

**July 23-24, 2020 Energy Facility Siting Council Meeting  
 Agenda Item D: Rulemaking to Clarify Standard for  
 Contested Case Requests for Type A Amendments  
 Attachment 2: Public Comments  
 Updated July 17, 2020**

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June 24, 2020

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

**Re: EFSC Rulemaking Hearing – Proposed Rules to Clarify Standard for Contested Case Requests for Type A Amendments**

Dear Chair Jenkins and Council Members:

The following comments regarding the above-referenced proposed 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.

The proposed rule would modify the threshold standard at OAR 345-027-0371(9) for Council decisions on whether to conduct a contested case proceeding on site certificate amendments reviewed under the “Type A” process as follows:

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 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.

Although the proposed rule would result in only a few words being changed, the effects would be significant. Commenters oppose the proposed rule language for several reasons. The proposed rule language would put the Council in the awkward position of having to prematurely weigh and adjudicate the merits of specific issues in deciding whether to hold a contested case—yet the merits and likelihood of success on specific issues are supposed to be the subject of the contested case. Second, the proposed rule language would impose new burdens on interested persons to justify a contested case by satisfying a new burden of proof, thus decreasing even further the likelihood that there would ever be a contested case on a proposed site certificate amendment. Finally, in many scenarios it could be impossible for interested persons to satisfy the proposed rule language—for example, situations where satisfying the new burden would depend on evidence that would be produced in the future, *via* a contested case. There is no need to change the Council’s rules to impose new, difficult (and potentially insurmountable) burdens on interested persons requesting contested cases.

In addition, if the Council is not inclined to immediately reject the proposed rule language, then the Council should delay final action on the proposed rule until a later date. Commenters believe that both the Council and the public do not yet have sufficient information for meaningful review of

the proposed rule. In addition, the notice of proposed rulemaking and the meeting agenda for this rulemaking fail to accurately describe the proposed rule change, because they refer to the rule change as merely “clarifying” the Council’s rules, when in fact the rule would *modify* the threshold standard for requesting—and determining whether to hold—a contested case. If the Council is not inclined to immediately reject the proposed rule language outright, then it should request more information from the ODOE Staff (as described below) and should authorize the distribution of a revised notice of proposed rulemaking to specify that the proposed rule would do more than merely “clarify” the Council’s rules, but in fact would change the operative standards for the public to request and the Council to authorize a contested case. The public should also be given additional time to comment following this revised rulemaking notice. Finally, at the end of this letter below, Commenters formally request an extension of the rulemaking process by at least 21 days pursuant to ORS 183.335(4).

**1. The Council should reject the proposed rule language.**

The proposed rule language would substantially change the threshold standard for interested persons to request a contested case, and the standard for the Council to determine whether to hold a contested case. The Council should reject the proposed rule language.

Under the current rules at OAR 345-027-0371(9), if a request for a contested case is filed and if that “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,” then the Council is empowered to authorize a contested case, which will be held before a hearings officer. This is an appropriate threshold standard to apply at the time a contested case is requested: if an issue is raised that “may affect” the ultimate determination of compliance with the applicable law, then a contested case should be held to vet and adjudicate that issue.

The proposed rule language, however, would turn the current process on its head. It would require the Council to evaluate the merits of each issue at the outset and determine whether it is “reasonably likely to affect” the ultimate determination of compliance with the applicable law. This would put the Council in the awkward position of having to prejudge the merits of each issue at an early stage, without the benefit of that issue having been vetted and adjudicated by a hearings officer in a contested case. While the Council is the ultimate decision-maker on applications for certificate amendments, the Council also utilizes the expertise and assistance of hearings officers to resolve complex evidentiary and legal issues via contested cases. Under current law, the Council waits until each contested case is concluded and then relies on the recommendations of the hearings officer to evaluate the merits of each issue. Again, the proposed rule change would turn that process on its head.

Compounding these problems, the evidence for each issue might not yet be available at the time a contested case is requested. Indeed, that is the very *purpose* of a contested case: for each party to litigate the issues in dispute by producing evidence, including the sworn testimony of expert witnesses. In addition, ODOE has recently taken the position that when a person requests a contested case, that person is prohibited from supplying new evidence to support the request if the evidence was not previously supplied with the person’s initial comments on the amendment request. Commenters disagree with that position, but assuming ODOE is correct, then under the proposed rule change, a

person requesting a contested case in order to pursue evidentiary issues will find themselves in an unfair “Catch-22” predicament: they will be prohibited from submitting new evidence in support of a request for a contested case, and yet they will also be unlikely to convince the Council that a contested case should be held to produce that evidence in the future, because they will now be required to meet the high burden of demonstrating that the issue is “reasonably likely to affect” the Council’s determination of compliance, based on evidence that does not yet exist. In essence, a person requesting a contested case would be required to prove her case, before the case even starts. This is unfair and inappropriate.

Moreover, there will be scenarios where persons requesting a contested case will not be capable of producing certain supporting evidence on their own, but rather will need to pursue that evidence from other parties, through discovery in a contested case. For example, a contested case may be necessary in order to pursue from site certificate holders, through discovery, evidence such as underlying data that was used to prepare application materials, or surveys or analyses that may have been conducted by the certificate holders but not furnished to the Department or the Council or otherwise made available to the public. Because most energy projects are proposed on private property (to which the general public does not have access), it can be critical for interested persons to obtain this type of evidence from energy certificate holders or their consultants via discovery. Similarly, persons requesting a contested case may need to use the discovery process to obtain evidence from the Department, such as legislative history of specific rules or communications with relevant persons. The discovery process is one of the fundamental reasons to hold a contested case: to pursue relevant evidence and furnish it to a hearings officer for adjudication and resolution of the disputed issues. The proposed rule language would circumvent that process by not allowing contested cases unless the supporting evidence already exists.

Ultimately, there is no need to change the standards for requesting and deciding whether to hold a contested case. The current rules are appropriate and fair. The proposed new rule language would upset the apple cart, substantially modifying the standards in ways that would put the Council in the awkward position of having to pre-judge issues, and that would unfairly hamstring persons requesting contested cases by requiring them to satisfy new burdens based on evidence that does not yet exist (and that, according to ODOE, could not be attached to the requests even if it did exist), and by requiring them to effectively prove their cases before the cases even begin. This substantial change in the rules would be unfair and inappropriate, and should be rejected.

**Recommendation:** Reject the proposed rule language.

- 2. If the Council is not inclined to immediately reject the proposed language, then the Council should delay final action on the proposed rule change until a later date, so that additional information can be supplied by ODOE Staff, so that a revised rulemaking notice can be distributed to the public, and so that the comment period on the proposed rule can be extended.**

If the Council is not inclined to immediately reject the proposed rule language, then the Council should delay final action on the proposed rule until a later date and should authorize several actions to take place in the meantime.

First, Commenters believe that both the Council and the public do not yet have sufficient information for meaningful review of the proposed rule. The rulemaking notice states that the proposed rule change would be “consistent with the Council’s current interpretation . . . of the rule.” (Notice of Proposed Rulemaking at 2.) Yet nothing in the notice or in the ODOE Staff Report identifies any source(s) for this “current interpretation.” The notice also states that the rule change would be “consistent with the Council’s . . . past application of the rule.” (*Id.*) Again, nothing in the ODOE Staff Report nor in the rulemaking notice identifies any relevant “past application[s]” of the rule. Without this information, it is difficult if not impossible to evaluate the statement that the proposed rule change would be consistent with the Council’s past applications of and current interpretation of the rule. Similarly, the agency materials do not state when the “may affect” language in the rule was first adopted,<sup>1</sup> nor provide any legislative history behind the “may affect” language to show its intent, nor any discussion of the Council’s interpretation and application of this language over time.<sup>2</sup> Finally, the notice states that one of the purposes of the rule is “to be consistent with other rules that convey a similar standard of proof.” (*Id.*) But neither the notice nor the Staff Report identifies these other rules. The Council should request all of this information from ODOE Staff, so that the public and the Council can have a full picture of the history and intent behind the current rule, how it has been implemented and interpreted, whether the proposed rule change would indeed be consistent with that implementation and interpretation, and the relevance of any other unrelated rules that are being relied on by Staff.

In addition, the notice of proposed rulemaking and the meeting agenda for this rulemaking fail to accurately describe the proposed rule change, because they state that the purpose of the intended action is to “clarify” the Council’s rules, when in fact the rule would *modify* the threshold standard for requesting—and determining whether to hold—a contested case. For example, the caption in the rulemaking notice is “*Clarification* of standard for issue to justify a Contested Case in Type A Amendment Review.” (*Id.* at 1 (emphasis added).) The use of the word “clarification” is inaccurate and misleading, because the operative standard would in fact be modified, not merely clarified. Specifically, the standard would be changed from “may affect” to “reasonably likely to affect.” These are two different standards.<sup>3</sup> The caption in the rulemaking notice fails to comply with ORS

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<sup>1</sup> Commenters have begun to research this question, and have determined that the “may affect” language in question appears to have been first adopted on February 2, 2000, via a rulemaking order numbered EFSC 2-2000, and was first adopted at OAR 345-027-0070(6) (2000). ODOE Staff should provide the Council with the full rule language when it was first adopted, along with any prior and/or subsequent legislative history that might evidence the intent of this language. It is especially important for ODOE to do so, given the contentions in the rulemaking notice that the rule language is merely being “clarified,” presumably to capture EFSC’s intended interpretation.

<sup>2</sup> The ODOE Staff Report also fails to acknowledge that when the “may affect” language was first added to EFSC’s rules (in February 2000), it was accompanied by the following sentence in the rules: “If the Council determines that even if the alleged facts are taken as true the outcome of the Council’s determination would not change, but that conditions of performance might need revision, the Council may deny the request and may adopt appropriate conditions.” OAR 345-027-0070(6) (2000). This sentence, which did require the Council to effectively weigh the merits of each issue in deciding whether to allow a contested case, was subsequently removed from EFSC’s rules. The Council’s subsequent choice to remove this sentence from its rules, while retaining the “may affect” language, helps demonstrate that the Council no longer intends for the merits of issues to be prematurely weighed in determining whether to hold a contested case.

<sup>3</sup> Indeed, in a prior Staff Report dated March 13, 2020 in this matter, ODOE Staff appears to

183.335(2)(a)(A) by misleadingly using the word “clarification.” Second, the summary of the proposed rule in the rulemaking notice violates ORS 183.335(2)(a)(B), because it similarly states that “[t]he purpose of the rule amendment is to *clarify* the Council's standard.” (Notice of Proposed Rulemaking at 2 (emphasis added).) The inaccurate and misleading use of the word “clarify,” rather than a word such as “modify,” fails to “inform a person that the person’s interests may be affected,” and thus violates ORS 183.335(2)(a)(B). The Council could and should rectify these procedural errors by authorizing the distribution of a revised notice.

If the Council is not inclined to reject the proposed rule language outright, then it should authorize the distribution of a revised notice of proposed rulemaking specifying that the proposed rule would do more than merely “clarify” the Council’s rules, but in fact would modify or change the operative standard for the public to request and the Council to authorize a contested case. The public should also be given additional time to comment following this revised rulemaking notice.

Finally, pursuant to ORS 183.335(4), Commenters request that EFSC and ODOE postpone the process for this rulemaking by at least 21 days in order to allow Commenters and other interested persons a sufficient opportunity to submit data, views, or arguments concerning the proposed action.<sup>4</sup> Specifically, Commenters request that the Council postpone the June 25, 2020 deadline for written comments on this proposed rulemaking by at least 21 days, and also postpone the June 26, 2020 date (the scheduled date when the Council may take final action) by at least 21 days. This will allow the Department to supply more information to the Council regarding the proposed rule, will allow for a revised rulemaking notice to be distributed to the public specifying that the standards for requesting a contested case would be modified and not merely “clarified,” and would allow interested persons to review this information, to continue researching and evaluating the proposed rule, and to respond appropriately.

**Recommendation:** If the Council is not inclined to immediately reject the proposed language, then the Council should request additional information from ODOE staff, should delay final action on the proposed rule change by at least 21 days, should extend the comment period on the proposed rule by at least 21 days, and should authorize the distribution of a revised rulemaking notice to the public.

### 3. Conclusion

For the reasons stated above, please retain the current language and reject the proposed rule, which would substantially change the threshold standards for requesting and determining whether to

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acknowledged that “may affect” and “reasonably likely to affect” are two different standards. The March Staff Report equates “may affect” with “in some degree likely to affect” and acknowledges that this standard could “include any non-zero probability.” (Mar. 13, 2020 Staff Report at 2.) It also describes the proposed rule change to “reasonably likely to” as being “consistent with other rules which convey a *standard of proof*.” (*Id.* (emphasis added).) If the “reasonably likely to affect” language indeed imposes a standard of proof similar to other rules, then this is a substantive change to the applicable standard in this rule.

<sup>4</sup> This request is timely under ORS 183.335(4) because it is made before the earliest date that the rules could become effective pursuant to ORS 183.335(1). The notice of the proposed rulemaking was distributed to Commenters and others on May 6, 2020. The earliest date the proposed rules could become effective is June 25, 2020 (50 days after notice was given pursuant to ORS 183.335(1)(d)). The deadline to make requests under ORS 183.335(4) is thus June 24, 2020 (one day before the earliest date the rules could become effective).

hold a contested case. Otherwise, if the Council is not inclined to immediately reject the proposed language, then it should delay final action on the proposed rule, request additional information from ODOE staff, authorize the distribution of a revised rulemaking notice, and extend the time period for interested persons to comment on the proposed rule.

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*

FRIENDS OF THE COLUMBIA GORGE



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cc (via email):

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## CLARK Christopher \* ODOE

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**From:** Irene Gilbert <ott.irene@frontier.com>  
**Sent:** Friday, June 26, 2020 10:32 AM  
**To:** EFSC Rulemaking \* ODOE  
**Cc:** BENNER Janine \* ODOE  
**Subject:** Comment on Amendment Rule Amendment

My comment is that there is a significant difference from "may" meaning "possible" and "is reasonably likely to which was stated on the record by Mr. Howe to provide "limits".

The change means the council is provided significantly increased "discretion" in their decision. I clearly do not support this change, however, no matter what the outcome of the rulemaking, I am exceedingly concerned regarding the statement that this change was in part to provide council direction regarding the process that is already being used to make the decision. The council should not be using a standard other than the one in rules to make decisions. This issue has been a concern in the past due to interpretations that do not necessarily appear in the administrative rules. I encourage the council to discuss this concern.

For the council's consideration: I believe that the impetus for proposing this rule change may be based upon challenges to the Summit Ridge amendment denial of contested cases based upon the fact that the contested case request met the standard of "may" impact the decision.

I also did not hear any discussion regarding the fact that for the original Amendment Rule change or the current Amended Rule change none of the comments from the public were implemented. The only change that did occur was from a statement I made in a council meeting that the least the council could do is provide notice on their web site that they were going to use an amendment procedure that failed to provide any opportunity for the public to request a contested case. There were no changes to provide increased opportunity for public participation or to leave rules that in any way supported that. During the Friday meeting it was stated that ODOE would provide information regarding this comment. Perhaps that will occur during the July meeting. It will be a short discussion as there were none in spite of the many public comments received and in fact, there was no information provided regarding why none of the suggestions were implemented.

I recommend that the rulemaking revert back to the original rules in place prior to the rewrite which excluded the public from participating in Amended Site Certificate Contested Cases. Changes should reflect an actual presence of the public in the process. I was on the Amendment Rule Change Advisory Committee as one of two public representatives. Nothing in the rules reflected public participation in the process.

Irene Gilbert  
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# REEVES, KAHN, HENNESSY & ELKINS

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July 15, 2020

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

## **Re: EFSC Rulemaking Hearing – Proposed Rules to Clarify Standard for Contested Case Requests for Type A Amendments**

Dear Chair Jenkins and Council Members:

Thank you for extending the comment deadline to allow additional public comments on the above-referenced rulemaking. The following supplemental comments 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”).

### **1. The Council should terminate this rulemaking.**

As Commenters have previously stated and will further explain below, we vigorously oppose the removal of the “may affect” language from the threshold standard at OAR 345-027-0371(9) for Council decisions on whether to conduct a contested case proceeding on site certificate amendments reviewed under the “Type A” process. Not only would such a rule change be ill-advised on the merits, this rulemaking proceeding itself is an unnecessary, inefficient use of the Council’s resources. The Council has recently completed three rulemaking proceedings in as many years involving its procedural rules for reviewing proposed amendments to site certificates (*i.e.*, the rules in OAR chapter 345, division 27), and is scheduled to review all of the same rules yet again in 2022. It is unclear why the Council would want to devote its time and resources on the current rulemaking, just to focus on a couple of specific words in one rule subsection now, given that the Council will be looking at all of these rules again in less than two years. Commenters are unaware of any immediate or urgent reason to review or revise the threshold standard for contested cases now. If there is any perceived sense of urgency, it is illusory. The current rulemaking should be terminated.

### **2. The Council should retain the “may affect” language in the rules.**

As Commenters and others have explained, the “may affect” language in OAR 345-027-0371(9) is a fair and appropriate standard that has been in the Council’s rules for twenty years. To replace it now with a new standard, such as “reasonably likely to affect” or “in some degree likely to affect,” would impose new, unfair burdens on persons requesting contested cases, and would decrease transparency and opportunities for public participation. Furthermore, as Commenters have previously explained, imposing such new burdens could prove difficult or even impossible to meet at

the relatively early stage in the review process when a contested case is requested (for example, in some instances before relevant evidence would or could be available).

In addition, changing the rules to require the Council to prejudge,<sup>1</sup> before a contested case begins, whether specific issues are “reasonably likely” or “in some degree likely” to affect the ultimate outcomes on the merits, would be unfair to everyone involved—including the general public, the persons requesting a contested case, the site certificate holders, the hearings officer (if a contested case is held), and the Council itself. For example, if and when the Council decides that issues raised by interested persons are “reasonably likely to affect” the ultimate outcome, could that decision influence the proceedings, so that the issues do in fact affect the outcome? Conversely, if the Council decides that the issues are *not* “reasonably likely to affect” the outcome, could that decision influence subsequent judicial review, for example by enhancing judicial deference to EFSC’s ultimate decisions on the merits, even where specific issues were not adequately vetted via contested cases? Asking the Council to prejudge the issues in these ways would be akin to polling the members of a jury in a criminal trial, immediately after opening arguments, whether they believe a defendant is “reasonably likely” to ultimately be found guilty, and only allowing the trial to move forward if the jury votes in the affirmative. It makes no sense for the Council to make such a weighty decision at such an early stage in the process—or in a vacuum, before relevant evidence may exist. The Council should retain the “may affect” standard in the rules.

It should also be noted that the language at OAR 345-027-0371(9) already imposes a burden on persons requesting a contested case to raise one or more “significant” issues:

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.

Thus, persons requesting a contested case must already meet this burden of raising “significant” issues.<sup>2</sup> The Council should not add to that existing burden by replacing the “may affect” language with new language, which would make it even harder for concerned members of the public to ever obtain a contested case, thus frustrating public participation and decreasing transparency in the Council’s decision-making processes. The Council should retain the “may affect” language and should terminate this rulemaking.

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<sup>1</sup> The Council has previously described its determinations of what is “reasonable” as “judgmental decision[s]”: “The Council’s determination of what is ‘reasonable’ is not a factual or legal issue that can be addressed through a contested case proceeding. It is a judgmental decision by the Council on what it meant by ‘reasonable effort’ when it imposed the condition.” EFSC, Final Order, *In re Thermal Power Plant Site Certificate for the Hermiston Power Project Request for Amendment No. Four* at 20 (May 4, 2001).

<sup>2</sup> EFSC’s rules define “significant” as “having an important consequence, either alone or in combination with other factors, based upon the magnitude and likelihood of the impact on the affected human population or natural resources, or on the importance of the natural resource affected, considering the context of the action or impact, its intensity and the degree to which possible impacts are caused by the proposed action. Nothing in this definition is intended to require a statistical analysis of the magnitude or likelihood of a particular impact.” OAR 345-001-0010(52).

**3. Before making any “clarifying” amendments to the procedural standards in its rules, the Council should first examine the legislative history of these rules.**

In our prior comments, Commenters requested that the Council refrain from amending the “may affect” language in its rules until it first examines the legislative history behind this language, as well as the Council’s interpretation and application of this language over time. In response, Department Staff stated that “[w]e are not aware of any requirement for a rulemaking notice to contain a detailed analysis or legislative history supporting the rulemaking action.” (ODOE, Staff Summary and Evaluation of Public Comments at 1 (June 25, 2020).)

Commenters agree that EFSC is not under a legal obligation to review and analyze the legislative history of a rule before amending it. However, Commenters’ request was apparently misinterpreted. We requested a review and analysis of the legislative history in this instance not because we believe it is legally required, but because this entire rulemaking proceeding has been framed as a mere “clarification” of an existing EFSC rule. In order to “clarify” a rule, EFSC should first know the intent behind that rule. Accordingly, the Council should review the legislative history and past implementation of the “may affect” language at OAR 345-027-0371(9).

Similarly, at the June 26, 2020 EFSC meeting, the Council asked ODOE Staff and EFSC’s legal counsel to examine alternative rule language that might already be in use by other agencies in similar circumstances. If the Council will be reviewing what other agencies are doing or have done, the Council should also know what rule language EFSC itself has used in the past, and how that language has changed over time. Accordingly, Commenters will set forth below a history of how EFSC’s rule language for determining when to hold a contested case on proposed site certificate amendments has changed over time.

The “may affect” language was first adopted by the Council on February 2, 2000, via a rulemaking order numbered EFSC 1-2000,<sup>3</sup> and was codified at OAR 345-027-0070(6) (2000).

Prior to 2000, EFSC’s standards for determining whether to hold a contested case on a proposed certificate amendment read as follows:

The Council shall determine **whether any issue identified in a request for a contested case proceeding is significant as defined in OAR 345-001-0010 or otherwise justifies a contested case proceeding.**

(a) If the Council finds that the request **identifies an issue that is significant or that otherwise justifies a contested case proceeding**, the Council shall conduct a contested case proceeding according to the applicable provisions of OAR 345-015-0002 to OAR 345-015-0085 limited to the issues that the Council found significant or sufficient to justify the proceeding.

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<sup>3</sup> In footnote 1 of our prior written comments, Commenters inadvertently mislabeled EFSC Order 1-2000 as Order 2-2000.

OAR 345-027-0070(4) (1999); *see also* EFSC Order 2-1999. Thus, prior to 2000, the Council's rules allowed it to authorize a contested case whenever a person raised a "significant issue," or in the alternative whenever a person raised any other issue that, despite not being significant, nevertheless "justifie[d] a contested case proceeding." OAR 345-027-0070(4) (1999).

In its rulemaking in 2000, the Council announced that it was adopting "new language [that] gives the Council guidance in determining whether to grant a request for a contested case." EFSC Order 1-2000 at 2. In this new language, the Council originated the "may affect" standard, along with contextual language effectively requiring the Council, in determining whether the "may affect" standard is met, to take as "true" the factual allegations of the person requesting the contested case:

To determine that an issue justifies a contested case proceeding under section (7), 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 an applicable standard. If the Council determines that **even if the alleged facts are taken as true the outcome of the Council's determination would not change**, but that conditions of performance might need revision, the Council may deny the request and may adopt appropriate conditions. If the Council does not have jurisdiction over the issue raised in the request, the Council shall deny the request.

OAR 345-027-0070(6) (2000) (emphasis added); *see also* EFSC Order 1-2000.

