled power plant by $0.85 per ton of excess carbon dioxide emissions produced by the facility over a 30-year period. Because the standard applies to new carbon dioxide emitting facilities, staff proposes to collect available cost, performance, and emissions estimates for new resources from recent Integrated Resource Plans produced by Oregon Utilities and from certificate holders of

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[6] See Forest Trends' Ecosystem Marketplace (2019) Financing Emissions Reductions for the Future: State of the Voluntary Carbon Markets 2019. In personal correspondence dated March 16, 2020, Sheldon Zakreski, Executive Director of The Climate Trust noted that the prices it negotiates for carbon offsets are markedly higher than the global average price in part because The Climate Trust focuses its CO2 Standard purchases on latter vintage offsets with a strong preference for Oregon and regional projects.

approved, but not constructed natural-gas fired power plants. Staff will provide its final evaluation and recommended findings to Council when it presents draft proposed rules to the Council.

Objectives and Scope

As described above, Staff recommends that the objective of this project is to ensure that, to the extent allowed by law, carbon monetary offset funds provided to meet the carbon standard are sufficient to produce a reduction in greenhouse gas emissions that is equivalent to the amount of carbon dioxide emissions a proposed fossil fueled power plant would have to avoid, displace, or sequester to meet the Council's standard. To meet this objective in a timely fashion, and consistent with the goals and objectives stated in the Governor's Executive Order 20-04, staff recommends the Council limit the scope of this rulemaking project to adjusting the monetary offset rate in OAR 345-024-0580.

Potential Impacts on Stakeholders

The recommended increase in the monetary offset rate would result in increased costs of compliance with the Council's Carbon Standard for any persons who proposes to construct or operate a new carbon dioxide emitting energy facility which has not been previously approved by Council. Certificate holders of operational facilities will not be affected. In developing the fiscal impact statement for this project, staff will seek input on the potential extent of these impacts, as well as any other potential impacts from stakeholders who are likely to be affected as described below.

Method for Obtaining Public Input

In the initial scope of this project approved as part of the 2020-2022 Rulemaking Schedule approved by the Council at its Nov 21-22, 2019 meeting, the Council approved staff's recommendation to appoint an advisory committee to provide recommendations on whether the rule will have fiscal impact, what the extent of that impact will be, and whether the rule will have a significant impact on small businesses.[7] Staff recommends that the advisory committee also be asked to provide input on the economic achievability of the proposed rate increase.

Under ORS 183.333, an agency may appoint an advisory committee that will represent the interests of persons likely to be affected by a rule to provide input that will assist the agency in drafting a proposed rule. While the scope of input sought from an advisory committee may vary, if an advisory committee is appointed it must be asked to provide input on the proposed rule's potential fiscal impacts. While an advisory committee is not required for any project, they can be particularly useful for rulemaking projects where the Council is considering multiple policy options, is considering an issue with broad stakeholder interests, or is considering a rule change that is expected to result in fiscal impacts on stakeholders. The number of advisory committee meetings required depends on the scope and objectives of the committee.

It is important to note that an advisory committee need not consist of all stakeholders that are likely to be affected by a proposed rule. In most circumstances a group of 5-8 stakeholders which represent various stakeholder interests is likely to be sufficient. The Council has the

[7] See ORS 183.333(3).

option to solicit or consider advice from other stakeholders in addition to or in lieu of an advisory committee in any rulemaking proceeding.

For this rulemaking project, staff recommends an advisory committee consisting of representatives from the following organizations:

- Perennial Power Holdings, Inc.
- Portland General Electric Company
- NW Natural
- Columbia Riverkeeper
- The Climate Trust

Staff recommends these groups are representative of electric and gas utilities, energy developers, public interests, and subject matter experts.

Council may specify if it wishes to proceed with this method of obtaining public input on the proposed rules, or specify another method, such as soliciting written advice or holding a public workshop. If Council wishes to proceed with appointing an advisory committee, it may modify the recommended membership as it deems appropriate. Council may also choose to forgo seeking informal advice on the proposed rules and proceed directly to soliciting formal comments through a Notice of Proposed Rulemaking.

<u>Proposed Rulemaking Timeline</u>
Staff recommends Council expedite this rulemaking to the extend possible. A recommended rulemaking timeline that would allow permanent rules to be effective immediately following the Council's June 25-26 meeting.

Permanent Rulemaking Steps	Completion Date
Council initiates permanent rulemaking process.	**April 24, 2020**
Staff convenes advisory committee stakeholders	Early May 2020
Staff drafts proposed new or amended rules and prepares Notice of Proposed Rulemaking	May 8, 2020
Council considers proposed rules and authorizes staff to file Notice of Proposed Rulemaking	**May 21-22, 2020**
Staff issues Public Notice	May 25, 2020
Public Comment Period	May 25 – June 25, 2020
Rulemaking Hearing	**June 25, 2020**
Staff prepares draft final rules for Council	**June 25, 2020**
Council considers public comments and testimony and adopts, amends, or repeals permanent rules	**June 26, 2020**
Staff submits permanent rule filing to Secretary of State	June 29, 2020
Permanent rules are effective	July 1, 2020

Staff notes that notice of the Council's intended rulemaking action must be given to the legislators described in ORS 183.335(14) at least 49 days before proposed rules may become effective. Notice to other interested parties must be given 28 days before. To achieve the proposed timeline above, staff requests Council's approval to submit the notice to legislators upon initiation of the rulemaking project.

Consistency with Executive Orders Related to COVID-19

On March 17, 2020, Governor Brown issued an Executive Order 20-05 prohibiting gatherings of 25 or more people to limit transmission of COVID-19. On March 23rd, 2020; Governor Brown further ordered Oregonians to stay at home or at their place of residence to the maximum extent possible and ordered state agencies to close to the public and provide public services by phone and online to the maximum extent possible. Consistent with these Orders, Staff recommends that any advisory committee meetings or public hearings associated with this rulemaking be conducted by telephone or other electronic means, as allowed under ORS 192.670.

RECOMMENDED COUNCIL ACTION

Staff recommends that Council initiate rulemaking proceeding to update the monetary offset rate in OAR 345-024-0580 by 50 percent to $2.85, the maximum increase allowed by statute.

Staff further recommends that Council appoint an advisory committee to provide input on the potential fiscal impacts and economic achievability of this recommended rate increase. Staff recommends that the representatives from the following organizations be invited to participate on the advisory committee:

- Perennial Power Holdings, Inc.
- Portland General Electric Company
- NW Natural
- Columbia Riverkeeper
- The Climate Trust

Finally, staff recommends that Council approve the proposed timeline described in this project and authorize staff to send notice of Council's intended rulemaking action to the legislators described in ORS 183.335(14) prior to the public notice.