

**June 25-26, 2020 Energy Facility Siting Council Meeting**  
**Agenda Item I: Solar PV Rulemaking**  
**Attachment 2: Public Comments**  
**Updated June 25, 2020**

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To: Energy Facility Siting Council  
From: Max Greene, Regulatory & Policy Director, Renewable Northwest  
Angela Crowley-Koch, Executive Director, Oregon Solar Energy Industries Association  
Date: June 25, 2020

**Re: Item D & Item I – Proposed Solar Photovoltaic Facility Rules,  
June 25-26, 2020 Council Meeting**

Dear Council Members,

Renewable Northwest and the Oregon Solar Energy Industries Association (OSEIA) appreciate the opportunity to comment on the draft rules regarding solar photovoltaic power generating facilities, included as Attachment 1 to Item I on the June 25-26, 2020 Council agenda. We have been a part of the Solar PV rulemaking process since its initiation in June 2018, and we commend Council staff for the progress that has occurred in the intervening two years. The draft rules evidence Council staff's attempt to take into consideration the perspectives, feedback, and information provided by the Rulemaking Advisory Committee, an effort that we appreciate.

As Renewable Northwest and our members have worked through the draft rule language, we further appreciate staff's taking the time to talk through our questions and discuss how staff intends the language to be read; the conversation informed our reading considerably. The purpose of this comment letter is to request that Council confirm on the rulemaking record the intent behind the proposed language and offer revisions to provide further clarification.

**OAR 345-001-00105(56)**

- (56) The rule language defines "Solar photovoltaic power generation facility" partly by reference to a list of potential components of such a facility; the list ends with the phrase "and other components." We read the language "other components" narrowly as including components of a solar facility similar to those that are enumerated. The intent of the phrase is to be a catch-all in case technology or construction techniques change over time. This language is not meant to capture what would otherwise be considered "related or supporting facilities." Please confirm this reading reflects the Council's intent behind the rule or otherwise explain the Council's intent on the rulemaking record.

- (56)(a) The rule language provides that “[r]elated or supporting facilities” are included in acreage calculations for determining EFSC jurisdiction but “are not otherwise considered to be components of the solar photovoltaic power generation facility.” We read this language as excluding “related or supporting facilities” such as gen-tie lines, access roads, O&M buildings, and battery storage systems from the one-mile calculation presented in (56)(b)(A). Please confirm this reading reflects the Council’s intent behind the rule or otherwise explain the Council’s intent on the rulemaking record.
- (56)(b)(A) The rule language provides that projects proposed within one mile of an existing solar photovoltaic power generation facility “may be determined to be an expansion” of the existing facility. We appreciate staff’s explanation of the thought process behind the recommended one-mile distance, but having a distance that differs from the Oregon Department of Land Conservation and Development (DLCD) solar siting rules is problematic. We encourage Council to reduce the one-mile radius to a quarter-mile to align with DLCD’s solar siting rule.
- (56)(b)(B) The rule language provides that projects under common ownership with an existing solar photovoltaic power generation facility may be determined to be an expansion of the existing facility. Further, “[p]rojects connected to the same parent company or individuals will be considered to be in common ownership, regardless of the operating business structure.” We understand the phrasing “connected to the same parent company or individuals” to mean that the primary stake in the project ultimately belongs to the same owner or owners, regardless of the structure or structures that insulate that owner from liability related to the project. It is not intended to capture debt lenders, tax equity investors, minority partners, and other entities involved in financing the project. In other words “connected with” is intended to be applied narrowly, looking at the project subsidiary and its parent company. Please confirm this reading reflects Council’s intent behind the rule or otherwise explain the Council’s intent on the rulemaking record.