The contextual language directing the Council, in determining whether to hold a contested case, to take "as true" the factual allegations of the person requesting the contested case was modified slightly over time, but remained in the Council's rules as of 2017, as shown in the following rule language dated September 2017:

To determine that an issue justifies a contested case proceeding under section (8), 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 an applicable standard. If the Council finds that **the request would not affect the Council's determination if the alleged facts were found to be true** but that those facts could affect a site certificate condition, the Council may deny the request and may adopt appropriate conditions. If the Council does not have jurisdiction over the issue raised in the request, the Council must deny the request.

OAR 345-027-0070(7) (2017) (emphasis added).

In 2017, the Council attempted a "wholesale re-write" of OAR chapter 345, division 27, including the language of OAR 345-027-0070 (2017), but the Oregon Supreme Court held these attempted rules "invalid." *Friends of the Columbia Gorge v. EFSC*, 365 Or 371, 446 P3d 53 (2019).

Finally, in early 2020, EFSC adopted permanent rule revisions to the above-quoted language of OAR 345-027-0070, and relocated this rule to OAR 345-027-0370. The rule now reads as follows:

After identifying the issues properly raised the Council must 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.

OAR 345-027-0371(9) (2020) (emphasis added).

In this current version of the applicable rules, EFSC retained the “may affect” language, but omitted the contextual language directing the Council to take “as true” the factual allegations of the person requesting the contested case. It is unclear whether the omission of the latter language was intentional or inadvertent, because EFSC did not provide any legislative guidance on that specific issue in its rulemaking order. *See* EFSC Order 1-2020. Nevertheless, this language accompanied the “may affect” language in EFSC’s rules for twenty years, and thus provided context regarding the original intent of the “may affect” language.

The legislative history recited above sheds some light on the intent behind and meaning of the Council’s procedural standards for determining whether to hold a contested case on a proposed site certificate amendment. Given that foundational parts of those standards have been in the rules for twenty years and remain in the rules today, this legislative history is relevant and applicable when interpreting the Council’s current rules.

Under the Council’s current rules, the Council must answer two key questions in determining whether to hold a contested case to resolve properly raised issues. First, the Council must determine whether any of the issues are “significant.” Second, if any of the issues are deemed significant, the Council must then determine whether the allegations asserted under each of these issues, if ultimately proven true via a contested case, “may affect” the Council’s ultimate determination of whether the energy facility will comply with the applicable laws and Council standards. If the answer to both of these questions is “yes,” then a contested case will be held to allow the identified issues to be fully vetted through the adversarial setting afforded by a contested case proceeding. In such instances, the Council will abstain from making its ultimate determinations on any disputed significant issues of fact or law until after it receives recommendations from a hearings officer on how to resolve these issues. This is exactly how the Council’s rules are designed and were intended to work. The “may affect” language is integral to this procedural framework, and should be retained in the rules.

Finally, the rulemaking notice for this matter cites the “Final Order Regarding Application of OAR 345-027-0371(9) dated February 14, 2020” as one of the documents that may be relied upon for this rulemaking. That order, without citing any evidence or supporting examples, asserts that “[w]hen considering requests for contested case regarding a proposed order on a site certificate amendment subject to Type A review, Council’s practice is to consider whether the request is reasonably likely to affect the Council’s determination as to whether the facility complies with applicable laws and Council standards.” (Final Order Regarding Application of OAR 345-027-0371(9) at 3.) Commenters dispute this statement, which fails to accurately describe what is required under the

Council's current rules, as well as the Council's current practice. In addition, even if this were an accurate description of the Council's current practice, the statement is expressly limited to the processing of requests in Type A matters, which were not lawfully created until August 22, 2019, less than one year ago.<sup>4</sup> Moreover, the "Final Order Regarding Application of OAR 345-027-0371(9)" has been appealed and is currently the subject of litigation. *Friends of the Columbia Gorge v. EFSC*, No. 20CV13611 (Multnomah County Circuit Court). Thus, this order is undergoing judicial review, and is potentially subject to reversal, remand, or withdrawal in that judicial review process. The Council should refrain from relying on this order given that it is currently under appeal and, at best, describes a current practice implementing rules adopted less than one year ago. Rather than relying on this order, the Council should examine and rely on the twenty-year legislative history of the "may affect" language discussed above.

**4. If the Council does not terminate this rulemaking, the only clarifying change that should be made to the rule language at OAR 345-027-0371(9) is to replace the word "that" with "whether," in order to avoid any implication in the rule language that the Council will ultimately approve proposed amendments to site certificates.**

As discussed above, Commenters urge the Council to terminate this rulemaking proceeding. But if any change is made to the language in the threshold standards at OAR 345-027-0371(9), it should be to make the following grammatical correction to the rule:

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~~ **whether** 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.

The problem with the word "that" in the quoted rule language is that it could be read as presupposing that the Council will, in fact, make a "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). But it would be inappropriate to imply or presuppose that the Council will ultimately determine that the facility complies with the applicable laws and rules. Indeed, the Council's rules elsewhere require the Council to *deny* a proposed amendment if the site certificate holder fails to meet its burden of demonstrating that the facility, with the proposed change, will comply with the applicable laws and rules. *See, e.g.*, OAR 345-027-0375(1), (2). The word "whether" should be substituted for the word "that" in this rule, in order to avoid any preliminary implication that the Council will ultimately determine that the facility with the proposed amendment will comply with the law (and that the Council will ultimately approve the proposed amendment). The concept embodied by the word "whether" was always intended in this rule; the rule should be revised to make that clear.

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<sup>4</sup> EFSC attempted to adopt new rules creating the Type A procedure in 2017, but in doing so violated the Oregon Administrative Procedures Act, rendering these attempted rules "invalid." *Friends of the Columbia Gorge v. EFSC*, 365 Or 371, 446 P3d 53 (2019). New rules creating the type A procedure were not lawfully adopted until August 22, 2019, when the Council adopted new temporary rules via Order No. EFSC 9-2019.

**Recommendation:** Replace the word “that” with the word “whether” in OAR 345-027-0371(9), as shown above.

**5. Conclusion**

For the reasons stated above and in our prior comments, the Council should promote transparency and opportunities for public participation by retaining the current language in OAR 345-027-0371(9) and by rejecting the proposed rule revision, which would substantially change the threshold standards for requesting and determining whether to hold a contested case. If any change is made to the language of OAR 345-027-0371(9), it should be to replace the word “that” with “whether,” as Commenters have outlined above.

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*

FRIENDS OF THE COLUMBIA GORGE



Nathan J. Baker, OSB No. 001980

*Senior Staff Attorney, Friends of the Columbia  
Gorge*

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

## ODOE Rule Change Comments

I am writing to protest Oregon Department of Energy's proposed rulemaking change. I have commented on similar efforts in the past, and I am deeply distressed to see that these sleazy efforts to undermine the democratic process in Oregon continue.

Our family moved to Oregon when Tom McCall was Governor. Our children were raised in Oregon and it's no surprise that we now find ourselves at family gatherings wondering aloud "What happened to Oregon? What do we have to be proud of? Thanks goodness for Mississippi or we'd be at the bottom in education. Where is the integrity of government agencies?"

Last year I listened to Todd Cornet maundering hours of obfuscation masquerading as "information" to Senator Olson's legislative committee as it investigated precisely this kind of bureaucratic chicanery. It's disgusting. There is not one credible defense of this proposed change in wording from "may" to "is likely to." This change will in no measure increase EFSC transparency. It will not simplify or clarify citizens' access to the regulatory process. It not only 'may' but 'is likely to' further impede citizens' efforts to protect their property from needless exploitation.

By tweaking a bit of wording here and there, the agency plans to assure corporations that their plans will prevail over any citizen comments or objections, no matter how valid they may be. This is a trick for a cheap magic show. I'm disappointed and disgusted. I pay my taxes for state government agencies to serve the citizens of Oregon, not to support pusillanimous bureaucrats who are in thrall to industry lobbyists. Shame on you!

Lois Barry  
PO Box 566  
La Grande, OR 97850

541-963-3562

July 16, 2020

Dear Council Members,

I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the state of Oregon. Because these values are important to me, I am strongly opposed to the so-called “Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments.” This proposal severely undermines transparency and public participation in the Council’s review processes, and should be immediately terminated.

According to the official notice, this rulemaking is merely intended to make a “clarification” to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple “clarification,” the notice misleads the public and buries what is actually under consideration.

Under Council rules that have been in place for decades, the public has the right to request a contested case, and if such a request raises issues that “may affect” the Council’s ultimate determination of whether the energy project complies with the law, then a contested case will be held to resolve those issues. In contrast, if the proposed rule change goes through, it would impose new, unfair burdens on the public. Under the proposed rule, concerned members of the public would be required to demonstrate—at the time they request a contested case—that the issues they raise are “reasonably likely to affect” the Council’s review. This new burden would be unfair and inappropriate because it would require the Council to prematurely evaluate the ultimate merits of the issues, based on limited or no evidence, before a contested case is held to adjudicate those issues. This would turn the established decision-making process on its head, squelching public participation and decreasing transparency.

The “may affect” language has been in the Council’s rules for twenty years, and it establishes a level playing field for the public to participate in the Council’s review process. There is no need to change this long-standing language, which is fundamental to the Council’s rules. The old adage applies here: “if it ain’t broke, don’t fix it.” The “may affect” language should be retained.

In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the “may affect” language in the rules. The Council should terminate this rulemaking so that it may focus its valuable time and resources elsewhere.

Thank you for considering my comments,

	A	B	C	D	E	F	G
1	First Name	Last Name	Email Address	City	State Code	Zip Code	Comment
2	Paul	Caggiano	prcaggiano@gmail.com	Portland	OR	97203-3141	
3	Ann	Watters	twofivestars@comcast.net	Salem	OR	97301-4352	
4	Lucile	Brook	babbles@nehalemtel.net	Nehalem	OR	97131-0136	I agree 100% with the above letter. I would like to add that it is high time, way past time, that the power structure that rules this country start thinking more about the health and safety of humanity, the health of our environment, and less about their pocketbooks. Let's invest in a safe, clean future for all life! Respectfully yours
5	Ian	Shelley	ianjs@comcast.net	Portland	OR	97225-6902	
6	Alyssa	Deardorff	alyssadear@me.com	Molalla	OR	97038-9215	
7	Katherine	Wright	kmhgw@yahoo.com	West Linn	OR	97068-1651	

	A	B	C	D	E	F	G
8	Sarah	Prowell	sprowell@ix.netcom.com	Portland	OR	97239-2154	<p>We, the affected public, need meaningful engagement in all future energy facility permits. The oversight agency's current proposal would greatly reduce our ability to engage up-front with our concerns and comments before any of these proposed facilities are approved to move forward. In these times of climate change it is more important than ever that we participate in energy facility plans to ensure that they meet the will and priorities of We The People of Oregon, who will live with the consequences of potentially damaging energy facility decisions by your agency. It's more important now than ever to be vigilant in protecting our environment, our safety, and our mitigation of dangerous energy facility impacts to our climate. I urgently ask you to abandon your newly proposed changes, which substantially deny the public to have a meaningful say, before facility plans are unilaterally approved by your agency. I stand with Columbia Riverkeeper's position on this</p>

	A	B	C	D	E	F	G
9	Dena	Turner	denaturn62@gmail.com	Portland	OR	97215-2805	Public comment is an integral part of democracy. Do not shut out the public. Shutting down public comment is like shutting down free speech. It is un-American.
10	Randall	Webb	lawrkw@comcast.net	Portland	OR	97210-3490	
11	Jean	Svadlenka	storm33@sonic.net	Wilsonville	OR	97070-8761	

	A	B	C	D	E	F	G
12	April	Atwood	hissrattlesnap@yahoo.co	Portland	OR	97202-5442	Dear Council Members, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the state of Oregon, and am strongly opposed to the so-called „Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments.“ This proposal severely undermines transparency and public participation in the Council, the review processes, and should be immediately terminated. The proposed rule language would delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple „clarification,“ the notice misleads the public and buries what is actually under consideration. If the proposed rule change goes through, it would impose new, unfair burdens on the public. This would squelch public participation and decreasing transparency. The Council should
13	Tamara	Westbrook	2tamara2me@gmail.com	West Linn	OR	97068-4831	Stay strong, our earth depends on us!
14	Amy	Roberts	homerjim82@gmail.com	Albany	OR	97321-9637	
15	Satya	Vayu	satyavayu@gmail.com	Portland	OR	97215-1618	

	A	B	C	D	E	F	G
16	Robert	Carothers	bobcarothers@comcast.r	Lake Osweg	OR	97035-4551	Please retain ,Äúmay affect,Äù language.
17	Bill	O'Brien	wobobr123@yahoo.com	Beaverton	OR	97005-1360	
18	Janice	Karpenick	jkarpenick@gmail.com	Portland	OR	97229-6383	Weakening these rules is a bad idea, we need to everything in our power to provide transparency and inclusion. Please continue to stand for protection of the public.
19	Michael	Wilson	michaelamarwilson@gm	Portland	OR	97214-2651	When it comes to using natural resources, careful public deliberation is necessary. Everyone has a stake and ought to be consulted. Haste makes waste.
20	Jamie	Shields	jfillmore66@gmail.com	Portland	OR	97229-8985	
21	Don	Jacobson	donjphoto@gmail.com	Portland	OR	97201-6304	
22	lorraine	foster	lorraine@spiretech.com	Portland	OR	97202-6533	I fully concur with the above statements. Lorraine Foster
23	Jean	Rosenbalm	jean.rosenbalm@gmail.c	Beaverton	OR	97007	

	A	B	C	D	E	F	G
24	John	McSwigan	mcswigan@gmail.com	Hillsboro	OR	97124-5044	Orgon should be a leader in the fight against expanding fossil fuel use and the public needs access to address concerns about new foul fossil fuel projects.
25	Lise	Hull	castlesu@aol.com	Bandon	OR	97411-9651	
26	Gregory	Monahan	gregorymonahan29@gm	Portland	OR	97219-2015	Weakening the public,Ãs right to protect the environment is just flat wrong!
27	Teresa	DeLorenzo	tde@teleport.com	Astoria	OR	97103-8469	We need clear, fair procedures that are totally transparent, and actively engage the public.
28	dana	Bleckinger	wooflevi@yahoo.com	Yachats	OR	97498-0904	
29	Ron	Ennis	ronfennis@gmail.com	Portland	OR	97213-1247	Equal rights for all
30	Paulette	Meyer	meyer4842@comcast.ne	Portland	OR	97215-3414	
31	Mark	McCormick	markmccormickart@gma	Portland	OR	97206	
32	Patty	Larsen	pklaaslarsen@yahoo.com	Astoria	OR	97103-6436	

	A	B	C	D	E	F	G
33	Carolina	Hood	cvhood@gmail.com	Eugene	OR	97402-3730	What terrible intensity of greed must be involved that perverts an organization that was created to protect our environment to now want to enable its ruin?
34	Valerie	Blackmore	bobval22@comcast.net	Columbia C	OR	97018-0453	
35	Cheryl	Erb	awdsn@gmx.com	Salem	OR	97301-2547	
36	Deborah	Honthaner	honthand@yahoo.com	Portland	OR	97223-3670	It,Äôs time to STOP trying to make this change, the Oregon Supreme Court said No!
37	Catherine	Keys	valkate@comcast.net	Medford	OR	97501-9070	
38	D	Stirpe	dolcezza077@yahoo.com	Portland	OR	97214-1633	
39	Rick	Ray	columbiariverkeeper@ric	Troutdale	OR	97060-9380	

	A	B	C	D	E	F	G
40	Jeffrey	White	rogue576@gmail.com	Forest Grove	OR	97116-8523	This new burden would be unfair and inappropriate because it would require the Council to prematurely evaluate the ultimate merits of the issues, based on limited or no evidence, before a contested case is held to adjudicate those issues. This would turn the established decision-making process on its head, squelching public participation and decreasing transparency.
41	Anna	Cowen	annaysun@yahoo.com	Portland	OR	97266-2532	
42	Ryan	Schwartz	losetheshoes@gmail.com	Portland	OR	97213-5410	
43	Dana	Weintraub	mrdanaweintraub@tutar	Beaverton	OR	97003-4249	
44	Joel	Porter	joelypozole@gmail.com	Portland	OR	97293-0515	
45	Phoenix	Oaks	peaceloveandart89@gma	Portland	OR	97217-2360	

	A	B	C	D	E	F	G
46	Kima	Garrison	kimasuegarrison@gmail.	Portland	OR	97211-6341	The public needs accountability, transparency, and the right to include input on anything that directly affects ALL OF US!
47	Richard	Jaffe	rljaffe@gmail.com	Portland	OR	97229-2599	I Have read and agree with this prepared statement. Please do not change these standards.
48	Matthew	Barmann	chiakacomm@mac.com	Hood River	OR	97031-1211	
49	Susan	Vosburg	fgtaxsusan@gmail.com	Gales Creel	OR	97117-9419	
50	Kyle	Rolnick	charo33@centurylink.net	Lorane	OR	97451-0999	
51	Melissa	Rehder	misslissr@yahoo.com	Portland	OR	97206-9067	

	A	B	C	D	E	F	G
52	David	Grant	d2avid@charter.net	Medford	OR	97504-9734	You,Äöve heard from the Oregon Supreme Court, and now you are hearing from the public: changing your administrative rules in order to circumvent the possibility of valid public input and concern is not in the public interest, nor in the interest of the environment. This proposed rule change is typical of the influence of energy companies on the current federal administration. It is not in fact in the country,Äôs overall interest at all. Try doing the right thing. Your children and grandchildren will thank you.
53	Diana	Pope	diana.s.pope@gmail.com	Portland	OR	97212-5345	

	A	B	C	D	E	F	G
54	Francisco	Gadea	frankie0004260@gmail.c	Portland	OR	97212-2356	Please do right by the people of the state and be more transparent not less!!!
55	Steve	Sheehy	sheehy.s@charter.net	Klamath Fa	OR	97603-8303	
56	Jean	Culp	jazcfhc@gmail.com	Bandon	OR	97411-6362	The Oregon Energy Facility Siting Council needs to realize that the people are demanding more of a voice in these vital decisions, not less. We must start NOW to demand better care of our Earth. The people know that our health and future depends on it.

	A	B	C	D	E	F	G
57	Laura	Hanks	laura.hanks@comcast.net	Portland	OR	97222-2325	This is an important issue to me because of climate change. Over the past three years, EFSC has repeatedly tried to weaken the rules governing the review of large energy projects throughout the state of Oregon, despite being told by the Oregon Supreme Court that EFSC broke the law in doing so. Now EFSC is considering yet another proposal to further weaken these regulations and reduce public participation. This is unacceptable. We are already at the tipping point in terms of fossil fuel use and climate disaster. Please stop this ill-advised rule change.
58	Tora	Bengochea	tormichab@yahoo.com	Grants Pass	OR	97527-9721	There are no jobs on a dead planet!

	A	B	C	D	E	F	G
59	Cathie	Bell	cathiebell@gmail.com	Portland	OR	97218-2407	How fast we are becoming so obviously fascist!
60	Pamela	Vasquez	cayetanatabullo@gmail.com	Salem	OR	97305-3062	
61	Victoria	Holzendorf	vinvanmo@yahoo.com	Lake Oswego	OR	97034-4118	
62	Benton	Elliott	benton.elliott@gmail.com	Eugene	OR	97401-3986	Please strengthen, not weaken, rules for large energy projects in Oregon. We need to protect what remains of our state's natural heritage.
63	Gretchan	Jackson	gretchan.jackson@gmail.com	Portland	OR	97215-3637	Don't thwart my ability to see what's going on and to contribute and participate in the process.
64	John	Barger	john@johnbarger.com	Portland	OR	97206-8418	

	A	B	C	D	E	F	G
65	Linore	Blackstone	llblackstone@comcast.net	Portland	OR	97213-2113	Oh for Earth's sake. What is your ethic? All flourishing is mutual. Humans are the only species with agency. Why are you so interested in seeing the earth and its bounty as commodity? What you do is destructive.
66	Eric	Lambart	eric-crk@nomeaning.org	Portland	OR	97217-5834	
67	Drew	BRADBURY	drewbradbury@gmail.com	Portland	OR	97204-2831	
68	Diana	Boom	dianajeffers44@gmail.com	Lake Oswego	OR	97034-3043	
69	Dennis	Smith	cgagen@spiretech.com	Enterprise	OR	97828-1249	
70	Stephen	Bachhuber	srbachhuber1@gmail.com	Portland	OR	97202-2717	
71	John	Reynolds	johnxr@protonmail.com	Portland	OR	97222-7938	
72	Larry	Morningstar	manapranabanana@gmail.com	Talent	OR	97540-7005	
73	Cindy	Allen	womaninthehood@gmail.com	Hood River	OR	97031	
74	Jamie	Melton	jamie@columbiariverkeeper.org	Portland	OR	97217-4053	
75	David	Nichols	davemult@aol.com	Portland	OR	97213-3021	

	A	B	C	D	E	F	G
76	Brent	Rocks	brent_rocks@comcast.net	Portland	OR	97201-6132	fossil fuel projects are a losing proposition with energy company's stock prices falling and bankruptcy's in the fracking industries show this is the end of Oil as we know it.
77	John	Schumann	jschumann8@earthlink.net	Portland	OR	97212-2708	The ‚Äúmay affect,‚Äù language has been in the Council,‚Äôs rules for twenty years, and it establishes a level playing field for the public to participate in the Council,‚Äôs review process. There is no need to change this long-standing language, which is fundamental to the Council,‚Äôs rules. The old adage applies here: ‚Äúif it ain,‚Äôt broke, don,‚Äôt fix it.,‚Äù The ‚Äúmay affect,‚Äù language should be retained.

	A	B	C	D	E	F	G
78	Jan	Polychronis	jp21florida@gmail.com	The Dalles	OR	97058-0639	
79	Ann	Turner	annturnerpx106@gmail	Portland	OR	97211-5770	
80	Nora	Polk	nora.mattek@gmail.com	Portland	OR	97206-6605	
81	Kay	Nolan	kaynell47@gmail.com	Gresham	OR	97030-6919	The public needs to be able to easily participate in any energy infrastructure in Oregon and beyond. Especially in areas like the Columbia River, where impacts are felt on many levels to the health of the river. Thanks
82	Craig	Mackie	beachbum@nehalemte.	Nehalem	OR	97131-9665	Any attempt to weaken the participation of citizens in the decision making process should not be allowed!
83	Kelly	O'Hanley	kohanley@gmail.com	Portland	OR	97213-4056	
84	Cale	Christi	cale.austin@gmail.com	Chiloquin	OR	97624-9711	
85	Beth	Levin	bethagl@yahoo.com	Portland	OR	97213-2415	
86	Barbara	Krupnik-Gold	bkgold2@gmail.com	Portland	OR	97216-3501	
87	Craig	Heverly	heverlyjc@hevanet.com	Portland	OR	97202-3757	
88	David	Edwards	david@riverbird.com	Eugene	OR	97404-1292	This expresses my feelings exactly!

