



Oregon

Kate Brown, Governor



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To: Energy Facility Siting Council

From: Christopher M. Clark, Siting Policy Analyst and Rules Coordinator

Date: June 12, 2020

Subject: Agenda Item F (Possible Action Item):
Rulemaking to Clarify Standard for Contested Case Requests for Type A Amendments – Review of Public Comments and Consideration of Permanent Rules for June 25-26, 2020 Council Meeting.

Attachments: Attachment 1: Notice of Proposed Rulemaking
Attachment 2: Public Comments
Attachment 3: Staff Summary and Evaluation of Issues raised in Comments

RECOMMENDED COUNCIL ACTION

Staff recommends Council adopt permanent rules after fully considering all written and oral comments provided on the proposed rules and revising as needed to reduce significant adverse economic impact on small businesses, consistent with public health and safety.

BACKGROUND

At its March 13, 2020 meeting, the Council initiated rulemaking to clarify the standard for an issue to justify a contested case under the Type A amendment review process. The proposed rules would amend OAR 345-027-0371(9) to provide that “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 *is reasonably likely to 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.*” (Emphasis added.) The Council authorized Staff to issue a Notice of Proposed Rulemaking at the same meeting. Staff filed the Notice with the Secretary of State on May 5, 2020. Staff subsequently posted a copy of the notice to its website and provided notice as required by ORS 183.335(1) and OAR 345-001-0000. For reference, the Notice is included as **Attachment 1** to this report.

CONSIDERATION OF PUBLIC COMMENTS

The Notice requested public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business. The Notice also informed the public of the opportunity to provide oral comment on the proposed rules at the hearing scheduled to begin on June 25, 2020 at 5:00 pm (Agenda Item C of this meeting). The public comment period closes at the end of the hearing.

The Council must consider fully any written or oral comments provided before the close of the public comment period. Comments submitted after the close of the public comment period may not be considered unless the Council decides to extend the comment period for all interested agencies and persons.

No comments were received prior to the publication of this staff report. Staff will update **Attachment 2** to this report periodically to include exact copies of any public comments received before the close of the public comment period.

STAFF RECOMMENDATION

A document providing staff's summary of and recommended responses to the significant data, views, and arguments contained in the public comment received before the close of the public comment period will be provided as **Attachment 3** to this staff report prior to the Council's consideration of permanent rules. This document may be revised to include and address additional comments as they are received.