**OAR 345-001-0250**

- (1) To find that a project is an expansion of an existing facility, “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.” We understand that the “other proceeding” referenced in this section is to give the Council flexibility to make a determination outside of a declaratory-order proceeding, given the requirement that parties to a declaratory-order proceeding must agree to the facts as posed by the petitioner seeking a declaratory order. We request that the Council discuss the nature of such a proceeding on the record to provide direction for future determinations.
- (2) “Any person ... may petition the Council to issue a declaratory ruling” regarding whether a project is an expansion of an existing facility. We understand that the Council

has authority under the declaratory-order process to reject a petition if Council staff determine that relevant parties do not agree regarding the underlying facts. Please confirm this reading reflects the Council's intent behind the rule or explain the Council's intent on the rulemaking record.

- (3) We understand this language to provide a safe harbor for solar facilities that have already been permitted locally. Given this safe harbor, we understand that the rule would not apply to existing facilities but only to new projects proposed within one (or, if the Council accepts our recommendation above, one-quarter) mile of the existing facility and the proposed project is under common ownership with the existing or approved facility, in which case the new project may be reviewed under OAR 345-001-0250. This reading is informed by our understanding that a "solar photovoltaic power generation facility" under the rule is not necessarily an "energy facility" subject to EFSC jurisdiction, and a "solar photovoltaic power generation project" is distinct from a "solar photovoltaic power generation facility." Please confirm this reading reflects the Council's intent behind the rule or explain the Council's intent on the rulemaking record.

Again, we appreciate the way this rulemaking process has developed, and we commend the thought and effort that went into drafting these proposed rules. Renewable Northwest and OSEIA support adoption of the proposed rules, subject to the comments above.

Sincerely,

Max Greene  
Regulatory & Policy Director  
Renewable Northwest

Angela Crowley-Koch  
Executive Director  
Oregon Solar Energy Industries Association

June 25, 2020

*VIA EMAIL*

Energy Facility Siting Council  
c/o Christopher Clark ([Christopher.Clark@oregon.gov](mailto:Christopher.Clark@oregon.gov))

**Re: Comments on Proposed Solar Facility Siting Rules**

Dear Council Members:

Obsidian Renewable LLC (“Obsidian”) appreciates the opportunity to provide comments on the proposed rules to define a “solar photovoltaic power generation facility” under ORS 469.300. Obsidian was an active participant on the Rules Advisory Committee and appreciates the effort of Staff and the other participants. Obsidian notes that the rules presented for Council’s consideration are considerably improved from where the Rules Advisory Committee started a few years ago. However, Obsidian remains concerned that the rules, in application, could be abused and used by opponents to delay or derail projects. Obsidian requests that the Council consider and address the following:

- What will Council do if a party other than the applicant or ODOE files a petition for declaratory ruling? Shouldn’t such a petition be dismissed? If not, does the applicant have to intervene? It is very likely that the applicant could not stipulate to the petitioner’s statement of facts because they are inaccurate. Then what? Generation facility objectors are common, and is this another time consuming and expensive expansion of the process? Obsidian understands that Council may consider another process to address such situations (as indicated by the language in OAR 345-001-0250(1)), but that process is not described or defined in the rule. Obsidian encourages Council to describe how it would address such a situation on the record so as to document in the rulemaking record Council’s intent behind the language in OAR 345-001-0250(1).
- The Council rule should be consistent with the DLCDC solar siting rules when looking at distance between projects under common ownership. Obsidian advocates for Council to adopt a 1/4 mile instead of one mile.
- There needs to be a clear safe harbor for existing or approved projects. The language should go further than the Council not making a ruling, but instead specify that the rules in OAR 345-001-0250 do not apply to safe harbor projects.

*(3) OAR 345-001-02500 shall not apply to* ~~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.~~

Obsidian maintains that these are still issues that need to be address before the Council acts on the proposed rules. While on the Advisory Committee we asked if there was an example of a problem prompting this rule, and as far as we know the answer is no. Obsidian also supports the proposed clarifications and changes presented in the joint letter from Renewable Northwest and Oregon Solar Energy Industries Association. It is important to have the rulemaking record reflect Council's intent to ensure practical application of the rules in the future.

Thank you for your consideration.

Very truly yours,



David W. Brown