	A	B	C	D	E	F	G
89	Mary	Peterson	mary.peterso@gmail.com	Newport	OR	97365-9605	This is the only earth we have. Keep it safe.
90	Anne-Marie	Claire	amclaire_2000@yahoo.co	Portland	OR	97212-5249	Thank you for considering my input on this rule making. I have over 20 years of working experience in the energy field. It is so important as citizens, to be fully informed about energy projects that affect our economy, environment. Please support public participation and transparency in the decision-making process by retaining the „Äúmay affect,Äù language in the rules. Anne-Marie Claire
91	Dan	Jaffee	dsjaffee@gmail.com	Portland	OR	97211-5011	
92	joan	viers	joan@wbcable.net	Hubbard	OR	97032-9200	
93	John	Nettleton	jpn5710@yahoo.com	Portland	OR	97202-3276	
94	Katelyn	Entzeroth	katelyn@entzeroth.com	Portland	OR	97225-1383	

	A	B	C	D	E	F	G
95	Sandi	Cornez	sandicornez@gmail.com	Portland	OR	97219-5208	The public must have the right to participate thus increasing more transparency in the system.
96	Linda	Bolduan	lindabolduan@comcast.net	Lake Oswego	OR	97034-6447	
97	Rae	Gholson	dorothydisko@gmail.com	Vancouver	WA	98661-4103	
98	Lori	Kunkel	kunkelpdx@comcast.net	Portland	OR	97203-5021	
99	Susan	Heath	forbux@hotmail.com	Albany	OR	97322-8898	
100	kent	Sugnet	kent@fossilcartel.com	Portland	OR	97215-3527	
101	Capt. Peter	Wilcox	peter@decarbthepassage.com	Portland	OR	97211-1074	Weakening citizen voices in large energy project siting is an extremely dumb idea in a climate crisis like Oregonian's and the rest of humanity are facing right now!
102	Susan	Haywood	susansaphone2@yahoo.com	Portland	OR	97210-3526	Marginalizing public input seems to be the goal of those trying to take advantage of this perilous time in history. We must fight for transparency and making our voices heard.
103	Charles	Townsend	charlesntownsend@gmail.com	Portland	OR	97212-3162	

	A	B	C	D	E	F	G
104	Mary	Davis	cycliders@aol.com	Portland	OR	97206-7856	
105	Diana	Talcott	diana.talcott@gmail.com	Portland	OR	97202-2208	
106	Hugh	Cochran	hughc97404@gmail.com	Eugene	OR	97404-1944	
	Joann	Macey	jomace123@gmail.com	Portland	OR	97224-3381	It is unconscionable to try to keep the public from for EFSC to try to do this to the public under the circumstances we are living in. They are trying to subvert the law and the public from knowing and responding to proposals. I say no to any changes to standing regulations whatsoever.
107							

## CLARK Christopher \* ODOE

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**From:** Irene Gilbert <ott.irene@frontier.com>  
**Sent:** Thursday, July 16, 2020 2:50 PM  
**To:** EFSC Rulemaking \* ODOE  
**Cc:** Fuji Kreider; Lois Barry; Jim Kreider; Charlie Gillis; Nathan Baker  
**Subject:** Public Comments on Amendment Rule Decision

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

At the last EFSC meeting, Marcia Grail requested that ODOE provide information confirming or showing that my comment that none of the public comments regarding either the 2017 or most recent major change in the Amendment Contested Case Rules were incorporated. That was not done. Prior to making a decision regarding the most recent change further restricts public involvement in the Contested Case Process, ODOE needs to provide the requested information.



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Portland, Oregon 97219  
Phone: (503) 768-6741 Fax: (503) 768-6671  
E-Mail: [ars@lclark.edu](mailto:ars@lclark.edu)

July 16, 2020

Oregon Energy Facility Siting Council  
c/o EFSC Rules Coordinator  
*Via email to [EFSC.rulemaking@oregon.gov](mailto:EFSC.rulemaking@oregon.gov)*

**Re: Comments on Proposed Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments**

Dear Chair Jenkins and Council Members:

The Green Energy Institute at Lewis & Clark Law School is a nonprofit energy and climate law and policy institute within Lewis & Clark's top-ranked environmental, natural resources, and energy law program. Our team of attorneys and law students work to design comprehensive legal and policy strategies to support a swift transition to a clean and renewable energy system. We appreciate the opportunity to comment on the Energy Facility Siting Council's (EFSC or the Council) Proposed Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments.

Despite the immediate harms caused by the current pandemic, climate change continues to present the greatest long-term threat to the health and wellbeing of Oregonians and the natural environment. To address this threat, the Green Energy Institute is committed to developing and supporting policies that help facilitate the decarbonization of Oregon's energy system. In accordance with these objectives, we feel it is essential that EFSC maintain a fair, transparent, and accessible process for evaluating proposed site certificate amendments for energy facilities in Oregon. We believe that EFSC's proposed rule amendment would undermine transparency and public participation in the Council's review processes and we strongly urge the Council to reject this proposed amendment to its existing rules.

As a preliminary matter, we wish to emphasize that we disagree with the Council's representation of the proposed amendment as a simple clarification of its existing standard. In practice, the proposal would raise the threshold for determining whether a contested case proceeding is justified and would thus substantially limit opportunities for the public to seek review of proposed orders for Type A amendments. The Council's proposal therefore reflects a *modification* of its existing standards, rather than a clarification of its interpretation of those standards. Moreover, by representing the proposed amendment as a procedural clarification rather than a modification of an existing rule, the Council failed to adequately notify potentially interested stakeholders of the implications of its action and likely deterred some stakeholders from commenting on this rulemaking.

The type and location of new energy infrastructure has considerable implications for the health and wellbeing of Oregon’s citizens and its natural environment, and members of the public should be given ample opportunity to meaningfully participate in EFSC’s siting processes. Contested case proceedings are an essential tool for enabling members of the public to seek review of the Council’s site certificate amendment decisions. Under the current rules, the public has the right to request a contested case hearing, and if such a request raises significant issues that “may affect” the Council’s ultimate determination of whether the energy facility will comply with existing laws and regulations, the Council must conduct a contested case proceeding to resolve those issues. The existing standards reflect an appropriate burden of proof for contested case requests for proposed site certificate amendments.

In contrast, under the Council’s proposed rule amendment, concerned members of the public would be required to show that the issues raised in their requests are “reasonably likely to affect” the Council’s final determination. This new standard would impose substantial and unwarranted burdens on the public. The Council is effectively proposing to make preliminary determinations on the legal merits of issues raised in requests for contested case hearings before examining supporting evidence or providing an opportunity to adjudicate those issues. This would turn the established decision-making process on its head, restricting public participation and decreasing transparency.

The Council’s proposal reflects a notable departure from Oregon’s existing administrative procedures, which aim to facilitate public participation in agency decision-making processes. For example, Oregon’s Model Rules of Procedure for Contested Cases allow any person to request a contested case proceeding by demonstrating “a personal or public interest that could reasonably be affected by the outcome of the proceeding.”<sup>1</sup> In other words, under Oregon’s Model Rules, agencies are urged to allow a contested case to proceed if the outcome could reasonably affect a personal or public interest. Under the Council’s proposal, in contrast, a contested case would only proceed when a member of the public demonstrated a high likelihood that the proceeding would cause EFSC to alter its initial determination regarding a facility’s legal compliance. This would require members of the public to satisfy a new, elevated burden of proof that would be difficult or even impossible to meet. The proposal would particularly burden individuals and organizations that lack legal training or access to legal resources by raising the threshold for them to successfully initiate a contested case. The Council’s proposed amendment would therefore serve to stifle public participation, rather than facilitate it.

The Council’s proposal would also impose a higher threshold for review than those established by the Oregon legislature. Under Oregon’s Administrative Procedures Act, “any person adversely affected or aggrieved by an order or any party to an agency proceeding is entitled to judicial review of a final order.”<sup>2</sup> The Oregon Supreme Court has noted that the legislature made a deliberate decision to allow “any person” to seek judicial review of a government action.<sup>3</sup> Additionally, the court has clarified that “the legislature envisioned broad public participation in the energy facility siting process itself.”<sup>4</sup> By imposing a higher threshold for review than the

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<sup>1</sup> OR. ADMIN. R. § 137-003-0005(7)(a).

<sup>2</sup> OR. REV. STAT. § 183.480(1).

<sup>3</sup> See *Kellas v. Dept. of Corrections*, 341 Or. 471 (2006).

<sup>4</sup> *Id.* at 481.

standard established through Oregon’s Administrative Procedures Act, the Council’s proposed amendment would restrict opportunities for public participation in energy facility siting processes.

Finally, the Council’s proposed rule amendment potentially conflicts with Governor Brown’s recent executive order on greenhouse gas (GHG) emissions and climate change. In EO 20-04, Governor Brown declared that “GHG emissions present a significant threat to Oregon’s public health, economy, safety, and environment” and that “all agencies with jurisdiction over the sources of GHG emissions will need to continue to develop and implement programs that reduce emissions to reach the state’s GHG goals.”<sup>5</sup> In accordance with these findings, EO 20-04 directed all relevant agencies, including the Oregon Department of Energy, to “exercise any and all authority and discretion vested in them by law to help facilitate Oregon’s achievement of the GHG emissions reduction goals.”<sup>6</sup> EFSC has jurisdiction over fossil fuel-fired power plants that produce large quantities of GHG emissions, and therefore has an obligation under the EO to exercise its siting authority and discretion to help reduce power sector emissions. If the Council restricts access to contested case proceedings, it could prevent concerned members of the public from challenging proposed amendments to site certificates for natural gas-fired power plants. This unfortunate outcome could lead to an increase in GHG emissions in Oregon in direct contravention of the Governor’s climate directives.

We strongly urge the Council to terminate the proposed rulemaking and retain the “may affect” standard in the current regulations. We appreciate your consideration of our comments.

Sincerely,



Amelia Schlusser  
*Staff Attorney*  
*Green Energy Institute at Lewis & Clark Law School*

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<sup>5</sup> Executive Order 20-04 (2020).

<sup>6</sup> *Id.* § 3(a).



## Stop B2H Coalition

60366 Marvin Road  
La Grande, Oregon 97850

[www.stopb2h.org](http://www.stopb2h.org)

[info@stopb2h.org](mailto:info@stopb2h.org)

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July 16, 2020

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](mailto:EFSC.rulemaking@oregon.gov)

### CLARIFICATION OF STANDARD FOR ISSUE TO JUSTIFY A CONTESTED CASE IN TYPE A AMENDMENT REVIEW

Dear Council:

The Stop B2H Coalition (“STOP”) is a nonprofit public interest organization with more than 700 individual members/supporters and 8 organizational members. STOP was formed to prevent an unneeded 300 mile 500kV transmission line from being built through Eastern Oregon by looking for alternatives to building the transmission line. If a site certificate is approved for B2H, we are fairly sure that Idaho Power and their partners, PacifiCorp, and the Bonneville Power Administration, will be coming to the council for Type A Amendments. This rule change will impact our ability to participate in significant changes, aka amendments, to the site certificate when requested. We need to maintain an open public process that values inclusion, not exclusion, as this rule amendment is proposing.

According to the [Notice of Proposed Rulemaking](#):

The purpose of the rule amendment is to clarify the Council's standard for determining whether an issue raised in a Type A Amendment Review justifies a Contested Case proceeding. The Council interprets the term “may” in section (9) of this rule to mean that a person must raise an issue that “is in some degree likely to” affect the Council’s determination as to whether the facility complies with applicable laws and Council standards. To be consistent with the Council's interpretation and past application of the rule, and to be consistent with other rules that convey a similar standard of proof for Council findings, the term “may” in section (9) of the rule is replaced with the term “is reasonably likely to.”

The change in the term from “may” to “is reasonably likely to” is not a clarification. It is a wholesale change in the standard for allowing the public access to a contested case. In a legal sense “may” is commonly interpreted as “expressing a possibility” or “permitted to.” The Peoples Law Dictionary defines “may” as a choice to act or not, or a promise of a possibility. In other words, this change is a clear intentional action to further restrict the public from access to the contested case process. There is no relationship between something being “possible” and it being “likely.”

In a staff report dated March 13, 2020, there is an acknowledgement that “may affect” and “reasonably likely to affect” are two different standards. The March Staff Report equates “may affect” with “in some degree likely to affect” and acknowledges that this standard could “include any non-zero probability.” (Mar. 13, 2020 Staff Report at 2.) It also describes the proposed rule change to “reasonably likely to” as being “consistent with other rules which convey a *standard of proof*.” (*Id.* (emphasis added).) If the “reasonably likely to affect” language indeed imposes a standard of proof similar to other rules, then this is a substantive change to the applicable standard in this rule--and again, this is NOT a clarification.

The procedure for obtaining a contested case on an amended site certificate is already restrictive for the public. Creating a rule to limit the questions that council deliberates for contested cases runs counter to why the governor appointed public representatives to the council. That is to listen to more questions and get the full story. Council decisions have a 20+ year horizon and due diligence would suggest listening to the maximum number of positions possible in decision making, rather than limiting them would be prudent.

In fact, the legislature requires EFSC to allow the public to fully participate in EFSC’s review processes for siting decisions. This was confirmed in 1977 by the Oregon Supreme Court in *Marbet v. PGE*, 277 Or. 447, 561 P.2d 154 (1977). In that case, the Court confirmed that “the important decisions of public policy entrusted to the Energy Facility Siting Council are not to be treated as a dispute between opposing private interests” and decided that EFSC must provide “procedures that allow for the presentation of views and data on the issues involved.” The Supreme Court also held that EFSC should use the contested case process to make “judgments about technological feasibility, economic projections, costs, safety, environmental consequences, and similar probabilities that will call for factual information and agency expertise, and judgments about the relative importance of conflicting goals, about values and priorities, in short, policy judgments.” For EFSC to modify its rules now to make it even harder for the public to even request a contested case—let alone actually participate in a contested case—would violate these principles espoused by the Oregon Supreme Court.

More recently, in the case *Blue Mountain Alliance v. Energy Facility Siting Council*, 353 Or. 465, 300 P.3d 1203 (2013), the Oregon Supreme Court interpreted the phrase “may affect” in EFSC’s rules (the exact phrase involved here) to mean what it says: “Thus, the question under OAR 345–027–0070(7) is whether the council erred in determining that petitioners raised no significant issue of fact or law that **may have affected** the council’s determination under ORS 469.503(1) that the facility, with Amendment # 2, would meet an applicable council-adopted

standard arising under ORS 469.501.” In other words, the Court applied the “may affect” language exactly as it is written—not some other alternative language like “reasonably likely to affect” or “in some degree likely to affect.”

The legislature never intended to eliminate contested cases on amended site certificates, but ODOE and EFSC have created rules that have been so subjective that no one is being allowed to access the process. The result has been that the public at large is excluded from challenging any decisions unless they are wealthy enough to pay the \$50,000 to \$100,000 needed to appeal directly to the Oregon Supreme Court when council decisions do not comply with state statutes and rules.

The Oregon Department of Energy failed to move forward any of the recommendations from the public or organizations representing the public interests in past rulemaking proceedings on this issue. The recommendations will not even be considered until at least 2022. Now, barely 5 months later, the Oregon Department of Energy is proposing rules that will require the public to in effect prove their contested case not only could result in a change, but it likely would result in a change -- **and do it in their request to be heard.**

This is an increased burden of proof as it would require the council to evaluate that the information presented is “reasonably likely to affect” the outcome before hearing the facts. All the facts at this time will not be known because that is what a contested case does – gets the facts out. Discovery in front of a hearing officer with the ability to question others involved in the process creates a knowledge base that the council needs in order to make a fair and informed decision. This rule change denies that process.

Before implementing any additional changes to these rules recommended by ODOE, we recommend the council consider the many comments from the public objecting to the rules as they currently are written and make changes that will allow for the public to actually have access to Contested Case proceedings, not just give that appearance. **This current rule change should not be approved.** The entire Contested Case Amendment rule changes should be reevaluated to make them more accessible, not more difficult, for the public to participate.

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](mailto:jim@stopb2h.org)

## CLARK Christopher \* ODOE

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**From:** Carol Douglass <Carol.Douglass.222628936@p2a.co>  
**Sent:** Friday, July 10, 2020 9:03 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

The contested case process is an immensely important tool in the Council's rules for examining and ultimately getting to the truth of whether a proposed project will comply with the law, and for allowing the public to meaningfully participate in that review. Under Council rules that have been in place for decades, the public has the right to request a contested case, and if such a request raises issues that "may affect" the Council's ultimate determination of whether the energy project complies with the law, then a contested case will be held to resolve those issues.

In contrast, if the proposed rule change goes through, it would impose new, unfair burdens on the public. Under the proposed rule, concerned members of the public would be required to demonstrate—at the time they request a contested case—that the issues they raise are "reasonably likely to affect" the Council's review. This new burden would be unfair and inappropriate because it would require the Council to prematurely evaluate the ultimate merits of the issues, based on limited or no evidence, before a contested case is held to adjudicate those issues. This would turn the established decision-making process on its head, squelching public participation and decreasing transparency.

In fact, the proposed new "reasonably likely to affect" standard for justifying a contested case could in many situations be impossible to meet at such an early stage in the process. For example, the public may need a contested case in order to obtain critical evidence that lies only in the hands of energy developers, or may need to hire expert witnesses to submit sworn testimony, subject to cross-examination, in a contested case. The proposed rule change would forever shut the door on such public participation opportunities by penalizing the public for not yet having that evidence in hand. Such a rule change could hardly be deemed fair or appropriate.

Nor would I support changing the "may affect" language in the rules to some other new language. The "may affect" language has been in the Council's rules for twenty years, and it establishes a level playing field for the public to participate in the Council's review process. There is no need to change this long-standing language, which is fundamental to the Council's rules. The old adage applies here: "if it ain't broke, don't fix it." The "may affect" language should be retained.

In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Carol Douglass  
821 Columbia St  
Hood River, OR 97031

## CLARK Christopher \* ODOE

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**From:** Sara Grigsby <Sara.Grigsby.218850998@p2a.co>  
**Sent:** Friday, July 10, 2020 9:04 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

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In contrast, if the proposed rule change goes through, it would impose new, unfair burdens on the public. Under the proposed rule, concerned members of the public would be required to demonstrate—at the time they request a contested case—that the issues they raise are "reasonably likely to affect" the Council's review. This new burden would be unfair and inappropriate because it would require the Council to prematurely evaluate the ultimate merits of the issues, based on limited or no evidence, before a contested case is held to adjudicate those issues. This would turn the established decision-making process on its head, squelching public participation and decreasing transparency.

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In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Sara Grigsby  
37201 NE Benfield Loop  
Corbett, OR 97019

## CLARK Christopher \* ODOE

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**From:** Robert Kimbro <Robert.Kimbrow.221453544@p2a.co>  
**Sent:** Friday, July 10, 2020 9:05 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

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valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Robert Kimbro  
7625 SW Wilson Ave  
Beaverton, OR 97008

## CLARK Christopher \* ODOE

---

**From:** Judith Lienhard <Judith.Lienhard.218828443@p2a.co>  
**Sent:** Friday, July 10, 2020 9:05 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

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valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Judith Lienhard  
4455 SW 94th Ave  
Portland, OR 97225

## CLARK Christopher \* ODOE

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**From:** Monica Gilman <Monica.Gilman.221502981@p2a.co>  
**Sent:** Friday, July 10, 2020 9:07 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

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valuable time and resources elsewhere.

Thank you for considering my comments,

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

## CLARK Christopher \* ODOE

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**From:** Jaclyn Easton <Jaclyn.Easton.268778435@p2a.co>  
**Sent:** Friday, July 10, 2020 9:08 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

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Thank you for considering my comments,

Regards,  
Jaclyn Easton  
155 Liberty St NE  
Salem, OR 97301

## CLARK Christopher \* ODOE

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**From:** Thomas Keys <Thomas.Keys.218828317@p2a.co>  
**Sent:** Friday, July 10, 2020 9:12 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

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Thank you for considering my comments,

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

## CLARK Christopher \* ODOE

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**From:** Joel Kay <Joel.Kay.218871481@p2a.co>  
**Sent:** Friday, July 10, 2020 9:13 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

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Thank you for considering my comments,

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

## CLARK Christopher \* ODOE

---

**From:** Sara Simon-Behrnes <Sara.SimonBehrnes.276332403@p2a.co>  
**Sent:** Friday, July 10, 2020 9:13 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

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Thank you for considering my comments,

Regards,  
Sara Simon-Behrnes  
7331 NE Sacramento St  
Portland, OR 97213

## CLARK Christopher \* ODOE

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**From:** Linda Browning <Linda.Browning.228140887@p2a.co>  
**Sent:** Friday, July 10, 2020 9:13 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

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Thank you for considering my comments,

Regards,  
Linda Browning  
7855 SW Matheny Dr  
Beaverton, OR 97008

## CLARK Christopher \* ODOE

---

**From:** Jay Maxwell <Jay.Maxwell.220213424@p2a.co>  
**Sent:** Friday, July 10, 2020 9:17 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

The contested case process is an immensely important tool in the Council's rules for examining and ultimately getting to the truth of whether a proposed project will comply with the law, and for allowing the public to meaningfully participate in that review. Under Council rules that have been in place for decades, the public has the right to request a contested case, and if such a request raises issues that "may affect" the Council's ultimate determination of whether the energy project complies with the law, then a contested case will be held to resolve those issues.

In contrast, if the proposed rule change goes through, it would impose new, unfair burdens on the public. Under the proposed rule, concerned members of the public would be required to demonstrate—at the time they request a contested case—that the issues they raise are "reasonably likely to affect" the Council's review. This new burden would be unfair and inappropriate because it would require the Council to prematurely evaluate the ultimate merits of the issues, based on limited or no evidence, before a contested case is held to adjudicate those issues. This would turn the established decision-making process on its head, squelching public participation and decreasing transparency.

In fact, the proposed new "reasonably likely to affect" standard for justifying a contested case could in many situations be impossible to meet at such an early stage in the process. For example, the public may need a contested case in order to obtain critical evidence that lies only in the hands of energy developers, or may need to hire expert witnesses to submit sworn testimony, subject to cross-examination, in a contested case. The proposed rule change would forever shut the door on such public participation opportunities by penalizing the public for not yet having that evidence in hand. Such a rule change could hardly be deemed fair or appropriate.

Nor would I support changing the "may affect" language in the rules to some other new language. The "may affect" language has been in the Council's rules for twenty years, and it establishes a level playing field for the public to participate in the Council's review process. There is no need to change this long-standing language, which is fundamental to the Council's rules. The old adage applies here: "if it ain't broke, don't fix it." The "may affect" language should be retained.

In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Jay Maxwell  
1432 SW College St  
Portland, OR 97201

## CLARK Christopher \* ODOE

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**From:** Bonnie New <Bonnie.New.261663952@p2a.co>  
**Sent:** Friday, July 10, 2020 9:18 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

I'm writing to urge you to reject the proposal to weaken regulations for reviewing large energy facilities. I live in Hood River, part of the Gorge NSA, and am very much affected by decisions that are made regarding large energy facilities in Oregon - including transport of fuels on and along the river, and air, water, and soil pollution from fossil fuel processing and use. The public should have a significant role in reviewing such facilities, and the proposal is designed to thwart that.

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

The contested case process is an immensely important tool in the Council's rules for examining and ultimately getting to the truth of whether a proposed project will comply with the law, and for allowing the public to meaningfully participate in that review. Under Council rules that have been in place for decades, the public has the right to request a contested case, and if such a request raises issues that "may affect" the Council's ultimate determination of whether the energy project complies with the law, then a contested case will be held to resolve those issues.

In contrast, if the proposed rule change goes through, it would impose new, unfair burdens on the public. Under the proposed rule, concerned members of the public would be required to demonstrate—at the time they request a contested case—that the issues they raise are "reasonably likely to affect" the Council's review. This new burden would be unfair and inappropriate because it would require the Council to prematurely evaluate the ultimate merits of the issues, based on limited or no evidence, before a contested case is held to adjudicate those issues. This would turn the established decision-making process on its head, squelching public participation and decreasing transparency.

In fact, the proposed new "reasonably likely to affect" standard for justifying a contested case could in many situations be impossible to meet at such an early stage in the process. For example, the public may need a contested case in order to obtain critical evidence that lies only in the hands of energy developers, or may need to hire expert witnesses to submit sworn testimony, subject to cross-examination, in a contested case. The proposed rule change would forever shut the door on such public participation opportunities by penalizing the public for not yet having that evidence in hand. Such a rule change could hardly be deemed fair or appropriate.

Nor would I support changing the "may affect" language in the rules to some other new language. The "may affect" language has been in the Council's rules for twenty years, and it establishes a level playing field for the public to participate in the Council's review process. There is no need to change this long-standing language, which is

fundamental to the Council's rules. The old adage applies here: "if it ain't broke, don't fix it." The "may affect" language should be retained.

In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its valuable time and resources elsewhere.

Thank you for considering my comments,

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

## CLARK Christopher \* ODOE

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**From:** John Eskridge <John.Eskridge.218942563@p2a.co>  
**Sent:** Friday, July 10, 2020 9:21 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

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In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

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

## **CLARK Christopher \* ODOE**

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**From:** Grant Fujii <Grant.Fujii.218846182@p2a.co>  
**Sent:** Friday, July 10, 2020 9:23 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

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In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

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

## CLARK Christopher \* ODOE

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**From:** Cory Buckley <Cory.Buckley.218837704@p2a.co>  
**Sent:** Friday, July 10, 2020 9:25 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

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In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

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

## CLARK Christopher \* ODOE

---

**From:** Lynne Coward <Lynne.Coward.249765854@p2a.co>  
**Sent:** Friday, July 10, 2020 9:25 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

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In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

My primary concern is that EFSC is a Public agency thwarting the public to be a part of the decision process. This is another step to rubbing out respect and trust in LAW. Trust is basic. It is not about winning or loosing a decision, but about knowing and trusting the rules by which a decision is made. A public agency is the people's only defense against well-financed private interests.

Regards,  
Lynne Coward  
1427 NE 17th Ave  
Portland, OR 97232

## CLARK Christopher \* ODOE

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**From:** Regna Merritt <Regna.Merritt.328767034@p2a.co>  
**Sent:** Friday, July 10, 2020 9:26 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

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valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Regna Merritt  
260 NW Pittock Ave  
Portland, OR 97210

## CLARK Christopher \* ODOE

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**From:** Doug Richardson <Doug.Richardson.328767539@p2a.co>  
**Sent:** Friday, July 10, 2020 9:27 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

Transparency to the public is key with regard to long term planning that will impact our lives and our environment and implement use of a variety of energy resources into the future. As a long time resident of this region and a visitor to the Columbia Gorge area I want my energy officials to protect my opportunity to take full advantage of our natural resources...certainly not merely to exploit them at the risk of depriving us unknowingly of information that will preclude us from offering pertinent input to the process. As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

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In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Doug Richardson  
8122 N Jersey St  
Portland, OR 97203

## CLARK Christopher \* ODOE

---

**From:** Sally Reichmuth <Sally.Reichmuth.328767881@p2a.co>  
**Sent:** Friday, July 10, 2020 9:27 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

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In contrast, if the proposed rule change goes through, it would impose new, unfair burdens on the public. Under the proposed rule, concerned members of the public would be required to demonstrate—at the time they request a contested case—that the issues they raise are "reasonably likely to affect" the Council's review. This new burden would be unfair and inappropriate because it would require the Council to prematurely evaluate the ultimate merits of the issues, based on limited or no evidence, before a contested case is held to adjudicate those issues. This would turn the established decision-making process on its head, squelching public participation and decreasing transparency.

In fact, the proposed new "reasonably likely to affect" standard for justifying a contested case could in many situations be impossible to meet at such an early stage in the process. For example, the public may need a contested case in order to obtain critical evidence that lies only in the hands of energy developers, or may need to hire expert witnesses to submit sworn testimony, subject to cross-examination, in a contested case. The proposed rule change would forever shut the door on such public participation opportunities by penalizing the public for not yet having that evidence in hand. Such a rule change could hardly be deemed fair or appropriate.

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In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Sally Reichmuth  
607 Hazel Ave  
Hood River, OR 97031

## CLARK Christopher \* ODOE

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**From:** Maxine Sheets-Johnstone <Maxine.SheetsJohnstone.218922592@p2a.co>  
**Sent:** Friday, July 10, 2020 9:28 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

The contested case process is an immensely important tool in the Council's rules for examining and ultimately getting to the truth of whether a proposed project will comply with the law, and for allowing the public to meaningfully participate in that review. Under Council rules that have been in place for decades, the public has the right to request a contested case, and if such a request raises issues that "may affect" the Council's ultimate determination of whether the energy project complies with the law, then a contested case will be held to resolve those issues.

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In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Maxine Sheets-Johnstone  
330 King St  
Yachats, OR 97498

## CLARK Christopher \* ODOE

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**From:** Michael Robinson <Michael.Robinson.228705538@p2a.co>  
**Sent:** Friday, July 10, 2020 9:28 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

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valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Michael Robinson  
28979 Hurlburt Rd  
Corvallis, OR 97333

## CLARK Christopher \* ODOE

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**From:** Jan Thorpe <Jan.Thorpe.328768691@p2a.co>  
**Sent:** Friday, July 10, 2020 9:29 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

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In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Jan Thorpe  
PO Box 80443  
Portland, OR 97280

## CLARK Christopher \* ODOE

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**From:** Sarah Cook <Sarah.Cook.220037970@p2a.co>  
**Sent:** Friday, July 10, 2020 9:30 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

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In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Sarah Cook  
316 E 13th St  
The Dalles, OR 97058

## CLARK Christopher \* ODOE

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**From:** Geoff Carr <Geoff.Carr.284554723@p2a.co>  
**Sent:** Friday, July 10, 2020 9:31 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian a member of Friends of the Columbia River Gorge and thus as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in the Oregon Energy Facilities Siting Council maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

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In conclusion, I ask the Council to please support public participation and transparency in the decision-making process

by retaining the “may affect” language in the rules. The Council should terminate this rulemaking so that it may focus its valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Geoff Carr  
3435 NE 20th Ave  
Portland, OR 97212

## CLARK Christopher \* ODOE

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**From:** Rick Ray <Rick.Ray.218835607@p2a.co>  
**Sent:** Friday, July 10, 2020 9:35 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

My family lives in the Columbia River Gorge National Scenic Area. As an Oregonian and as a supporter of the Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

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Thank you for considering my comments,

Regards,  
Rick Ray  
30777 NE Hurt Rd  
Troutdale, OR 97060

## CLARK Christopher \* ODOE

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**From:** Michael Fieldnikki <Michael.Fieldnikki.228135793@p2a.co>  
**Sent:** Friday, July 10, 2020 9:35 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

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valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Michael Fieldnikki  
534 SW 3rd Ave  
Portland, OR 97204

## CLARK Christopher \* ODOE

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**From:** George Cummings <George.Cummings.218828182@p2a.co>  
**Sent:** Friday, July 10, 2020 9:37 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

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valuable time and resources elsewhere.

Thank you for considering my comments,

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

## CLARK Christopher \* ODOE

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**From:** Paige Unangst <Paige.Unangst.228141264@p2a.co>  
**Sent:** Friday, July 10, 2020 9:39 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

The contested case process is an immensely important tool in the Council's rules for examining and ultimately getting to the truth of whether a proposed project will comply with the law, and for allowing the public to meaningfully participate in that review. Under Council rules that have been in place for decades, the public has the right to request a contested case, and if such a request raises issues that "may affect" the Council's ultimate determination of whether the energy project complies with the law, then a contested case will be held to resolve those issues.

In contrast, if the proposed rule change goes through, it would impose new, unfair burdens on the public. Under the proposed rule, concerned members of the public would be required to demonstrate—at the time they request a contested case—that the issues they raise are "reasonably likely to affect" the Council's review. This new burden would be unfair and inappropriate because it would require the Council to prematurely evaluate the ultimate merits of the issues, based on limited or no evidence, before a contested case is held to adjudicate those issues. This would turn the established decision-making process on its head, squelching public participation and decreasing transparency.

In fact, the proposed new "reasonably likely to affect" standard for justifying a contested case could in many situations be impossible to meet at such an early stage in the process. For example, the public may need a contested case in order to obtain critical evidence that lies only in the hands of energy developers, or may need to hire expert witnesses to submit sworn testimony, subject to cross-examination, in a contested case. The proposed rule change would forever shut the door on such public participation opportunities by penalizing the public for not yet having that evidence in hand. Such a rule change could hardly be deemed fair or appropriate.

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In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Paige Unangst  
12935 SW Cherry Blossom Ct  
Beaverton, OR 97008

## CLARK Christopher \* ODOE

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**From:** Geoff Laroche <Geoff.Laroche.228268020@p2a.co>  
**Sent:** Friday, July 10, 2020 9:45 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

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valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Geoff Laroche  
16070 SW Waxwing Way  
Beaverton, OR 97007

## CLARK Christopher \* ODOE

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**From:** Nora Polk <Nora.Polk.218830071@p2a.co>  
**Sent:** Friday, July 10, 2020 9:49 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

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valuable time and resources elsewhere.

Thank you for considering my comments,

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

## CLARK Christopher \* ODOE

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**From:** Merle Clifton <Merle.Clifton.218831395@p2a.co>  
**Sent:** Friday, July 10, 2020 10:05 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

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valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Merle Clifton  
4457 NE Campaign St  
Portland, OR 97218

## CLARK Christopher \* ODOE

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**From:** Larry Martin <Larry.Martin.237893693@p2a.co>  
**Sent:** Friday, July 10, 2020 10:08 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

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valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Larry Martin  
3715 Arrowhead Ave  
Hood River, OR 97031

## CLARK Christopher \* ODOE

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**From:** Marianne Nelson <Marianne.Nelson.218829073@p2a.co>  
**Sent:** Friday, July 10, 2020 10:09 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

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valuable time and resources elsewhere.

Thank you for considering my comments,

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

## CLARK Christopher \* ODOE

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**From:** michael Ryan <michael.Ryan.268690658@p2a.co>  
**Sent:** Friday, July 10, 2020 10:10 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

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valuable time and resources elsewhere.

I have hiked in the Gorge for many, and am fearful that the proposed rule changes will negatively impact my Gorge hiking experience.

Thank you for considering my comments,

Regards,

michael Ryan

2891 SW Fairview Blvd

Portland, OR 97205

## CLARK Christopher \* ODOE

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**From:** Christine Farrington <Christine.Farrington.328787753@p2a.co>  
**Sent:** Friday, July 10, 2020 10:11 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

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valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Christine Farrington  
1119 SW Myrtle Dr  
Portland, OR 97201

## CLARK Christopher \* ODOE

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**From:** Bill kirkland <Bill.kirkland.233382810@p2a.co>  
**Sent:** Friday, July 10, 2020 10:13 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

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Thank you for considering my comments,

Regards,  
Bill Kirkland  
4050 SW Bancroft St  
Portland, OR 97221

## CLARK Christopher \* ODOE

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**From:** Sally Stevens <Sally.Stevens.218828551@p2a.co>  
**Sent:** Friday, July 10, 2020 10:29 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

The contested case process is an immensely important tool in the Council's rules for examining and ultimately getting to the truth of whether a proposed project will comply with the law, and for allowing the public to meaningfully participate in that review. Under Council rules that have been in place for decades, the public has the right to request a contested case, and if such a request raises issues that "may affect" the Council's ultimate determination of whether the energy project complies with the law, then a contested case will be held to resolve those issues.

In contrast, if the proposed rule change goes through, it would impose new, unfair burdens on the public. Under the proposed rule, concerned members of the public would be required to demonstrate—at the time they request a contested case—that the issues they raise are "reasonably likely to affect" the Council's review. This new burden would be unfair and inappropriate because it would require the Council to prematurely evaluate the ultimate merits of the issues, based on limited or no evidence, before a contested case is held to adjudicate those issues. This would turn the established decision-making process on its head, squelching public participation and decreasing transparency.

In fact, the proposed new "reasonably likely to affect" standard for justifying a contested case could in many situations be impossible to meet at such an early stage in the process. For example, the public may need a contested case in order to obtain critical evidence that lies only in the hands of energy developers, or may need to hire expert witnesses to submit sworn testimony, subject to cross-examination, in a contested case. The proposed rule change would forever shut the door on such public participation opportunities by penalizing the public for not yet having that evidence in hand. Such a rule change could hardly be deemed fair or appropriate.

Nor would I support changing the "may affect" language in the rules to some other new language. The "may affect" language has been in the Council's rules for twenty years, and it establishes a level playing field for the public to participate in the Council's review process. There is no need to change this long-standing language, which is fundamental to the Council's rules. The old adage applies here: "if it ain't broke, don't fix it." The "may affect" language should be retained.

In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Sally Stevens  
9935 SE Grant Ct  
Portland, OR 97216

## CLARK Christopher \* ODOE

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**From:** Sherry Hanrahan <Sherry.Hanrahan.328797301@p2a.co>  
**Sent:** Friday, July 10, 2020 10:36 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and American, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because Democracy is important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes. The official rulemaking notice is misleading and therefore fails to advise me and other members of the public how our current rights would be affected.

According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules but the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

The contested case process is an immensely important tool in the Council's rules for examining and ultimately getting to the truth of whether a proposed project will comply with the law, and for allowing the public to meaningfully participate in that review. Under Council rules that have been in place for decades, the public has the right to request a contested case, and if such a request raises issues that "may affect" the Council's ultimate determination of whether the energy project complies with the law, then a contested case will be held to resolve those issues.

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Finally

I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Sherry Hanrahan  
6412 SE 63rd Ave  
Portland, OR 97206

## CLARK Christopher \* ODOE

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**From:** Colleen Wright <Colleen.Wright.218837029@p2a.co>  
**Sent:** Friday, July 10, 2020 10:55 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

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In contrast, if the proposed rule change goes through, it would impose new, unfair burdens on the public. Under the proposed rule, concerned members of the public would be required to demonstrate—at the time they request a contested case—that the issues they raise are "reasonably likely to affect" the Council's review. This new burden would be unfair and inappropriate because it would require the Council to prematurely evaluate the ultimate merits of the issues, based on limited or no evidence, before a contested case is held to adjudicate those issues. This would turn the established decision-making process on its head, squelching public participation and decreasing transparency.

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In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

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

## CLARK Christopher \* ODOE

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**From:** Kelly OHanley <Kelly.OHanley.218879997@p2a.co>  
**Sent:** Friday, July 10, 2020 10:59 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

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In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Kelly OHanley  
6134 NE Alameda St  
Portland, OR 97213

## CLARK Christopher \* ODOE

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**From:** Howard Shapiro <Howard.Shapiro.218848568@p2a.co>  
**Sent:** Friday, July 10, 2020 11:03 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

Rule number 1 of Oregon's Land Use Planning Goals requires public input and this proposed amendment interferes with this goal and should not be pursued.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

The contested case process is an immensely important tool in the Council's rules for examining and ultimately getting to the truth of whether a proposed project will comply with the law, and for allowing the public to meaningfully participate in that review. Under Council rules that have been in place for decades, the public has the right to request a contested case, and if such a request raises issues that "may affect" the Council's ultimate determination of whether the energy project complies with the law, then a contested case will be held to resolve those issues.

In contrast, if the proposed rule change goes through, it would impose new, unfair burdens on the public. Under the proposed rule, concerned members of the public would be required to demonstrate—at the time they request a contested case—that the issues they raise are "reasonably likely to affect" the Council's review. This new burden would be unfair and inappropriate because it would require the Council to prematurely evaluate the ultimate merits of the issues, based on limited or no evidence, before a contested case is held to adjudicate those issues. This would turn the established decision-making process on its head, squelching public participation and decreasing transparency.

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Nor would I support changing the "may affect" language in the rules to some other new language. The "may affect" language has been in the Council's rules for twenty years, and it establishes a level playing field for the public to participate in the Council's review process. There is no need to change this long-standing language, which is fundamental to the Council's rules. The old adage applies here: "if it ain't broke, don't fix it." The "may affect" language should be retained.

In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the “may affect” language in the rules. The Council should terminate this rulemaking so that it may focus its valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Howard Shapiro  
2545 SW Terwilliger Blvd  
Portland, OR 97201

## CLARK Christopher \* ODOE

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**From:** Mark McCormick <Mark.McCormick.221530223@p2a.co>  
**Sent:** Friday, July 10, 2020 11:08 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

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In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

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

## CLARK Christopher \* ODOE

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**From:** Steven Bruckner <Steven.Bruckner.221465055@p2a.co>  
**Sent:** Friday, July 10, 2020 11:24 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

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In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Steven Bruckner  
2448 NW Westover Rd  
Portland, OR 97210

## CLARK Christopher \* ODOE

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**From:** patricia Hutchinson <patricia.Hutchinson.328815328@p2a.co>  
**Sent:** Friday, July 10, 2020 11:32 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

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In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
patricia Hutchinson  
4241 NE Laurelhurst Pl  
Portland, OR 97213

## CLARK Christopher \* ODOE

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**From:** Patricia Rau <Patricia.Rau.284535706@p2a.co>  
**Sent:** Friday, July 10, 2020 11:47 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

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valuable time and resources elsewhere.

Thank you for considering my comments,

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

## CLARK Christopher \* ODOE

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**From:** Antoinette Peterson <Antoinette.Peterson.220134369@p2a.co>  
**Sent:** Friday, July 10, 2020 11:51 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

The contested case process is an immensely important tool in the Council's rules for examining and ultimately getting to the truth of whether a proposed project will comply with the law, and for allowing the public to meaningfully participate in that review. Under Council rules that have been in place for decades, the public has the right to request a contested case, and if such a request raises issues that "may affect" the Council's ultimate determination of whether the energy project complies with the law, then a contested case will be held to resolve those issues.

In contrast, if the proposed rule change goes through, it would impose new, unfair burdens on the public. Under the proposed rule, concerned members of the public would be required to demonstrate—at the time they request a contested case—that the issues they raise are "reasonably likely to affect" the Council's review. This new burden would be unfair and inappropriate because it would require the Council to prematurely evaluate the ultimate merits of the issues, based on limited or no evidence, before a contested case is held to adjudicate those issues. This would turn the established decision-making process on its head, squelching public participation and decreasing transparency.

In fact, the proposed new "reasonably likely to affect" standard for justifying a contested case could in many situations be impossible to meet at such an early stage in the process. For example, the public may need a contested case in order to obtain critical evidence that lies only in the hands of energy developers, or may need to hire expert witnesses to submit sworn testimony, subject to cross-examination, in a contested case. The proposed rule change would forever shut the door on such public participation opportunities by penalizing the public for not yet having that evidence in hand. Such a rule change could hardly be deemed fair or appropriate.

Nor would I support changing the "may affect" language in the rules to some other new language. The "may affect" language has been in the Council's rules for twenty years, and it establishes a level playing field for the public to participate in the Council's review process. There is no need to change this long-standing language, which is fundamental to the Council's rules. The old adage applies here: "if it ain't broke, don't fix it." The "may affect" language should be retained.

In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Antoinette Peterson  
7118 SE Steele St  
Portland, OR 97206

## CLARK Christopher \* ODOE

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**From:** John Hall <John.Hall.220200473@p2a.co>  
**Sent:** Friday, July 10, 2020 12:06 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

The contested case process is an immensely important tool in the Council's rules for examining and ultimately getting to the truth of whether a proposed project will comply with the law, and for allowing the public to meaningfully participate in that review. Under Council rules that have been in place for decades, the public has the right to request a contested case, and if such a request raises issues that "may affect" the Council's ultimate determination of whether the energy project complies with the law, then a contested case will be held to resolve those issues.

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In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
John Hall  
2141 NW Walmer Dr  
Portland, OR 97229

## CLARK Christopher \* ODOE

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**From:** Dave Shelman <Dave.Shelman.220128195@p2a.co>  
**Sent:** Friday, July 10, 2020 12:12 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

The contested case process is an immensely important tool in the Council's rules for examining and ultimately getting to the truth of whether a proposed project will comply with the law, and for allowing the public to meaningfully participate in that review. Under Council rules that have been in place for decades, the public has the right to request a contested case, and if such a request raises issues that "may affect" the Council's ultimate determination of whether the energy project complies with the law, then a contested case will be held to resolve those issues.

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In fact, the proposed new "reasonably likely to affect" standard for justifying a contested case could in many situations be impossible to meet at such an early stage in the process. For example, the public may need a contested case in order to obtain critical evidence that lies only in the hands of energy developers, or may need to hire expert witnesses to submit sworn testimony, subject to cross-examination, in a contested case. The proposed rule change would forever shut the door on such public participation opportunities by penalizing the public for not yet having that evidence in hand. Such a rule change could hardly be deemed fair or appropriate.

Nor would I support changing the "may affect" language in the rules to some other new language. The "may affect" language has been in the Council's rules for twenty years, and it establishes a level playing field for the public to participate in the Council's review process. There is no need to change this long-standing language, which is fundamental to the Council's rules. The old adage applies here: "if it ain't broke, don't fix it." The "may affect" language should be retained.

In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Dave Shelman  
36141 SE Hurlburt Rd  
Corbett, OR 97019

## CLARK Christopher \* ODOE

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**From:** Carol Clark <Carol.Clark.218831197@p2a.co>  
**Sent:** Friday, July 10, 2020 12:19 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

I hike, camp, and bird watch throughout the Gorge and it is important to me that these energy projects are put where they will have the least impacts on migratory birds and resources such as wild rivers.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

The contested case process is an immensely important tool in the Council's rules for examining and ultimately getting to the truth of whether a proposed project will comply with the law, and for allowing the public to meaningfully participate in that review. Under Council rules that have been in place for decades, the public has the right to request a contested case, and if such a request raises issues that "may affect" the Council's ultimate determination of whether the energy project complies with the law, then a contested case will be held to resolve those issues.

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Nor would I support changing the "may affect" language in the rules to some other new language. The "may affect" language has been in the Council's rules for twenty years, and it establishes a level playing field for the public to participate in the Council's review process. There is no need to change this long-standing language, which is fundamental to the Council's rules. The old adage applies here: "if it ain't broke, don't fix it." The "may affect" language should be retained.

In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the “may affect” language in the rules. The Council should terminate this rulemaking so that it may focus its valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Carol Clark  
3221 NE Schuyler St  
Portland, OR 97212

## CLARK Christopher \* ODOE

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**From:** KB Mercer <KB.Mercer.228135838@p2a.co>  
**Sent:** Friday, July 10, 2020 12:21 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

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In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

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

## CLARK Christopher \* ODOE

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**From:** Galil Accuardi <Galil.Accuardi.249592649@p2a.co>  
**Sent:** Friday, July 10, 2020 12:22 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

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Nor would I support changing the "may affect" language in the rules to some other new language. The "may affect" language has been in the Council's rules for twenty years, and it establishes a level playing field for the public to participate in the Council's review process. There is no need to change this long-standing language, which is fundamental to the Council's rules. The old adage applies here: "if it ain't broke, don't fix it." The "may affect" language should be retained.

In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Galil Accuardi  
27698 E Welches Rd  
Mount Hood Village, OR 97067

## CLARK Christopher \* ODOE

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**From:** Galil Accuardi <Galil.Accuardi.249592649@p2a.co>  
**Sent:** Friday, July 10, 2020 12:24 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

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valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Galil Accuardi  
27698 E Welches Rd  
Mount Hood Village, OR 97067

## CLARK Christopher \* ODOE

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**From:** Barbara Coleman <Barbara.Coleman.261541551@p2a.co>  
**Sent:** Friday, July 10, 2020 12:33 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

Do not weaken the rules governing the review of large energy projects in Oregon. The public has a right to know about and comment on such projects.

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

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In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the “may affect” language in the rules. The Council should terminate this rulemaking so that it may focus its valuable time and resources elsewhere.

Thank you for considering my comments,

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

## CLARK Christopher \* ODOE

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**From:** Michael Wolf <Michael.Wolf.220220219@p2a.co>  
**Sent:** Friday, July 10, 2020 12:34 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

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In contrast, if the proposed rule change goes through, it would impose new, unfair burdens on the public. Under the proposed rule, concerned members of the public would be required to demonstrate—at the time they request a contested case—that the issues they raise are "reasonably likely to affect" the Council's review. This new burden would be unfair and inappropriate because it would require the Council to prematurely evaluate the ultimate merits of the issues, based on limited or no evidence, before a contested case is held to adjudicate those issues. This would turn the established decision-making process on its head, squelching public participation and decreasing transparency.

In fact, the proposed new "reasonably likely to affect" standard for justifying a contested case could in many situations be impossible to meet at such an early stage in the process. For example, the public may need a contested case in order to obtain critical evidence that lies only in the hands of energy developers, or may need to hire expert witnesses to submit sworn testimony, subject to cross-examination, in a contested case. The proposed rule change would forever shut the door on such public participation opportunities by penalizing the public for not yet having that evidence in hand. Such a rule change could hardly be deemed fair or appropriate.

Nor would I support changing the "may affect" language in the rules to some other new language. The "may affect" language has been in the Council's rules for twenty years, and it establishes a level playing field for the public to participate in the Council's review process. There is no need to change this long-standing language, which is fundamental to the Council's rules. The old adage applies here: "if it ain't broke, don't fix it." The "may affect" language should be retained.

In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Michael Wolf  
3126 NE 7th Ave  
Portland, OR 97212

## CLARK Christopher \* ODOE

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**From:** Sandra Joos <Sandra.Joos.219793379@p2a.co>  
**Sent:** Friday, July 10, 2020 12:48 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

The contested case process is an immensely important tool in the Council's rules for examining and ultimately getting to the truth of whether a proposed project will comply with the law, and for allowing the public to meaningfully participate in that review. Under Council rules that have been in place for decades, the public has the right to request a contested case, and if such a request raises issues that "may affect" the Council's ultimate determination of whether the energy project complies with the law, then a contested case will be held to resolve those issues.

In contrast, if the proposed rule change goes through, it would impose new, unfair burdens on the public. Under the proposed rule, concerned members of the public would be required to demonstrate—at the time they request a contested case—that the issues they raise are "reasonably likely to affect" the Council's review. This new burden would be unfair and inappropriate because it would require the Council to prematurely evaluate the ultimate merits of the issues, based on limited or no evidence, before a contested case is held to adjudicate those issues. This would turn the established decision-making process on its head, squelching public participation and decreasing transparency.

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In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

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

## CLARK Christopher \* ODOE

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**From:** Barbara Traver <Barbara.Traver.228934183@p2a.co>  
**Sent:** Friday, July 10, 2020 12:54 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

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In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Those who live in and who recreate in the Gorge should have a strong voice in where projects are sited to limit impacts on wildlife, community health, climate, and the beauty of the region (which is a national treasure).

Thank you for considering my comments,

Regards,  
Barbara Traver  
3740 SE Washington St  
Portland, OR 97214

## CLARK Christopher \* ODOE

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**From:** Paula Wood <Paula.Wood.219504360@p2a.co>  
**Sent:** Friday, July 10, 2020 12:55 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

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In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Paula Wood  
23831 NE Treehill Dr  
Wood Village, OR 97060

## CLARK Christopher \* ODOE

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**From:** carole beauclerk <carole.beauclerk.218896998@p2a.co>  
**Sent:** Friday, July 10, 2020 12:58 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

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valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
carole beauclerk  
1500 SW Park Ave  
Portland, OR 97201

## CLARK Christopher \* ODOE

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**From:** David May <David.May.328840591@p2a.co>  
**Sent:** Friday, July 10, 2020 1:04 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

Beyond what is below, delay for full public participation will not stop projects that on balance are beneficial.

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

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In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the “may affect” language in the rules. The Council should terminate this rulemaking so that it may focus its valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
David May  
1803 SW Hawthorne Terrace  
Portland, OR 97201

## CLARK Christopher \* ODOE

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**From:** James Marquard <James.Marquard.221449071@p2a.co>  
**Sent:** Friday, July 10, 2020 1:07 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

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In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
James Marquard  
9329 NW Old Skyline Blvd  
Portland, OR 97231

## CLARK Christopher \* ODOE

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**From:** Roland Begin <Roland.Begin.218900109@p2a.co>  
**Sent:** Friday, July 10, 2020 1:10 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

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valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Roland Begin  
2722 SW Huber St  
Portland, OR 97219

## CLARK Christopher \* ODOE

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**From:** Stephen Castles <Stephen.Castles.309233631@p2a.co>  
**Sent:** Friday, July 10, 2020 1:19 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

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Because large energy facilities are likely to become stranded assets in the future, there is a public interest in ensuring that the companies proposing the facility have the resources in reserve to maintain and, ultimately, to decommission

the facility.

In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the “may affect” language in the rules. The Council should terminate this rulemaking so that it may focus its valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Stephen Castles  
2011 Lonely Ln  
Mosier, OR 97040

## CLARK Christopher \* ODOE

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**From:** Raymond Lewis <Raymond.Lewis.328844335@p2a.co>  
**Sent:** Friday, July 10, 2020 1:20 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

The contested case process is an immensely important tool in the Council's rules for examining and ultimately getting to the truth of whether a proposed project will comply with the law, and for allowing the public to meaningfully participate in that review. Under Council rules that have been in place for decades, the public has the right to request a contested case, and if such a request raises issues that "may affect" the Council's ultimate determination of whether the energy project complies with the law, then a contested case will be held to resolve those issues.

In contrast, if the proposed rule change goes through, it would impose new, unfair burdens on the public. Under the proposed rule, concerned members of the public would be required to demonstrate—at the time they request a contested case—that the issues they raise are "reasonably likely to affect" the Council's review. This new burden would be unfair and inappropriate because it would require the Council to prematurely evaluate the ultimate merits of the issues, based on limited or no evidence, before a contested case is held to adjudicate those issues. This would turn the established decision-making process on its head, squelching public participation and decreasing transparency.

In fact, the proposed new "reasonably likely to affect" standard for justifying a contested case could in many situations be impossible to meet at such an early stage in the process. For example, the public may need a contested case in order to obtain critical evidence that lies only in the hands of energy developers, or may need to hire expert witnesses to submit sworn testimony, subject to cross-examination, in a contested case. The proposed rule change would forever shut the door on such public participation opportunities by penalizing the public for not yet having that evidence in hand. Such a rule change could hardly be deemed fair or appropriate.

Nor would I support changing the "may affect" language in the rules to some other new language. The "may affect" language has been in the Council's rules for twenty years, and it establishes a level playing field for the public to participate in the Council's review process. There is no need to change this long-standing language, which is fundamental to the Council's rules. The old adage applies here: "if it ain't broke, don't fix it." The "may affect" language should be retained.

In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Raymond Lewis  
2415 NE 25th Ave  
Portland, OR 97212

## CLARK Christopher \* ODOE

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**From:** Craig Heverly <Craig.Heverly.218834932@p2a.co>  
**Sent:** Friday, July 10, 2020 1:24 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

The contested case process is an immensely important tool in the Council's rules for examining and ultimately getting to the truth of whether a proposed project will comply with the law, and for allowing the public to meaningfully participate in that review. Under Council rules that have been in place for decades, the public has the right to request a contested case, and if such a request raises issues that "may affect" the Council's ultimate determination of whether the energy project complies with the law, then a contested case will be held to resolve those issues.

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In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

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

## CLARK Christopher \* ODOE

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**From:** Dan Jaffee <Dan.Jaffee.218834338@p2a.co>  
**Sent:** Friday, July 10, 2020 1:28 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

The contested case process is an immensely important tool in the Council's rules for examining and ultimately getting to the truth of whether a proposed project will comply with the law, and for allowing the public to meaningfully participate in that review. Under Council rules that have been in place for decades, the public has the right to request a contested case, and if such a request raises issues that "may affect" the Council's ultimate determination of whether the energy project complies with the law, then a contested case will be held to resolve those issues.

In contrast, if the proposed rule change goes through, it would impose new, unfair burdens on the public. Under the proposed rule, concerned members of the public would be required to demonstrate—at the time they request a contested case—that the issues they raise are "reasonably likely to affect" the Council's review. This new burden would be unfair and inappropriate because it would require the Council to prematurely evaluate the ultimate merits of the issues, based on limited or no evidence, before a contested case is held to adjudicate those issues. This would turn the established decision-making process on its head, squelching public participation and decreasing transparency.

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In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Dan Jaffee  
4723 NE 14th Ave  
Portland, OR 97211

## CLARK Christopher \* ODOE

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**From:** Anthony Skowlund <Anthony.Skowlund.228134884@p2a.co>  
**Sent:** Friday, July 10, 2020 1:42 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

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In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Anthony Skowlund  
18 Aquinas St  
Lake Oswego, OR 97035

## CLARK Christopher \* ODOE

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**From:** Ben Asher <Ben.Asher.219298856@p2a.co>  
**Sent:** Friday, July 10, 2020 2:19 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

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In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

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

## CLARK Christopher \* ODOE

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**From:** Stephen Bachhuber <Stephen.Bachhuber.218831061@p2a.co>  
**Sent:** Friday, July 10, 2020 2:48 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

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In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

In addition I consider the proposed EFSC rule change proposal to be an example of bureaucratic unresponsiveness. The courts have already addressed the issue and found similar proposals to be unacceptable. Why are we here again? This rule change will end up in court if it progresses. The only winners there will be the lawyers and litigation will cost the taxpayer dearly. Abandon this proposal.

Thank you for considering my comments,

Regards,  
Stephen Bachhuber  
3428 SE 9th Ave  
Portland, OR 97202

## CLARK Christopher \* ODOE

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**From:** Marguery Zucker <Marguery.Zucker.221660968@p2a.co>  
**Sent:** Friday, July 10, 2020 3:07 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

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Nor would I support changing the "may affect" language in the rules to some other new language. The "may affect" language has been in the Council's rules for twenty years, and it establishes a level playing field for the public to participate in the Council's review process. There is no need to change this long-standing language, which is fundamental to the Council's rules. The old adage applies here: "if it ain't broke, don't fix it." The "may affect" language should be retained.

In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Marguery Zucker  
1966 Orchard St  
Eugene, OR 97403

## CLARK Christopher \* ODOE

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**From:** Leigh Schwarz <Leigh.Schwarz.228185392@p2a.co>  
**Sent:** Friday, July 10, 2020 3:07 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

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Nor would I support changing the "may affect" language in the rules to some other new language. The "may affect" language has been in the Council's rules for twenty years, and it establishes a level playing field for the public to participate in the Council's review process. There is no need to change this long-standing language, which is fundamental to the Council's rules. The old adage applies here: "if it ain't broke, don't fix it." The "may affect" language should be retained.

In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Leigh Schwarz  
5858 S Riveridge Ln  
Portland, OR 97239

## CLARK Christopher \* ODOE

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**From:** Janet Weil <Janet.Weil.325039503@p2a.co>  
**Sent:** Friday, July 10, 2020 3:08 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I want to know what is going on in this beautiful but somewhat fragile area. I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin.

I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

The official rulemaking notice fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard.

The contested case process is an immensely important tool in the Council's rules for examining and ultimately getting to the truth of whether a proposed project will comply with the law, and for allowing the public to meaningfully participate in that review. Under Council rules that have been in place for decades, the public has the right to request a contested case, and if such a request raises issues that "may affect" the Council's ultimate determination of whether the energy project complies with the law, then a contested case will be held to resolve those issues.

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Nor do I support changing the "may affect" language in the rules to some other new language. The "may affect" language has been in the Council's rules for twenty years, and it establishes a level playing field for the public to participate in the Council's review process.

In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules.

Thank you for considering my comments,

Regards,

Janet Weil  
8320 SW Apple Way  
Portland, OR 97225

## CLARK Christopher \* ODOE

---

**From:** Ruth Flemming <Ruth.Flemming.218831007@p2a.co>  
**Sent:** Friday, July 10, 2020 3:17 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

The contested case process is an immensely important tool in the Council's rules for examining and ultimately getting to the truth of whether a proposed project will comply with the law, and for allowing the public to meaningfully participate in that review. Under Council rules that have been in place for decades, the public has the right to request a contested case, and if such a request raises issues that "may affect" the Council's ultimate determination of whether the energy project complies with the law, then a contested case will be held to resolve those issues.

In contrast, if the proposed rule change goes through, it would impose new, unfair burdens on the public. Under the proposed rule, concerned members of the public would be required to demonstrate—at the time they request a contested case—that the issues they raise are "reasonably likely to affect" the Council's review. This new burden would be unfair and inappropriate because it would require the Council to prematurely evaluate the ultimate merits of the issues, based on limited or no evidence, before a contested case is held to adjudicate those issues. This would turn the established decision-making process on its head, squelching public participation and decreasing transparency.

In fact, the proposed new "reasonably likely to affect" standard for justifying a contested case could in many situations be impossible to meet at such an early stage in the process. For example, the public may need a contested case in order to obtain critical evidence that lies only in the hands of energy developers, or may need to hire expert witnesses to submit sworn testimony, subject to cross-examination, in a contested case. The proposed rule change would forever shut the door on such public participation opportunities by penalizing the public for not yet having that evidence in hand. Such a rule change could hardly be deemed fair or appropriate.

Nor would I support changing the "may affect" language in the rules to some other new language. The "may affect" language has been in the Council's rules for twenty years, and it establishes a level playing field for the public to participate in the Council's review process. There is no need to change this long-standing language, which is fundamental to the Council's rules. The old adage applies here: "if it ain't broke, don't fix it." The "may affect" language should be retained.

In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments, I spend a lot of time outdoors in Oregon. I don't want to see the environment or wildlife threatened. Some of these changes could be permanent. Climate change is real and the more we have, the more forest fires we will have. We can't afford to lose our forests or wildlife or houses or lives by forest fire. Water needs to be clean. Many towns and cities use local water ways to source their water supply.

Regards,  
Ruth Flemming  
10320 NE 20th Cir  
Vancouver, WA 98664

## CLARK Christopher \* ODOE

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**From:** Joan Stevens <Joan.Stevens.328876439@p2a.co>  
**Sent:** Friday, July 10, 2020 3:30 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

The contested case process is an immensely important tool in the Council's rules for examining and ultimately getting to the truth of whether a proposed project will comply with the law, and for allowing the public to meaningfully participate in that review. Under Council rules that have been in place for decades, the public has the right to request a contested case, and if such a request raises issues that "may affect" the Council's ultimate determination of whether the energy project complies with the law, then a contested case will be held to resolve those issues.

In contrast, if the proposed rule change goes through, it would impose new, unfair burdens on the public. Under the proposed rule, concerned members of the public would be required to demonstrate—at the time they request a contested case—that the issues they raise are "reasonably likely to affect" the Council's review. This new burden would be unfair and inappropriate because it would require the Council to prematurely evaluate the ultimate merits of the issues, based on limited or no evidence, before a contested case is held to adjudicate those issues. This would turn the established decision-making process on its head, squelching public participation and decreasing transparency.

In fact, the proposed new "reasonably likely to affect" standard for justifying a contested case could in many situations be impossible to meet at such an early stage in the process. For example, the public may need a contested case in order to obtain critical evidence that lies only in the hands of energy developers, or may need to hire expert witnesses to submit sworn testimony, subject to cross-examination, in a contested case. The proposed rule change would forever shut the door on such public participation opportunities by penalizing the public for not yet having that evidence in hand. Such a rule change could hardly be deemed fair or appropriate.

Nor would I support changing the "may affect" language in the rules to some other new language. The "may affect" language has been in the Council's rules for twenty years, and it establishes a level playing field for the public to participate in the Council's review process. There is no need to change this long-standing language, which is fundamental to the Council's rules. The old adage applies here: "if it ain't broke, don't fix it." The "may affect" language should be retained.

In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

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

## CLARK Christopher \* ODOE

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**From:** Evelyn Bishop <Evelyn.Bishop.228139997@p2a.co>  
**Sent:** Friday, July 10, 2020 3:36 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

I enjoy the Deschutes and the area. Please don't detract from This wild and scenic river. As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

The contested case process is an immensely important tool in the Council's rules for examining and ultimately getting to the truth of whether a proposed project will comply with the law, and for allowing the public to meaningfully participate in that review. Under Council rules that have been in place for decades, the public has the right to request a contested case, and if such a request raises issues that "may affect" the Council's ultimate determination of whether the energy project complies with the law, then a contested case will be held to resolve those issues.

In contrast, if the proposed rule change goes through, it would impose new, unfair burdens on the public. Under the proposed rule, concerned members of the public would be required to demonstrate—at the time they request a contested case—that the issues they raise are "reasonably likely to affect" the Council's review. This new burden would be unfair and inappropriate because it would require the Council to prematurely evaluate the ultimate merits of the issues, based on limited or no evidence, before a contested case is held to adjudicate those issues. This would turn the established decision-making process on its head, squelching public participation and decreasing transparency.

In fact, the proposed new "reasonably likely to affect" standard for justifying a contested case could in many situations be impossible to meet at such an early stage in the process. For example, the public may need a contested case in order to obtain critical evidence that lies only in the hands of energy developers, or may need to hire expert witnesses to submit sworn testimony, subject to cross-examination, in a contested case. The proposed rule change would forever shut the door on such public participation opportunities by penalizing the public for not yet having that evidence in hand. Such a rule change could hardly be deemed fair or appropriate.

Nor would I support changing the "may affect" language in the rules to some other new language. The "may affect" language has been in the Council's rules for twenty years, and it establishes a level playing field for the public to participate in the Council's review process. There is no need to change this long-standing language, which is fundamental to the Council's rules. The old adage applies here: "if it ain't broke, don't fix it." The "may affect" language should be retained.

In conclusion, I ask the Council to please support public participation and transparency in the decision-making process

by retaining the “may affect” language in the rules. The Council should terminate this rulemaking so that it may focus its valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Evelyn Bishop  
13932 NE Beech St  
Portland, OR 97230

## CLARK Christopher \* ODOE

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**From:** Helen Jaskoski <Helen.Jaskoski.221463741@p2a.co>  
**Sent:** Friday, July 10, 2020 3:56 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

The contested case process is an immensely important tool in the Council's rules for examining and ultimately getting to the truth of whether a proposed project will comply with the law, and for allowing the public to meaningfully participate in that review. Under Council rules that have been in place for decades, the public has the right to request a contested case, and if such a request raises issues that "may affect" the Council's ultimate determination of whether the energy project complies with the law, then a contested case will be held to resolve those issues.

In contrast, if the proposed rule change goes through, it would impose new, unfair burdens on the public. Under the proposed rule, concerned members of the public would be required to demonstrate—at the time they request a contested case—that the issues they raise are "reasonably likely to affect" the Council's review. This new burden would be unfair and inappropriate because it would require the Council to prematurely evaluate the ultimate merits of the issues, based on limited or no evidence, before a contested case is held to adjudicate those issues. This would turn the established decision-making process on its head, squelching public participation and decreasing transparency.

In fact, the proposed new "reasonably likely to affect" standard for justifying a contested case could in many situations be impossible to meet at such an early stage in the process. For example, the public may need a contested case in order to obtain critical evidence that lies only in the hands of energy developers, or may need to hire expert witnesses to submit sworn testimony, subject to cross-examination, in a contested case. The proposed rule change would forever shut the door on such public participation opportunities by penalizing the public for not yet having that evidence in hand. Such a rule change could hardly be deemed fair or appropriate.

Nor would I support changing the "may affect" language in the rules to some other new language. The "may affect" language has been in the Council's rules for twenty years, and it establishes a level playing field for the public to participate in the Council's review process. There is no need to change this long-standing language, which is fundamental to the Council's rules. The old adage applies here: "if it ain't broke, don't fix it." The "may affect" language should be retained.

In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Helen Jaskoski  
PO Box 66074  
Portland, OR 97290

## CLARK Christopher \* ODOE

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**From:** Mauria McClay <Mauria.McClay.218952120@p2a.co>  
**Sent:** Friday, July 10, 2020 4:00 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

The contested case process is an immensely important tool in the Council's rules for examining and ultimately getting to the truth of whether a proposed project will comply with the law, and for allowing the public to meaningfully participate in that review. Under Council rules that have been in place for decades, the public has the right to request a contested case, and if such a request raises issues that "may affect" the Council's ultimate determination of whether the energy project complies with the law, then a contested case will be held to resolve those issues.

In contrast, if the proposed rule change goes through, it would impose new, unfair burdens on the public. Under the proposed rule, concerned members of the public would be required to demonstrate—at the time they request a contested case—that the issues they raise are "reasonably likely to affect" the Council's review. This new burden would be unfair and inappropriate because it would require the Council to prematurely evaluate the ultimate merits of the issues, based on limited or no evidence, before a contested case is held to adjudicate those issues. This would turn the established decision-making process on its head, squelching public participation and decreasing transparency.

In fact, the proposed new "reasonably likely to affect" standard for justifying a contested case could in many situations be impossible to meet at such an early stage in the process. For example, the public may need a contested case in order to obtain critical evidence that lies only in the hands of energy developers, or may need to hire expert witnesses to submit sworn testimony, subject to cross-examination, in a contested case. The proposed rule change would forever shut the door on such public participation opportunities by penalizing the public for not yet having that evidence in hand. Such a rule change could hardly be deemed fair or appropriate.

Nor would I support changing the "may affect" language in the rules to some other new language. The "may affect" language has been in the Council's rules for twenty years, and it establishes a level playing field for the public to participate in the Council's review process. There is no need to change this long-standing language, which is fundamental to the Council's rules. The old adage applies here: "if it ain't broke, don't fix it." The "may affect" language should be retained.

In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

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

## CLARK Christopher \* ODOE

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**From:** Heather Marsh <Heather.Marsh.273603423@p2a.co>  
**Sent:** Friday, July 10, 2020 4:17 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

The contested case process is an immensely important tool in the Council's rules for examining and ultimately getting to the truth of whether a proposed project will comply with the law, and for allowing the public to meaningfully participate in that review. Under Council rules that have been in place for decades, the public has the right to request a contested case, and if such a request raises issues that "may affect" the Council's ultimate determination of whether the energy project complies with the law, then a contested case will be held to resolve those issues.

In contrast, if the proposed rule change goes through, it would impose new, unfair burdens on the public. Under the proposed rule, concerned members of the public would be required to demonstrate—at the time they request a contested case—that the issues they raise are "reasonably likely to affect" the Council's review. This new burden would be unfair and inappropriate because it would require the Council to prematurely evaluate the ultimate merits of the issues, based on limited or no evidence, before a contested case is held to adjudicate those issues. This would turn the established decision-making process on its head, squelching public participation and decreasing transparency.

In fact, the proposed new "reasonably likely to affect" standard for justifying a contested case could in many situations be impossible to meet at such an early stage in the process. For example, the public may need a contested case in order to obtain critical evidence that lies only in the hands of energy developers, or may need to hire expert witnesses to submit sworn testimony, subject to cross-examination, in a contested case. The proposed rule change would forever shut the door on such public participation opportunities by penalizing the public for not yet having that evidence in hand. Such a rule change could hardly be deemed fair or appropriate.

Nor would I support changing the "may affect" language in the rules to some other new language. The "may affect" language has been in the Council's rules for twenty years, and it establishes a level playing field for the public to participate in the Council's review process. There is no need to change this long-standing language, which is fundamental to the Council's rules. The old adage applies here: "if it ain't broke, don't fix it." The "may affect" language should be retained.

In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Heather Marsh  
44 Eagle Crest Dr  
Lake Oswego, OR 97035

## CLARK Christopher \* ODOE

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**From:** Heidi Welte <Heidi.Welte.219295778@p2a.co>  
**Sent:** Friday, July 10, 2020 4:20 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

The contested case process is an immensely important tool in the Council's rules for examining and ultimately getting to the truth of whether a proposed project will comply with the law, and for allowing the public to meaningfully participate in that review. Under Council rules that have been in place for decades, the public has the right to request a contested case, and if such a request raises issues that "may affect" the Council's ultimate determination of whether the energy project complies with the law, then a contested case will be held to resolve those issues.

In contrast, if the proposed rule change goes through, it would impose new, unfair burdens on the public. Under the proposed rule, concerned members of the public would be required to demonstrate—at the time they request a contested case—that the issues they raise are "reasonably likely to affect" the Council's review. This new burden would be unfair and inappropriate because it would require the Council to prematurely evaluate the ultimate merits of the issues, based on limited or no evidence, before a contested case is held to adjudicate those issues. This would turn the established decision-making process on its head, squelching public participation and decreasing transparency.

In fact, the proposed new "reasonably likely to affect" standard for justifying a contested case could in many situations be impossible to meet at such an early stage in the process. For example, the public may need a contested case in order to obtain critical evidence that lies only in the hands of energy developers, or may need to hire expert witnesses to submit sworn testimony, subject to cross-examination, in a contested case. The proposed rule change would forever shut the door on such public participation opportunities by penalizing the public for not yet having that evidence in hand. Such a rule change could hardly be deemed fair or appropriate.

Nor would I support changing the "may affect" language in the rules to some other new language. The "may affect" language has been in the Council's rules for twenty years, and it establishes a level playing field for the public to participate in the Council's review process. There is no need to change this long-standing language, which is fundamental to the Council's rules. The old adage applies here: "if it ain't broke, don't fix it." The "may affect" language should be retained.

In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Heidi Welte  
18880 SW Hart Rd  
Beaverton, OR 97007

## CLARK Christopher \* ODOE

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**From:** Dan Blair <Dan.Blair.232047507@p2a.co>  
**Sent:** Friday, July 10, 2020 4:22 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As Oregonians and supporters of the Columbia River Gorge National Scenic Area, my wife and I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. The values inherent in the Gorge National Scenic Area designation are important to us. Issues such as the health of humans and wildlife, scenic views, and the very real threats presented by climate change, are priorities for us. Thus we are strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." In a nutshell, this proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

Our first concern with this rulemaking is that the official rulemaking notice is very misleading. It fails to advise us and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and obfuscates what is actually under consideration. That is not a "clarification" -- it is an outright modification! We object.

Then consider this: the contested case process is an immensely important tool in the Council's rules for examining and ultimately getting to the truth of whether a proposed project will comply with the law, and for allowing the public to meaningfully participate in that review. Under Council rules that have been in place for decades, the public has the right to request a contested case, and if such a request raises issues that "may affect" the Council's ultimate determination of whether the energy project complies with the law, then a contested case will be held to resolve those issues.

BUT -- if the proposed rule change goes through, new, unfair burdens would be imposed on the public. Under the proposed rule, concerned members of the public would be required to demonstrate, at the time they request a contested case, that the issues they raise are "reasonably likely to affect" the Council's review. Think about that! This places an unfair and inappropriate burden on everyone involved, because it would require the Council to prematurely evaluate the ultimate merits of the issues, based on limited or no evidence, before a contested case is held to adjudicate those issues. It should be apparent to all reasonable people that this would turn the established decision-making process on its head, squelching public participation and decreasing transparency. Again, we object.

In fact, the proposed new "reasonably likely to affect" standard for justifying a contested case could in many situations be impossible to meet at such an early stage in the process. For example, the public may need a contested case in order to obtain critical evidence that lies only in the hands of energy developers, or may need to hire expert witnesses to submit sworn testimony, subject to cross-examination, in a contested case. The proposed rule change would bar the door on such public participation opportunities, by penalizing the public for not yet having that evidence in hand. Such a rule change could hardly be considered fair or appropriate.

Nor would we support changing the "may affect" language in the rules to some other, new replacement verbiage. The "may affect" language has been in the Council's rules for twenty years, and it establishes a level playing field for the public to participate in the Council's review process. There is no need to change this long-standing language, which is fundamental to the Council's rules. You know that old adage "if it ain't broke, don't fix it"? This is a classic example. The

“may affect” language should be retained.

In conclusion, my wife and I ask the Council to please support public participation and transparency in the decision-making process by retaining the “may affect” language in the rules. The Council should terminate this rulemaking. There are other more worthy issues requiring the Council's focus, its valuable time and resources.

We trust you will give our comments your most serious and thoughtful consideration.

Regards,  
Dan Blair  
PO Box 330  
Joseph, OR 97846

## CLARK Christopher \* ODOE

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**From:** Don Jacobson <Don.Jacobson.218828704@p2a.co>  
**Sent:** Friday, July 10, 2020 4:31 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

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In contrast, if the proposed rule change goes through, it would impose new, unfair burdens on the public. Under the proposed rule, concerned members of the public would be required to demonstrate—at the time they request a contested case—that the issues they raise are "reasonably likely to affect" the Council's review. This new burden would be unfair and inappropriate because it would require the Council to prematurely evaluate the ultimate merits of the issues, based on limited or no evidence, before a contested case is held to adjudicate those issues. This would turn the established decision-making process on its head, squelching public participation and decreasing transparency.

In fact, the proposed new "reasonably likely to affect" standard for justifying a contested case could in many situations be impossible to meet at such an early stage in the process. For example, the public may need a contested case in order to obtain critical evidence that lies only in the hands of energy developers, or may need to hire expert witnesses to submit sworn testimony, subject to cross-examination, in a contested case. The proposed rule change would forever shut the door on such public participation opportunities by penalizing the public for not yet having that evidence in hand. Such a rule change could hardly be deemed fair or appropriate.

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In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Don Jacobson  
2545 SW Terwilliger Blvd  
Portland, OR 97201

## CLARK Christopher \* ODOE

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**From:** Blaine Ackley <Blaine.Ackley.219172224@p2a.co>  
**Sent:** Friday, July 10, 2020 4:32 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

The contested case process is an immensely important tool in the Council's rules for examining and ultimately getting to the truth of whether a proposed project will comply with the law, and for allowing the public to meaningfully participate in that review. Under Council rules that have been in place for decades, the public has the right to request a contested case, and if such a request raises issues that "may affect" the Council's ultimate determination of whether the energy project complies with the law, then a contested case will be held to resolve those issues.

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In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

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

## CLARK Christopher \* ODOE

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**From:** Alice Shapiro <Alice.Shapiro.221486115@p2a.co>  
**Sent:** Friday, July 10, 2020 4:38 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

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In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

The Columbia Gorge is a treasure and must be protected from damaging energy projects. Oregon law demands that public have input.

Thank you for considering my comments,

Regards,  
Alice Shapiro  
2545 SW Terwilliger Blvd  
Portland, OR 97201

## CLARK Christopher \* ODOE

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**From:** Diane Dulken <Diane.Dulken.218845543@p2a.co>  
**Sent:** Friday, July 10, 2020 5:01 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

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In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,

Diane Dulken

1844 SE Cesar Estrada Chavez Blvd

Portland, OR 97214

## CLARK Christopher \* ODOE

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**From:** Cheri Ceridwen <Cheri.Ceridwen.221979802@p2a.co>  
**Sent:** Friday, July 10, 2020 5:34 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

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In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

I love hiking in the Columbia River Gorge, and supporting local businesses when I do so. I need to know any energy projects won't deteriorate the beautiful habitat and resources in the Gorge or nearby communities.

Thank you for considering my comments.

Regards,  
Cheri Ceridwen  
2020 NW Northrup St  
Portland, OR 97209

## CLARK Christopher \* ODOE

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**From:** John Koenig <John.Koenig.218830387@p2a.co>  
**Sent:** Friday, July 10, 2020 5:44 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

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valuable time and resources elsewhere.

Thank you for considering my comments,

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

## CLARK Christopher \* ODOE

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**From:** Delores Porch <Delores.Porch.218833663@p2a.co>  
**Sent:** Friday, July 10, 2020 6:06 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

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Thank you for considering my comments,

Regards,  
Delores Porch  
1212 34th Ave SE  
Albany, OR 97322

## CLARK Christopher \* ODOE

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**From:** donald dickson <donald.dickson.268776464@p2a.co>  
**Sent:** Friday, July 10, 2020 6:12 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

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valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
donald dickson  
10543 SW River Dr  
Tigard, OR 97224

## **CLARK Christopher \* ODOE**

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**From:** Jan Polychronis <Jan.Polychronis.220161666@p2a.co>  
**Sent:** Friday, July 10, 2020 6:38 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

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valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Jan Polychronis  
101 W 2nd St  
The Dalles, OR 97058

## CLARK Christopher \* ODOE

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**From:** CONNIE Butler <CONNIE.Butler.220136790@p2a.co>  
**Sent:** Friday, July 10, 2020 6:50 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

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My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

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In contrast, if the proposed rule change goes through, it would impose new, unfair burdens on the public. Under the proposed rule, concerned members of the public would be required to demonstrate—at the time they request a contested case—that the issues they raise are "reasonably likely to affect" the Council's review. This new burden would be unfair and inappropriate because it would require the Council to prematurely evaluate the ultimate merits of the issues, based on limited or no evidence, before a contested case is held to adjudicate those issues. This would turn the established decision-making process on its head, squelching public participation and decreasing transparency.

In fact, the proposed new "reasonably likely to affect" standard for justifying a contested case could in many situations be impossible to meet at such an early stage in the process. For example, the public may need a contested case in order to obtain critical evidence that lies only in the hands of energy developers, or may need to hire expert witnesses to submit sworn testimony, subject to cross-examination, in a contested case. The proposed rule change would forever shut the door on such public participation opportunities by penalizing the public for not yet having that evidence in hand. Such a rule change could hardly be deemed fair or appropriate.

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In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
CONNIE Butler  
6405 N Burrage Ave  
Portland, OR 97217

## CLARK Christopher \* ODOE

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**From:** Diana Richardson <Diana.Richardson.243248881@p2a.co>  
**Sent:** Friday, July 10, 2020 6:54 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

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valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Diana Richardson  
1905 SW Sunset Blvd  
Portland, OR 97239

## CLARK Christopher \* ODOE

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**From:** Barbara Manildi <Barbara.Manildi.218847802@p2a.co>  
**Sent:** Friday, July 10, 2020 7:06 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

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valuable time and resources elsewhere.

Thank you for considering my comments,

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

## CLARK Christopher \* ODOE

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**From:** Gail Massoll <Gail.Massoll.228317025@p2a.co>  
**Sent:** Friday, July 10, 2020 7:27 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

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valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Gail Massoll  
922 NW 11th Ave  
Portland, OR 97209

## CLARK Christopher \* ODOE

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**From:** Laurel Turner <Laurel.Turner.220142469@p2a.co>  
**Sent:** Friday, July 10, 2020 7:35 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

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valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Laurel Turner  
11333 SE Powell Ct  
Portland, OR 97266

## CLARK Christopher \* ODOE

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**From:** Karen Fletcher <Karen.Fletcher.328945289@p2a.co>  
**Sent:** Friday, July 10, 2020 7:58 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

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Thank you for considering my comments,

Regards,  
Karen Fletcher  
5040 SE Henry St  
Portland, OR 97206

## CLARK Christopher \* ODOE

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**From:** Lorna Atherton <Lorna.Atherton.273813574@p2a.co>  
**Sent:** Friday, July 10, 2020 8:43 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

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valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Lorna Atherton  
473 NE 25th St  
Gresham, OR 97030

## CLARK Christopher \* ODOE

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**From:** Michael Wilson <Michael.Wilson.220725723@p2a.co>  
**Sent:** Friday, July 10, 2020 8:46 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

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Thank you for considering my comments,

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

## CLARK Christopher \* ODOE

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**From:** Bill O'Brien <Bill.O'Brien.242143824@p2a.co>  
**Sent:** Friday, July 10, 2020 9:25 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

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Thank you for considering my comments,

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

## CLARK Christopher \* ODOE

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**From:** Brian Winter <Brian.Winter.328958672@p2a.co>  
**Sent:** Friday, July 10, 2020 9:37 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

The contested case process is an immensely important tool in the Council's rules for examining and ultimately getting to the truth of whether a proposed project will comply with the law, and for allowing the public to meaningfully participate in that review. Under Council rules that have been in place for decades, the public has the right to request a contested case, and if such a request raises issues that "may affect" the Council's ultimate determination of whether the energy project complies with the law, then a contested case will be held to resolve those issues.

In contrast, if the proposed rule change goes through, it would impose new, unfair burdens on the public. Under the proposed rule, concerned members of the public would be required to demonstrate—at the time they request a contested case—that the issues they raise are "reasonably likely to affect" the Council's review. This new burden would be unfair and inappropriate because it would require the Council to prematurely evaluate the ultimate merits of the issues, based on limited or no evidence, before a contested case is held to adjudicate those issues. This would turn the established decision-making process on its head, squelching public participation and decreasing transparency.

In fact, the proposed new "reasonably likely to affect" standard for justifying a contested case could in many situations be impossible to meet at such an early stage in the process. For example, the public may need a contested case in order to obtain critical evidence that lies only in the hands of energy developers, or may need to hire expert witnesses to submit sworn testimony, subject to cross-examination, in a contested case. The proposed rule change would forever shut the door on such public participation opportunities by penalizing the public for not yet having that evidence in hand. Such a rule change could hardly be deemed fair or appropriate.

Nor would I support changing the "may affect" language in the rules to some other new language. The "may affect" language has been in the Council's rules for twenty years, and it establishes a level playing field for the public to participate in the Council's review process. There is no need to change this long-standing language, which is fundamental to the Council's rules. The old adage applies here: "if it ain't broke, don't fix it." The "may affect" language should be retained.

In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Brian Winter  
5656  
Portland, OR 97219

## CLARK Christopher \* ODOE

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**From:** David Griffith <David.Griffith.228463014@p2a.co>  
**Sent:** Saturday, July 11, 2020 12:49 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

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In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

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

## CLARK Christopher \* ODOE

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**From:** Phillip Norman <Phillip.Norman.328990324@p2a.co>  
**Sent:** Saturday, July 11, 2020 6:02 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

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valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Phillip Norman  
1764 Bonniebrae Dr  
Lake Oswego, OR 97034

## CLARK Christopher \* ODOE

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**From:** Ted Light <Ted.Light.231074139@p2a.co>  
**Sent:** Saturday, July 11, 2020 6:07 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

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In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

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

## CLARK Christopher \* ODOE

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**From:** stephen couche <stephen.couche.228136495@p2a.co>  
**Sent:** Saturday, July 11, 2020 7:08 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

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valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
stephen couche  
4718 SE 31st Ave  
Portland, OR 97202

## CLARK Christopher \* ODOE

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**From:** David Michalek <David.Michalek.218942392@p2a.co>  
**Sent:** Saturday, July 11, 2020 7:53 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

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valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
David Michalek  
25 Eugene St  
Hood River, OR 97031

## CLARK Christopher \* ODOE

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**From:** Deb Lawless <Deb.Lawless.249779138@p2a.co>  
**Sent:** Saturday, July 11, 2020 8:35 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

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valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Deb Lawless  
3035 NE 62nd Ave  
Portland, OR 97213

## CLARK Christopher \* ODOE

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**From:** Andrea Partenheimer <Andrea.Partenheimer.278508613@p2a.co>  
**Sent:** Saturday, July 11, 2020 8:39 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** [Fortimail Spam Detected] Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

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valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Andrea Partenheimer  
1915 NE 70th Ave  
Portland, OR 97213

## CLARK Christopher \* ODOE

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**From:** Carol Randell <Carol.Randell.218864650@p2a.co>  
**Sent:** Saturday, July 11, 2020 8:51 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

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valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Carol Randell  
8320 SW Maverick Terrace  
Beaverton, OR 97008

## CLARK Christopher \* ODOE

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**From:** Rhett Lawrence <Rhett.Lawrence.220137168@p2a.co>  
**Sent:** Saturday, July 11, 2020 9:54 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

The contested case process is an immensely important tool in the Council's rules for examining and ultimately getting to the truth of whether a proposed project will comply with the law, and for allowing the public to meaningfully participate in that review. Under Council rules that have been in place for decades, the public has the right to request a contested case, and if such a request raises issues that "may affect" the Council's ultimate determination of whether the energy project complies with the law, then a contested case will be held to resolve those issues.

In contrast, if the proposed rule change goes through, it would impose new, unfair burdens on the public. Under the proposed rule, concerned members of the public would be required to demonstrate—at the time they request a contested case—that the issues they raise are "reasonably likely to affect" the Council's review. This new burden would be unfair and inappropriate because it would require the Council to prematurely evaluate the ultimate merits of the issues, based on limited or no evidence, before a contested case is held to adjudicate those issues. This would turn the established decision-making process on its head, squelching public participation and decreasing transparency.

In fact, the proposed new "reasonably likely to affect" standard for justifying a contested case could in many situations be impossible to meet at such an early stage in the process. For example, the public may need a contested case in order to obtain critical evidence that lies only in the hands of energy developers, or may need to hire expert witnesses to submit sworn testimony, subject to cross-examination, in a contested case. The proposed rule change would forever shut the door on such public participation opportunities by penalizing the public for not yet having that evidence in hand. Such a rule change could hardly be deemed fair or appropriate.

Nor would I support changing the "may affect" language in the rules to some other new language. The "may affect" language has been in the Council's rules for twenty years, and it establishes a level playing field for the public to participate in the Council's review process. There is no need to change this long-standing language, which is fundamental to the Council's rules. The old adage applies here: "if it ain't broke, don't fix it." The "may affect" language should be retained.

In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

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

## CLARK Christopher \* ODOE

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**From:** Connie Price <Connie.Price.329025667@p2a.co>  
**Sent:** Saturday, July 11, 2020 9:58 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

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valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Connie Price  
16919 NW Stoller Dr  
Portland, OR 97229

## CLARK Christopher \* ODOE

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**From:** Jan Kelley <Jan.Kelley.329026927@p2a.co>  
**Sent:** Saturday, July 11, 2020 10:03 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

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valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Jan Kelley  
2825 SW Upper Dr  
Portland, OR 97201

## CLARK Christopher \* ODOE

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**From:** Kyle Haines <Kyle.Haines.220132569@p2a.co>  
**Sent:** Saturday, July 11, 2020 10:53 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

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valuable time and resources elsewhere.

Thank you for considering my comments,

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

## CLARK Christopher \* ODOE

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**From:** Paul Caggiano <Paul.Caggiano.218855885@p2a.co>  
**Sent:** Saturday, July 11, 2020 11:56 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

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valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Paul Caggiano  
8578 N Oswego Ave  
Portland, OR 97203

## CLARK Christopher \* ODOE

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**From:** Roger Kofler <Roger.Kofler.221447343@p2a.co>  
**Sent:** Saturday, July 11, 2020 12:39 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

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In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

We need to remember that public lands are just that; they belong to all American citizens. To attempt to remove the public from the management process of their own lands doesn't make any sense to me.

Thank you for considering my comments,

Regards,  
Roger Kofler  
17177 SE Jennings Crest Ln  
Milwaukie, OR 97267

## CLARK Christopher \* ODOE

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**From:** Susan Haywood <Susan.Haywood.329073385@p2a.co>  
**Sent:** Saturday, July 11, 2020 2:32 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

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In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments at this important time in history when we are fighting a pandemic and restructuring our policing forces. We the people must have a forum on how to implement policies for a greener planet. Please don't make rules that tie our hands.

Regards,  
Susan Haywood  
2146 NW Everett St  
Portland, OR 97210

## CLARK Christopher \* ODOE

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**From:** Erica Maranowski <Erica.Maranowski.220149462@p2a.co>  
**Sent:** Saturday, July 11, 2020 2:48 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

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valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Erica Maranowski  
22 NE 2nd Ave  
Portland, OR 97232

## CLARK Christopher \* ODOE

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**From:** Rob Parker <Rob.Parker.228298153@p2a.co>  
**Sent:** Saturday, July 11, 2020 3:23 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

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Nor would I support changing the "may affect" language in the rules to some other new language. The "may affect" language has been in the Council's rules for twenty years, and it establishes a level playing field for the public to participate in the Council's review process. There is no need to change this long-standing language, which is fundamental to the Council's rules. The old adage applies here: "if it ain't broke, don't fix it." The "may affect" language should be retained.

In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Rob Parker  
826 N Blandena St  
Portland, OR 97217

## CLARK Christopher \* ODOE

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**From:** Pamela Allee <Pamela.Alee.329084662@p2a.co>  
**Sent:** Saturday, July 11, 2020 3:48 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

The contested case process is an immensely important tool in the Council's rules for examining and ultimately getting to the truth of whether a proposed project will comply with the law, and for allowing the public to meaningfully participate in that review. Under Council rules that have been in place for decades, the public has the right to request a contested case, and if such a request raises issues that "may affect" the Council's ultimate determination of whether the energy project complies with the law, then a contested case will be held to resolve those issues.

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In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Pamela Allee  
7425 N Portsmouth Ave  
Portland, OR 97203

## CLARK Christopher \* ODOE

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**From:** Sherry Meier <Sherry.Meier.237825472@p2a.co>  
**Sent:** Saturday, July 11, 2020 3:50 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

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In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

I'm an avid user of Oregon's wild places and it's extremely important to me to know that these energy projects won't impact these outstanding and remarkable resources.

Thank you for considering my comments,

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

## CLARK Christopher \* ODOE

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**From:** Leif Schmit <Leif.Schmit.309165925@p2a.co>  
**Sent:** Saturday, July 11, 2020 3:58 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

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In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Leif Schmit  
10816 NE Skidmore St  
Portland, OR 97220

## CLARK Christopher \* ODOE

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**From:** Leslie Allen <Leslie.Allen.329096489@p2a.co>  
**Sent:** Saturday, July 11, 2020 4:23 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

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valuable time and resources elsewhere.

Thank you for considering my comments,

Leslie Allen

Regards,  
Leslie Allen  
24407 E Welches Rd  
Mount Hood Village, OR 97067

## CLARK Christopher \* ODOE

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**From:** Marilyn Stinnett <Marilyn.Stinnett.228136783@p2a.co>  
**Sent:** Saturday, July 11, 2020 4:49 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

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In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

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

## CLARK Christopher \* ODOE

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**From:** Lloyd Vivola <Lloyd.Vivola.221457199@p2a.co>  
**Sent:** Saturday, July 11, 2020 5:47 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

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valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Lloyd Vivola  
12120 SE Foster Pl  
Portland, OR 97266

## CLARK Christopher \* ODOE

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**From:** Jan Golick <Jan.Golick.329124144@p2a.co>  
**Sent:** Saturday, July 11, 2020 5:50 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

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valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Jan Golick  
140 E 35th Ave  
Eugene, OR 97405

## CLARK Christopher \* ODOE

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**From:** Mary Bailey <Mary.Bailey.221460889@p2a.co>  
**Sent:** Saturday, July 11, 2020 6:31 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

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valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Mary Bailey  
3131 NW Clubhouse Dr  
Bend, OR 97701

## CLARK Christopher \* ODOE

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**From:** Paul Hanrahan <Paul.Hanrahan.309506700@p2a.co>  
**Sent:** Saturday, July 11, 2020 7:14 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

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The contested case process is an immensely important tool in the Council's rules for examining and ultimately getting to the truth of whether a proposed project will comply with the law, and for allowing the public to meaningfully participate in that review. Under Council rules that have been in place for decades, the public has the right to request a contested case, and if such a request raises issues that "may affect" the Council's ultimate determination of whether the energy project complies with the law, then a contested case will be held to resolve those issues.

In contrast, if the proposed rule change goes through, it would impose new, unfair burdens on the public. Under the proposed rule, concerned members of the public would be required to demonstrate—at the time they request a contested case—that the issues they raise are "reasonably likely to affect" the Council's review. This new burden would be unfair and inappropriate because it would require the Council to prematurely evaluate the ultimate merits of the issues, based on limited or no evidence, before a contested case is held to adjudicate those issues. This would turn the established decision-making process on its head, squelching public participation and decreasing transparency.

In fact, the proposed new "reasonably likely to affect" standard for justifying a contested case could in many situations be impossible to meet at such an early stage in the process. For example, the public may need a contested case in order to obtain critical evidence that lies only in the hands of energy developers, or may need to hire expert witnesses to submit sworn testimony, subject to cross-examination, in a contested case. The proposed rule change would forever shut the door on such public participation opportunities by penalizing the public for not yet having that evidence in hand. Such a rule change could hardly be deemed fair or appropriate.

Nor would I support changing the "may affect" language in the rules to some other new language. The "may affect" language has been in the Council's rules for twenty years, and it establishes a level playing field for the public to participate in the Council's review process. There is no need to change this long-standing language, which is fundamental to the Council's rules. The old adage applies here: "if it ain't broke, don't fix it." The "may affect" language should be retained.

In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Paul Hanrahan  
2411 SE Ella Ave  
Milwaukie, OR 97267

## CLARK Christopher \* ODOE

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**From:** Kathleen Boylan <Kathleen.Boylan.329159182@p2a.co>  
**Sent:** Saturday, July 11, 2020 8:03 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

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Nor would I support changing the "may affect" language in the rules to some other new language. The "may affect" language has been in the Council's rules for twenty years, and it establishes a level playing field for the public to participate in the Council's review process. There is no need to change this long-standing language, which is fundamental to the Council's rules. The old adage applies here: "if it ain't broke, don't fix it." The "may affect" language should be retained.

In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Kathleen Boylan  
7626 SE Martins St  
Portland, OR 97206

## CLARK Christopher \* ODOE

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**From:** Walt Mintkeski <Walt.Mintkeski.218849981@p2a.co>  
**Sent:** Sunday, July 12, 2020 8:44 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. I am very opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

The official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

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The proposed new "reasonably likely to affect" standard for justifying a contested case could in many situations be impossible to meet at such an early stage in the process. For example, the public may need a contested case in order to obtain critical evidence that lies only in the hands of energy developers, or may need to hire expert witnesses to submit sworn testimony, subject to cross-examination, in a contested case. The proposed rule change would forever shut the door on such public participation opportunities by penalizing the public for not yet having that evidence in hand. Such a rule change could hardly be deemed fair or appropriate.

I do not support changing the "may affect" language in the rules to some other new language. The "may affect" language has been in the Council's rules for twenty years, and it establishes a level playing field for the public to participate in the Council's review process. There is no need to change this long-standing language, which is fundamental to the Council's rules. The old adage applies here: "if it ain't broke, don't fix it." The "may affect" language should be retained.

In conclusion, I request the Council to support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Walt Mintkeski  
6815 SE 31st Ave  
Portland, OR 97202

## CLARK Christopher \* ODOE

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**From:** BENJAMIN WARD <BENJAMIN.WARD.221515455@p2a.co>  
**Sent:** Sunday, July 12, 2020 10:29 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

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Nor would I support changing the "may affect" language in the rules to some other new language. The "may affect" language has been in the Council's rules for twenty years, and it establishes a level playing field for the public to participate in the Council's review process. There is no need to change this long-standing language, which is fundamental to the Council's rules. The old adage applies here: "if it ain't broke, don't fix it." The "may affect" language should be retained.

In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
BENJAMIN WARD  
4014 SE Ash St  
Portland, OR 97214

## CLARK Christopher \* ODOE

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**From:** Rebecca Clark <Rebecca.Clark.220552121@p2a.co>  
**Sent:** Sunday, July 12, 2020 12:41 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

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In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

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

## CLARK Christopher \* ODOE

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**From:** Joana Kirchhoff <Joana.Kirchhoff.297717638@p2a.co>  
**Sent:** Sunday, July 12, 2020 3:29 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

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valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Joana Kirchhoff  
3414 NE 73rd Ave  
Portland, OR 97213

## CLARK Christopher \* ODOE

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**From:** Katleen Batie <Katleen.Batie.329412261@p2a.co>  
**Sent:** Sunday, July 12, 2020 4:07 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

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valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Katleen Batie  
20400 NW Quail Hollow Dr  
Portland, OR 97229

## CLARK Christopher \* ODOE

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**From:** Diane Craig <Diane.Craig.228204345@p2a.co>  
**Sent:** Sunday, July 12, 2020 5:07 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

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In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Diane Craig  
8525 SW Davies Rd  
Beaverton, OR 97008

## **CLARK Christopher \* ODOE**

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**From:** Mary Hayden <Mary.Hayden.228154378@p2a.co>  
**Sent:** Sunday, July 12, 2020 8:39 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Mary Hayden  
18347 S Redland Rd  
Oregon City, OR 97045

## CLARK Christopher \* ODOE

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**From:** Emille Laffite <Emille.Laffite.249804643@p2a.co>  
**Sent:** Sunday, July 12, 2020 8:43 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

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In contrast, if the proposed rule change goes through, it would impose new, unfair burdens on the public. Under the proposed rule, concerned members of the public would be required to demonstrate—at the time they request a contested case—that the issues they raise are "reasonably likely to affect" the Council's review. This new burden would be unfair and inappropriate because it would require the Council to prematurely evaluate the ultimate merits of the issues, based on limited or no evidence, before a contested case is held to adjudicate those issues. This would turn the established decision-making process on its head, squelching public participation and decreasing transparency.

In fact, the proposed new "reasonably likely to affect" standard for justifying a contested case could in many situations be impossible to meet at such an early stage in the process. For example, the public may need a contested case in order to obtain critical evidence that lies only in the hands of energy developers, or may need to hire expert witnesses to submit sworn testimony, subject to cross-examination, in a contested case. The proposed rule change would forever shut the door on such public participation opportunities by penalizing the public for not yet having that evidence in hand. Such a rule change could hardly be deemed fair or appropriate.

Nor would I support changing the "may affect" language in the rules to some other new language. The "may affect" language has been in the Council's rules for twenty years, and it establishes a level playing field for the public to participate in the Council's review process. There is no need to change this long-standing language, which is fundamental to the Council's rules. The old adage applies here: "if it ain't broke, don't fix it." The "may affect" language should be retained.

In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Emille Laffite  
11700 SW Allen Blvd  
Beaverton, OR 97008

## CLARK Christopher \* ODOE

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**From:** Monica Donley <Monica.Donley.329486675@p2a.co>  
**Sent:** Sunday, July 12, 2020 9:03 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

The contested case process is an immensely important tool in the Council's rules for examining and ultimately getting to the truth of whether a proposed project will comply with the law, and for allowing the public to meaningfully participate in that review. Under Council rules that have been in place for decades, the public has the right to request a contested case, and if such a request raises issues that "may affect" the Council's ultimate determination of whether the energy project complies with the law, then a contested case will be held to resolve those issues.

In contrast, if the proposed rule change goes through, it would impose new, unfair burdens on the public. Under the proposed rule, concerned members of the public would be required to demonstrate—at the time they request a contested case—that the issues they raise are "reasonably likely to affect" the Council's review. This new burden would be unfair and inappropriate because it would require the Council to prematurely evaluate the ultimate merits of the issues, based on limited or no evidence, before a contested case is held to adjudicate those issues. This would turn the established decision-making process on its head, squelching public participation and decreasing transparency.

In fact, the proposed new "reasonably likely to affect" standard for justifying a contested case could in many situations be impossible to meet at such an early stage in the process. For example, the public may need a contested case in order to obtain critical evidence that lies only in the hands of energy developers, or may need to hire expert witnesses to submit sworn testimony, subject to cross-examination, in a contested case. The proposed rule change would forever shut the door on such public participation opportunities by penalizing the public for not yet having that evidence in hand. Such a rule change could hardly be deemed fair or appropriate.

Nor would I support changing the "may affect" language in the rules to some other new language. The "may affect" language has been in the Council's rules for twenty years, and it establishes a level playing field for the public to participate in the Council's review process. There is no need to change this long-standing language, which is fundamental to the Council's rules. The old adage applies here: "if it ain't broke, don't fix it." The "may affect" language should be retained.

In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Monica Donley  
1610 NE 65th Ave  
Portland, OR 97213

## CLARK Christopher \* ODOE

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**From:** Edward Cleary <Edward.Cleary.329519245@p2a.co>  
**Sent:** Monday, July 13, 2020 1:18 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

The contested case process is an immensely important tool in the Council's rules for examining and ultimately getting to the truth of whether a proposed project will comply with the law, and for allowing the public to meaningfully participate in that review. Under Council rules that have been in place for decades, the public has the right to request a contested case, and if such a request raises issues that "may affect" the Council's ultimate determination of whether the energy project complies with the law, then a contested case will be held to resolve those issues.

In contrast, if the proposed rule change goes through, it would impose new, unfair burdens on the public. Under the proposed rule, concerned members of the public would be required to demonstrate—at the time they request a contested case—that the issues they raise are "reasonably likely to affect" the Council's review. This new burden would be unfair and inappropriate because it would require the Council to prematurely evaluate the ultimate merits of the issues, based on limited or no evidence, before a contested case is held to adjudicate those issues. This would turn the established decision-making process on its head, squelching public participation and decreasing transparency.

In fact, the proposed new "reasonably likely to affect" standard for justifying a contested case could in many situations be impossible to meet at such an early stage in the process. For example, the public may need a contested case in order to obtain critical evidence that lies only in the hands of energy developers, or may need to hire expert witnesses to submit sworn testimony, subject to cross-examination, in a contested case. The proposed rule change would forever shut the door on such public participation opportunities by penalizing the public for not yet having that evidence in hand. Such a rule change could hardly be deemed fair or appropriate.

Nor would I support changing the "may affect" language in the rules to some other new language. The "may affect" language has been in the Council's rules for twenty years, and it establishes a level playing field for the public to participate in the Council's review process. There is no need to change this long-standing language, which is fundamental to the Council's rules. The old adage applies here: "if it ain't broke, don't fix it." The "may affect" language should be retained.

In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Edward Cleary  
19150 SW Murphy Ct  
Beaverton, OR 97007

## CLARK Christopher \* ODOE

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**From:** Fuji Kreider <Fuji.Kreider.262018236@p2a.co>  
**Sent:** Monday, July 13, 2020 8:31 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Governor's Clean Energy plans and recent climate policy, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in our beautiful state. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

The contested case process is an immensely important tool in the Council's rules for examining and ultimately getting to the truth of whether a proposed project will comply with the law, and for allowing the public to meaningfully participate in that review. Under Council rules that have been in place for decades, the public has the right to request a contested case, and if such a request raises issues that "may affect" the Council's ultimate determination of whether the energy project complies with the law, then a contested case will be held to resolve those issues.

In contrast, if the proposed rule change goes through, it would impose new, unfair burdens on the public. Under the proposed rule, concerned members of the public would be required to demonstrate—at the time they request a contested case—that the issues they raise are "reasonably likely to affect" the Council's review. This new burden would be unfair and inappropriate because it would require the Council to prematurely evaluate the ultimate merits of the issues, based on limited or no evidence, before a contested case is held to adjudicate those issues. This would turn the established decision-making process on its head, squelching public participation and decreasing transparency.

In fact, the proposed new "reasonably likely to affect" standard for justifying a contested case could in many situations be impossible to meet at such an early stage in the process. For example, the public may need a contested case in order to obtain critical evidence that lies only in the hands of energy developers, or may need to hire expert witnesses to submit sworn testimony, subject to cross-examination, in a contested case. The proposed rule change would forever shut the door on such public participation opportunities by penalizing the public for not yet having that evidence in hand. Such a rule change could hardly be deemed fair or appropriate.

Nor would I support changing the "may affect" language in the rules to some other new language. The "may affect" language has been in the Council's rules for twenty years, and it establishes a level playing field for the public to participate in the Council's review process. There is no need to change this long-standing language, which is fundamental to the Council's rules. The old adage applies here: "if it ain't broke, don't fix it." The "may affect" language should be retained.

In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules.

While we must save the planet, we should not destroy valuable wildlife and other natural resources in the process. These must remain in balance and the public transparency and participation is essential to maintaining this balance! The Council should terminate this rulemaking so that it may focus its valuable time and resources elsewhere.

Thank you for considering my comments,

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

## CLARK Christopher \* ODOE

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**From:** James Stratton <James.Stratton.249705652@p2a.co>  
**Sent:** Monday, July 13, 2020 10:45 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I am concerned that EFSC's proposed rulemaking is NOT maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Public participation is key to all government land use decisions and you should be making it easier for citizens to engage, not harder.

Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

The contested case process is an immensely important tool in the Council's rules for examining and ultimately getting to the truth of whether a proposed project will comply with the law, and for allowing the public to meaningfully participate in that review. Under Council rules that have been in place for decades, the public has the right to request a contested case, and if such a request raises issues that "may affect" the Council's ultimate determination of whether the energy project complies with the law, then a contested case will be held to resolve those issues.

In contrast, if the proposed rule change goes through, it would impose new, unfair burdens on the public. Under the proposed rule, concerned members of the public would be required to demonstrate—at the time they request a contested case—that the issues they raise are "reasonably likely to affect" the Council's review. This new burden would be unfair and inappropriate because it would require the Council to prematurely evaluate the ultimate merits of the issues, based on limited or no evidence, before a contested case is held to adjudicate those issues. This would turn the established decision-making process on its head, squelching public participation and decreasing transparency.

In fact, the proposed new "reasonably likely to affect" standard for justifying a contested case could in many situations be impossible to meet at such an early stage in the process. For example, the public may need a contested case in order to obtain critical evidence that lies only in the hands of energy developers, or may need to hire expert witnesses to submit sworn testimony, subject to cross-examination, in a contested case. The proposed rule change would forever shut the door on such public participation opportunities by penalizing the public for not yet having that evidence in hand. Such a rule change could hardly be deemed fair or appropriate.

Nor would I support changing the "may affect" language in the rules to some other new language. The "may affect" language has been in the Council's rules for twenty years, and it establishes a level playing field for the public to participate in the Council's review process. There is no need to change this long-standing language, which is fundamental to the Council's rules. The old adage applies here: "if it ain't broke, don't fix it." The "may affect" language should be retained.

In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the “may affect” language in the rules. The Council should terminate this rulemaking so that it may focus its valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
James Stratton  
1925 W 24th Ave  
Eugene, OR 97405

## CLARK Christopher \* ODOE

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**From:** Laura Hanks <Laura.Hanks.220434005@p2a.co>  
**Sent:** Monday, July 13, 2020 1:19 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

The contested case process is an immensely important tool in the Council's rules for examining and ultimately getting to the truth of whether a proposed project will comply with the law, and for allowing the public to meaningfully participate in that review. Under Council rules that have been in place for decades, the public has the right to request a contested case, and if such a request raises issues that "may affect" the Council's ultimate determination of whether the energy project complies with the law, then a contested case will be held to resolve those issues.

In contrast, if the proposed rule change goes through, it would impose new, unfair burdens on the public. Under the proposed rule, concerned members of the public would be required to demonstrate—at the time they request a contested case—that the issues they raise are "reasonably likely to affect" the Council's review. This new burden would be unfair and inappropriate because it would require the Council to prematurely evaluate the ultimate merits of the issues, based on limited or no evidence, before a contested case is held to adjudicate those issues. This would turn the established decision-making process on its head, squelching public participation and decreasing transparency.

In fact, the proposed new "reasonably likely to affect" standard for justifying a contested case could in many situations be impossible to meet at such an early stage in the process. For example, the public may need a contested case in order to obtain critical evidence that lies only in the hands of energy developers, or may need to hire expert witnesses to submit sworn testimony, subject to cross-examination, in a contested case. The proposed rule change would forever shut the door on such public participation opportunities by penalizing the public for not yet having that evidence in hand. Such a rule change could hardly be deemed fair or appropriate.

Nor would I support changing the "may affect" language in the rules to some other new language. The "may affect" language has been in the Council's rules for twenty years, and it establishes a level playing field for the public to participate in the Council's review process. There is no need to change this long-standing language, which is fundamental to the Council's rules. The old adage applies here: "if it ain't broke, don't fix it." The "may affect" language should be retained.

In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

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

## CLARK Christopher \* ODOE

---

**From:** John Christensen <John.Christensen.238539415@p2a.co>  
**Sent:** Monday, July 13, 2020 2:11 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

I urge the Siting Council to reject the proposed rule change that would significantly weaken the standard by which citizens can request a "contested case" for large energy projects. As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

The contested case process is an immensely important tool in the Council's rules for examining and ultimately getting to the truth of whether a proposed project will comply with the law, and for allowing the public to meaningfully participate in that review. Under Council rules that have been in place for decades, the public has the right to request a contested case, and if such a request raises issues that "may affect" the Council's ultimate determination of whether the energy project complies with the law, then a contested case will be held to resolve those issues.

In contrast, if the proposed rule change goes through, it would impose new, unfair burdens on the public. Under the proposed rule, concerned members of the public would be required to demonstrate—at the time they request a contested case—that the issues they raise are "reasonably likely to affect" the Council's review. This new burden would be unfair and inappropriate because it would require the Council to prematurely evaluate the ultimate merits of the issues, based on limited or no evidence, before a contested case is held to adjudicate those issues. This would turn the established decision-making process on its head, squelching public participation and decreasing transparency.

In fact, the proposed new "reasonably likely to affect" standard for justifying a contested case could in many situations be impossible to meet at such an early stage in the process. For example, the public may need a contested case in order to obtain critical evidence that lies only in the hands of energy developers, or may need to hire expert witnesses to submit sworn testimony, subject to cross-examination, in a contested case. The proposed rule change would forever shut the door on such public participation opportunities by penalizing the public for not yet having that evidence in hand. Such a rule change could hardly be deemed fair or appropriate.

Nor would I support changing the "may affect" language in the rules to some other new language. The "may affect" language has been in the Council's rules for twenty years, and it establishes a level playing field for the public to participate in the Council's review process. There is no need to change this long-standing language, which is fundamental to the Council's rules. The old adage applies here: "if it ain't broke, don't fix it." The "may affect" language should be retained.

In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the “may affect” language in the rules. The Council should terminate this rulemaking so that it may focus its valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
John Christensen  
39825 SE Gordon Creek Rd  
Corbett, OR 97019

## CLARK Christopher \* ODOE

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**From:** Rochelle Nedeau <Rochelle.Nedeau.232504996@p2a.co>  
**Sent:** Monday, July 13, 2020 4:30 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

The contested case process is an immensely important tool in the Council's rules for examining and ultimately getting to the truth of whether a proposed project will comply with the law, and for allowing the public to meaningfully participate in that review. Under Council rules that have been in place for decades, the public has the right to request a contested case, and if such a request raises issues that "may affect" the Council's ultimate determination of whether the energy project complies with the law, then a contested case will be held to resolve those issues.

In contrast, if the proposed rule change goes through, it would impose new, unfair burdens on the public. Under the proposed rule, concerned members of the public would be required to demonstrate—at the time they request a contested case—that the issues they raise are "reasonably likely to affect" the Council's review. This new burden would be unfair and inappropriate because it would require the Council to prematurely evaluate the ultimate merits of the issues, based on limited or no evidence, before a contested case is held to adjudicate those issues. This would turn the established decision-making process on its head, squelching public participation and decreasing transparency.

In fact, the proposed new "reasonably likely to affect" standard for justifying a contested case could in many situations be impossible to meet at such an early stage in the process. For example, the public may need a contested case in order to obtain critical evidence that lies only in the hands of energy developers, or may need to hire expert witnesses to submit sworn testimony, subject to cross-examination, in a contested case. The proposed rule change would forever shut the door on such public participation opportunities by penalizing the public for not yet having that evidence in hand. Such a rule change could hardly be deemed fair or appropriate.

Nor would I support changing the "may affect" language in the rules to some other new language. The "may affect" language has been in the Council's rules for twenty years, and it establishes a level playing field for the public to participate in the Council's review process. There is no need to change this long-standing language, which is fundamental to the Council's rules. The old adage applies here: "if it ain't broke, don't fix it." The "may affect" language should be retained.

In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Rochelle Nedeau  
6016 S Idaho St  
Portland, OR 97221

## CLARK Christopher \* ODOE

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**From:** Rick Ray <Rick.Ray.218835607@p2a.co>  
**Sent:** Monday, July 13, 2020 8:11 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As a resident and supporter of the Columbia River Gorge National Scenic Area, and as an Oregonian, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

The contested case process is an immensely important tool in the Council's rules for examining and ultimately getting to the truth of whether a proposed project will comply with the law, and for allowing the public to meaningfully participate in that review. Under Council rules that have been in place for decades, the public has the right to request a contested case, and if such a request raises issues that "may affect" the Council's ultimate determination of whether the energy project complies with the law, then a contested case will be held to resolve those issues.

In contrast, if the proposed rule change goes through, it would impose new, unfair burdens on the public. Under the proposed rule, concerned members of the public would be required to demonstrate—at the time they request a contested case—that the issues they raise are "reasonably likely to affect" the Council's review. This new burden would be unfair and inappropriate because it would require the Council to prematurely evaluate the ultimate merits of the issues, based on limited or no evidence, before a contested case is held to adjudicate those issues. This would turn the established decision-making process on its head, squelching public participation and decreasing transparency.

In fact, the proposed new "reasonably likely to affect" standard for justifying a contested case could in many situations be impossible to meet at such an early stage in the process. For example, the public may need a contested case in order to obtain critical evidence that lies only in the hands of energy developers, or may need to hire expert witnesses to submit sworn testimony, subject to cross-examination, in a contested case. The proposed rule change would forever shut the door on such public participation opportunities by penalizing the public for not yet having that evidence in hand. Such a rule change could hardly be deemed fair or appropriate.

Nor would I support changing the "may affect" language in the rules to some other new language. The "may affect" language has been in the Council's rules for twenty years, and it establishes a level playing field for the public to participate in the Council's review process. There is no need to change this long-standing language, which is fundamental to the Council's rules. The old adage applies here: "if it ain't broke, don't fix it." The "may affect" language should be retained.

In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Rick Ray  
30777 NE Hurt Rd  
Troutdale, OR 97060

## CLARK Christopher \* ODOE

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**From:** Susan Geer <Susan.Geer.262002936@p2a.co>  
**Sent:** Monday, July 13, 2020 8:18 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

The contested case process is an immensely important tool in the Council's rules for examining and ultimately getting to the truth of whether a proposed project will comply with the law, and for allowing the public to meaningfully participate in that review. Under Council rules that have been in place for decades, the public has the right to request a contested case, and if such a request raises issues that "may affect" the Council's ultimate determination of whether the energy project complies with the law, then a contested case will be held to resolve those issues.

In contrast, if the proposed rule change goes through, it would impose new, unfair burdens on the public. Under the proposed rule, concerned members of the public would be required to demonstrate—at the time they request a contested case—that the issues they raise are "reasonably likely to affect" the Council's review. This new burden would be unfair and inappropriate because it would require the Council to prematurely evaluate the ultimate merits of the issues, based on limited or no evidence, before a contested case is held to adjudicate those issues. This would turn the established decision-making process on its head, squelching public participation and decreasing transparency.

In fact, the proposed new "reasonably likely to affect" standard for justifying a contested case could in many situations be impossible to meet at such an early stage in the process. For example, the public may need a contested case in order to obtain critical evidence that lies only in the hands of energy developers, or may need to hire expert witnesses to submit sworn testimony, subject to cross-examination, in a contested case. The proposed rule change would forever shut the door on such public participation opportunities by penalizing the public for not yet having that evidence in hand. Such a rule change could hardly be deemed fair or appropriate.

Nor would I support changing the "may affect" language in the rules to some other new language. The "may affect" language has been in the Council's rules for twenty years, and it establishes a level playing field for the public to participate in the Council's review process. There is no need to change this long-standing language, which is fundamental to the Council's rules. The old adage applies here: "if it ain't broke, don't fix it." The "may affect" language should be retained.

In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

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

## CLARK Christopher \* ODOE

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**From:** David Komlosi <David.Komlosi.262002936@p2a.co>  
**Sent:** Monday, July 13, 2020 8:20 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

The contested case process is an immensely important tool in the Council's rules for examining and ultimately getting to the truth of whether a proposed project will comply with the law, and for allowing the public to meaningfully participate in that review. Under Council rules that have been in place for decades, the public has the right to request a contested case, and if such a request raises issues that "may affect" the Council's ultimate determination of whether the energy project complies with the law, then a contested case will be held to resolve those issues.

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In fact, the proposed new "reasonably likely to affect" standard for justifying a contested case could in many situations be impossible to meet at such an early stage in the process. For example, the public may need a contested case in order to obtain critical evidence that lies only in the hands of energy developers, or may need to hire expert witnesses to submit sworn testimony, subject to cross-examination, in a contested case. The proposed rule change would forever shut the door on such public participation opportunities by penalizing the public for not yet having that evidence in hand. Such a rule change could hardly be deemed fair or appropriate.

Nor would I support changing the "may affect" language in the rules to some other new language. The "may affect" language has been in the Council's rules for twenty years, and it establishes a level playing field for the public to participate in the Council's review process. There is no need to change this long-standing language, which is fundamental to the Council's rules. The old adage applies here: "if it ain't broke, don't fix it." The "may affect" language should be retained.

In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
David Komlosi  
906 Penn Ave  
La Grande, OR 97850

## CLARK Christopher \* ODOE

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**From:** Gretchen Valido <Gretchen.Valido.330083670@p2a.co>  
**Sent:** Monday, July 13, 2020 9:57 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian in Deschutes County and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration. This is a blatantly unfair tactic.

The contested case process is an immensely important tool in the Council's rules for examining and ultimately getting to the truth of whether a proposed project will comply with the law, and for allowing the public to meaningfully participate in that review. Under Council rules that have been in place for decades, the public has the right to request a contested case, and if such a request raises issues that "may affect" the Council's ultimate determination of whether the energy project complies with the law, then a contested case will be held to resolve those issues.

In contrast, if the proposed rule change goes through, it would impose new, unfair burdens on the public. Under the proposed rule, concerned members of the public would be required to demonstrate—at the time they request a contested case—that the issues they raise are "reasonably likely to affect" the Council's review. This new burden would be unfair and inappropriate because it would require the Council to prematurely evaluate the ultimate merits of the issues, based on limited or no evidence, before a contested case is held to adjudicate those issues. This would turn the established decision-making process on its head, squelching public participation and decreasing transparency.

In fact, the proposed new "reasonably likely to affect" standard for justifying a contested case could in many situations be impossible to meet at such an early stage in the process. For example, the public may need a contested case in order to obtain critical evidence that lies only in the hands of energy developers, or may need to hire expert witnesses to submit sworn testimony, subject to cross-examination, in a contested case. The proposed rule change would forever shut the door on such public participation opportunities by penalizing the public for not yet having that evidence in hand. Such a rule change could hardly be deemed fair or appropriate.

Nor would I support changing the "may affect" language in the rules to some other new language. The "may affect" language has been in the Council's rules for twenty years, and it establishes a level playing field for the public to participate in the Council's review process. There is no need to change this long-standing language, which is fundamental to the Council's rules. The old adage applies here: "if it ain't broke, don't fix it." The "may affect" language should be retained.

In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the “may affect” language in the rules. The Council should terminate this rulemaking so that it may focus its valuable time and resources elsewhere.

Because my friends and family enjoy recreating on the Deschutes River, we have a vested interest in knowing what energy projects might affect this wild and scenic river. I am not opposed to all energy projects, I just want them to be properly sited in ways that do not diminish our natural heritage or impinge unfairly on private property. Action on Climate Change and preservation of our old growth forests are essential.

Thank you for considering my comments,

Regards,  
Gretchen Valido  
19681 Ridgewood Dr  
Bend, OR 97701

## CLARK Christopher \* ODOE

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**From:** Gregory Monahan <Gregory.Monahan.261547410@p2a.co>  
**Sent:** Monday, July 13, 2020 10:24 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

I urge you to START thinking about future generations and STOP thinking about corporations. Stop trying to weaken the laws requiring environmental impact statements for energy projects.

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

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In contrast, if the proposed rule change goes through, it would impose new, unfair burdens on the public. Under the proposed rule, concerned members of the public would be required to demonstrate—at the time they request a contested case—that the issues they raise are "reasonably likely to affect" the Council's review. This new burden would be unfair and inappropriate because it would require the Council to prematurely evaluate the ultimate merits of the issues, based on limited or no evidence, before a contested case is held to adjudicate those issues. This would turn the established decision-making process on its head, squelching public participation and decreasing transparency.

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Nor would I support changing the "may affect" language in the rules to some other new language. The "may affect" language has been in the Council's rules for twenty years, and it establishes a level playing field for the public to participate in the Council's review process. There is no need to change this long-standing language, which is fundamental to the Council's rules. The old adage applies here: "if it ain't broke, don't fix it." The "may affect" language should be retained.

In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the “may affect” language in the rules. The Council should terminate this rulemaking so that it may focus its valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Gregory Monahan  
7225 SW 13th Ave  
Portland, OR 97219

## CLARK Christopher \* ODOE

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**From:** Todd Weigand <Todd.Weigand.330088152@p2a.co>  
**Sent:** Monday, July 13, 2020 10:25 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

The contested case process is an immensely important tool in the Council's rules for examining and ultimately getting to the truth of whether a proposed project will comply with the law, and for allowing the public to meaningfully participate in that review. Under Council rules that have been in place for decades, the public has the right to request a contested case, and if such a request raises issues that "may affect" the Council's ultimate determination of whether the energy project complies with the law, then a contested case will be held to resolve those issues.

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In fact, the proposed new "reasonably likely to affect" standard for justifying a contested case could in many situations be impossible to meet at such an early stage in the process. For example, the public may need a contested case in order to obtain critical evidence that lies only in the hands of energy developers, or may need to hire expert witnesses to submit sworn testimony, subject to cross-examination, in a contested case. The proposed rule change would forever shut the door on such public participation opportunities by penalizing the public for not yet having that evidence in hand. Such a rule change could hardly be deemed fair or appropriate.

Nor would I support changing the "may affect" language in the rules to some other new language. The "may affect" language has been in the Council's rules for twenty years, and it establishes a level playing field for the public to participate in the Council's review process. There is no need to change this long-standing language, which is fundamental to the Council's rules. The old adage applies here: "if it ain't broke, don't fix it." The "may affect" language should be retained.

In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Todd Weigand  
404 N East St  
Joseph, OR 97846

## CLARK Christopher \* ODOE

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**From:** Billy Oskay <Billy.Oskay.330091743@p2a.co>  
**Sent:** Monday, July 13, 2020 10:52 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

The contested case process is an immensely important tool in the Council's rules for examining and ultimately getting to the truth of whether a proposed project will comply with the law, and for allowing the public to meaningfully participate in that review. Under Council rules that have been in place for decades, the public has the right to request a contested case, and if such a request raises issues that "may affect" the Council's ultimate determination of whether the energy project complies with the law, then a contested case will be held to resolve those issues.

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Nor would I support changing the "may affect" language in the rules to some other new language. The "may affect" language has been in the Council's rules for twenty years, and it establishes a level playing field for the public to participate in the Council's review process. There is no need to change this long-standing language, which is fundamental to the Council's rules. The old adage applies here: "if it ain't broke, don't fix it." The "may affect" language should be retained.

In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Billy Oskay  
PO Box 66  
Corbett, OR 97019

## CLARK Christopher \* ODOE

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**From:** casey cunningham <casey.cunningham.249711277@p2a.co>  
**Sent:** Monday, July 13, 2020 11:17 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

The contested case process is an immensely important tool in the Council's rules for examining and ultimately getting to the truth of whether a proposed project will comply with the law, and for allowing the public to meaningfully participate in that review. Under Council rules that have been in place for decades, the public has the right to request a contested case, and if such a request raises issues that "may affect" the Council's ultimate determination of whether the energy project complies with the law, then a contested case will be held to resolve those issues.

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In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
casey cunningham  
7037 NE 8th Ave  
Portland, OR 97211

## CLARK Christopher \* ODOE

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**From:** Steve Feldman <Steve.Feldman.330110363@p2a.co>  
**Sent:** Tuesday, July 14, 2020 4:14 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

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In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Steve Feldman  
PO Box 948  
La Grande, OR 97850

## CLARK Christopher \* ODOE

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**From:** Walter Englert <Walter.Englert.330158488@p2a.co>  
**Sent:** Tuesday, July 14, 2020 7:28 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

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In fact, the proposed new "reasonably likely to affect" standard for justifying a contested case could in many situations be impossible to meet at such an early stage in the process. For example, the public may need a contested case in order to obtain critical evidence that lies only in the hands of energy developers, or may need to hire expert witnesses to submit sworn testimony, subject to cross-examination, in a contested case. The proposed rule change would forever shut the door on such public participation opportunities by penalizing the public for not yet having that evidence in hand. Such a rule change could hardly be deemed fair or appropriate.

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In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Walter Englert  
3525 SE Insley St  
Portland, OR 97202

## CLARK Christopher \* ODOE

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**From:** Kathleen Weight <Kathleen.Weight.330170051@p2a.co>  
**Sent:** Tuesday, July 14, 2020 7:57 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

The contested case process is an immensely important tool in the Council's rules for examining and ultimately getting to the truth of whether a proposed project will comply with the law, and for allowing the public to meaningfully participate in that review. Under Council rules that have been in place for decades, the public has the right to request a contested case, and if such a request raises issues that "may affect" the Council's ultimate determination of whether the energy project complies with the law, then a contested case will be held to resolve those issues.

In contrast, if the proposed rule change goes through, it would impose new, unfair burdens on the public. Under the proposed rule, concerned members of the public would be required to demonstrate—at the time they request a contested case—that the issues they raise are "reasonably likely to affect" the Council's review. This new burden would be unfair and inappropriate because it would require the Council to prematurely evaluate the ultimate merits of the issues, based on limited or no evidence, before a contested case is held to adjudicate those issues. This would turn the established decision-making process on its head, squelching public participation and decreasing transparency.

In fact, the proposed new "reasonably likely to affect" standard for justifying a contested case could in many situations be impossible to meet at such an early stage in the process. For example, the public may need a contested case in order to obtain critical evidence that lies only in the hands of energy developers, or may need to hire expert witnesses to submit sworn testimony, subject to cross-examination, in a contested case. The proposed rule change would forever shut the door on such public participation opportunities by penalizing the public for not yet having that evidence in hand. Such a rule change could hardly be deemed fair or appropriate.

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In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Kathleen Weight  
1010 W 28th Ave  
Eugene, OR 97405

## CLARK Christopher \* ODOE

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**From:** John Milbert <John.Milbert.330199302@p2a.co>  
**Sent:** Tuesday, July 14, 2020 8:52 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

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In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
John Milbert  
1812 Jefferson Ave  
La Grande, OR 97850

## CLARK Christopher \* ODOE

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**From:** Leslie Gatton <Leslie.Gatton.330214557@p2a.co>  
**Sent:** Tuesday, July 14, 2020 9:24 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

The contested case process is an immensely important tool in the Council's rules for examining and ultimately getting to the truth of whether a proposed project will comply with the law, and for allowing the public to meaningfully participate in that review. Under Council rules that have been in place for decades, the public has the right to request a contested case, and if such a request raises issues that "may affect" the Council's ultimate determination of whether the energy project complies with the law, then a contested case will be held to resolve those issues.

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In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Leslie Gatton  
4449 Dancing Ground Rd  
Santa Fe, NM 87507

## CLARK Christopher \* ODOE

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**From:** Debra Higbee-Sudyka <Debra.HigbeeSudyka.330262789@p2a.co>  
**Sent:** Tuesday, July 14, 2020 10:34 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

My family and I often camp near the Columbia Gorge I am concerned with this change in the process for evaluating energy projects. We enjoy bird watching, and the Gorge is an important migratory bird corridor. Given that the world's bird populations are already stressed by the effects of climate change, it's important that citizens are allowed to comment on harmful projects. Thank you for the opportunity to comment.

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

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In contrast, if the proposed rule change goes through, it would impose new, unfair burdens on the public. Under the proposed rule, concerned members of the public would be required to demonstrate—at the time they request a contested case—that the issues they raise are "reasonably likely to affect" the Council's review. This new burden would be unfair and inappropriate because it would require the Council to prematurely evaluate the ultimate merits of the issues, based on limited or no evidence, before a contested case is held to adjudicate those issues. This would turn the established decision-making process on its head, squelching public participation and decreasing transparency.

In fact, the proposed new "reasonably likely to affect" standard for justifying a contested case could in many situations be impossible to meet at such an early stage in the process. For example, the public may need a contested case in order to obtain critical evidence that lies only in the hands of energy developers, or may need to hire expert witnesses to submit sworn testimony, subject to cross-examination, in a contested case. The proposed rule change would forever shut the door on such public participation opportunities by penalizing the public for not yet having that evidence in hand. Such a rule change could hardly be deemed fair or appropriate.

Nor would I support changing the "may affect" language in the rules to some other new language. The "may affect" language has been in the Council's rules for twenty years, and it establishes a level playing field for the public to participate in the Council's review process. There is no need to change this long-standing language, which is

fundamental to the Council's rules. The old adage applies here: "if it ain't broke, don't fix it." The "may affect" language should be retained.

In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Debra Higbee-Sudyka  
4750 SW Nash Ave  
Corvallis, OR 97333

## CLARK Christopher \* ODOE

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**From:** mary Camp <mary.Camp.330379500@p2a.co>  
**Sent:** Tuesday, July 14, 2020 1:02 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

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In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
mary Camp  
2100 Thompson Creek Rd  
Selma, OR 97538

## CLARK Christopher \* ODOE

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**From:** Denis White <Denis.White.330402189@p2a.co>  
**Sent:** Tuesday, July 14, 2020 1:49 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

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In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Denis White  
PO Box 835  
Corvallis, OR 97339

## CLARK Christopher \* ODOE

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**From:** John Nettleton <John.Nettleton.220135719@p2a.co>  
**Sent:** Tuesday, July 14, 2020 2:21 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

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In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

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

## CLARK Christopher \* ODOE

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**From:** Veronica Poklemba <Veronica.Poklemba.330433365@p2a.co>  
**Sent:** Tuesday, July 14, 2020 2:55 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

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valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Veronica Poklemba  
4417 SE Crystal Springs Blvd  
Portland, OR 97206

## CLARK Christopher \* ODOE

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**From:** Cynthia Enlow <Cynthia.Enlow.330460301@p2a.co>  
**Sent:** Tuesday, July 14, 2020 3:59 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

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In contrast, if the proposed rule change goes through, it would impose new, unfair burdens on the public. Under the proposed rule, concerned members of the public would be required to demonstrate—at the time they request a contested case—that the issues they raise are "reasonably likely to affect" the Council's review. This new burden would be unfair and inappropriate because it would require the Council to prematurely evaluate the ultimate merits of the issues, based on limited or no evidence, before a contested case is held to adjudicate those issues. This would turn the established decision-making process on its head, squelching public participation and decreasing transparency.

In fact, the proposed new "reasonably likely to affect" standard for justifying a contested case could in many situations be impossible to meet at such an early stage in the process. For example, the public may need a contested case in order to obtain critical evidence that lies only in the hands of energy developers, or may need to hire expert witnesses to submit sworn testimony, subject to cross-examination, in a contested case. The proposed rule change would forever shut the door on such public participation opportunities by penalizing the public for not yet having that evidence in hand. Such a rule change could hardly be deemed fair or appropriate.

Nor would I support changing the "may affect" language in the rules to some other new language. The "may affect" language has been in the Council's rules for twenty years, and it establishes a level playing field for the public to participate in the Council's review process. There is no need to change this long-standing language, which is fundamental to the Council's rules. The old adage applies here: "if it ain't broke, don't fix it." The "may affect" language should be retained.

In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Cynthia Enlow  
1460 NW Ashley Dr  
Albany, OR 97321

## CLARK Christopher \* ODOE

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**From:** Kirsten Johnson <Kirsten.Johnson.330501035@p2a.co>  
**Sent:** Tuesday, July 14, 2020 5:47 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

Hello. I am concerned about democratic processes, and the ability for the public to meaningfully interact with huge projects that will affect the health of land and people for future generations. We should be encouraging fair, open, and transparent processes; not trending towards making BIG decisions behind closed doors. I know it means more work, more kinks, slower timelines... but it is THE RIGHT THING TO DO.

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

The contested case process is an immensely important tool in the Council's rules for examining and ultimately getting to the truth of whether a proposed project will comply with the law, and for allowing the public to meaningfully participate in that review. Under Council rules that have been in place for decades, the public has the right to request a contested case, and if such a request raises issues that "may affect" the Council's ultimate determination of whether the energy project complies with the law, then a contested case will be held to resolve those issues.

In contrast, if the proposed rule change goes through, it would impose new, unfair burdens on the public. Under the proposed rule, concerned members of the public would be required to demonstrate—at the time they request a contested case—that the issues they raise are "reasonably likely to affect" the Council's review. This new burden would be unfair and inappropriate because it would require the Council to prematurely evaluate the ultimate merits of the issues, based on limited or no evidence, before a contested case is held to adjudicate those issues. This would turn the established decision-making process on its head, squelching public participation and decreasing transparency.

In fact, the proposed new "reasonably likely to affect" standard for justifying a contested case could in many situations be impossible to meet at such an early stage in the process. For example, the public may need a contested case in order to obtain critical evidence that lies only in the hands of energy developers, or may need to hire expert witnesses to submit sworn testimony, subject to cross-examination, in a contested case. The proposed rule change would forever shut the door on such public participation opportunities by penalizing the public for not yet having that evidence in hand. Such a rule change could hardly be deemed fair or appropriate.

Nor would I support changing the "may affect" language in the rules to some other new language. The "may affect" language has been in the Council's rules for twenty years, and it establishes a level playing field for the public to participate in the Council's review process. There is no need to change this long-standing language, which is

fundamental to the Council's rules. The old adage applies here: "if it ain't broke, don't fix it." The "may affect" language should be retained.

In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Kirsten Johnson  
401 Aquarius Way  
La Grande, OR 97850

## CLARK Christopher \* ODOE

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**From:** Rebecca Picton <Rebecca.Picton.330570174@p2a.co>  
**Sent:** Tuesday, July 14, 2020 10:32 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

The contested case process is an immensely important tool in the Council's rules for examining and ultimately getting to the truth of whether a proposed project will comply with the law, and for allowing the public to meaningfully participate in that review. Under Council rules that have been in place for decades, the public has the right to request a contested case, and if such a request raises issues that "may affect" the Council's ultimate determination of whether the energy project complies with the law, then a contested case will be held to resolve those issues.

In contrast, if the proposed rule change goes through, it would impose new, unfair burdens on the public. Under the proposed rule, concerned members of the public would be required to demonstrate—at the time they request a contested case—that the issues they raise are "reasonably likely to affect" the Council's review. This new burden would be unfair and inappropriate because it would require the Council to prematurely evaluate the ultimate merits of the issues, based on limited or no evidence, before a contested case is held to adjudicate those issues. This would turn the established decision-making process on its head, squelching public participation and decreasing transparency.

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In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Rebecca Picton  
1780 NW 17th St  
Corvallis, OR 97330

## CLARK Christopher \* ODOE

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**From:** Mike Brinkley <Mike.Brinkley.330629133@p2a.co>  
**Sent:** Wednesday, July 15, 2020 7:21 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

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In contrast, if the proposed rule change goes through, it would impose new, unfair burdens on the public. Under the proposed rule, concerned members of the public would be required to demonstrate—at the time they request a contested case—that the issues they raise are "reasonably likely to affect" the Council's review. This new burden would be unfair and inappropriate because it would require the Council to prematurely evaluate the ultimate merits of the issues, based on limited or no evidence, before a contested case is held to adjudicate those issues. This would turn the established decision-making process on its head, squelching public participation and decreasing transparency.

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In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Mike Brinkley  
2582 W 28th Ave  
Eugene, OR 97405

## CLARK Christopher \* ODOE

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**From:** Anne March <Anne.March.330633624@p2a.co>  
**Sent:** Wednesday, July 15, 2020 7:35 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. I camp and walk a great deal on public lands in Oregon, and I feel that our open, un-degraded lands are our greatest state treasure. Moving forward, wild and scenic rivers and viewscapes will only become greater assets to our state. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

The contested case process is an immensely important tool in the Council's rules for examining and ultimately getting to the truth of whether a proposed project will comply with the law, and for allowing the public to meaningfully participate in that review. Under Council rules that have been in place for decades, the public has the right to request a contested case, and if such a request raises issues that "may affect" the Council's ultimate determination of whether the energy project complies with the law, then a contested case will be held to resolve those issues.

In contrast, if the proposed rule change goes through, it would impose new, unfair burdens on the public. Under the proposed rule, concerned members of the public would be required to demonstrate—at the time they request a contested case—that the issues they raise are "reasonably likely to affect" the Council's review. This new burden would be unfair and inappropriate because it would require the Council to prematurely evaluate the ultimate merits of the issues, based on limited or no evidence, before a contested case is held to adjudicate those issues. This would turn the established decision-making process on its head, squelching public participation and decreasing transparency.

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Nor would I support changing the "may affect" language in the rules to some other new language. The "may affect" language has been in the Council's rules for twenty years, and it establishes a level playing field for the public to participate in the Council's review process. There is no need to change this long-standing language, which is fundamental to the Council's rules. The old adage applies here: "if it ain't broke, don't fix it." The "may affect" language should be retained.

In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the “may affect” language in the rules. The Council should terminate this rulemaking so that it may focus its valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Anne March  
206 Main Ave  
La Grande, OR 97850

## CLARK Christopher \* ODOE

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**From:** Ann Brown <Ann.Brown.330641364@p2a.co>  
**Sent:** Wednesday, July 15, 2020 7:58 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

The burden of proof should fall on those who seek to profit from a project, not those who will be harmed. We will be living with these projects for a long time, so full access to all the evidence about need and also consequences of these projects must heard.

In contrast, if the proposed rule change goes through, it would impose new, unfair burdens on the public. Under the proposed rule, concerned members of the public would be required to demonstrate—at the time they request a contested case—that the issues they raise are “reasonably likely to affect” the Council’s review. This new burden would be unfair and inappropriate because it would require the Council to prematurely evaluate the ultimate merits of the issues, based on limited or no evidence, before a contested case is held to adjudicate those issues. This would turn the established decision-making process on its head, squelching public participation and decreasing transparency.

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In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the “may affect” language in the rules. The Council should terminate this rulemaking so that it may focus its valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Ann Brown  
53313 Highway 203  
Union, OR 97883

## CLARK Christopher \* ODOE

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**From:** Sue Craig <Sue.Craig.330703220@p2a.co>  
**Sent:** Wednesday, July 15, 2020 10:49 AM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

The contested case process is an immensely important tool in the Council's rules for examining and ultimately getting to the truth of whether a proposed project will comply with the law, and for allowing the public to meaningfully participate in that review. Under Council rules that have been in place for decades, the public has the right to request a contested case, and if such a request raises issues that "may affect" the Council's ultimate determination of whether the energy project complies with the law, then a contested case will be held to resolve those issues.

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In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Sue Craig  
27233 Huey Ln  
Eugene, OR 97402

## CLARK Christopher \* ODOE

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**From:** Jules Moritz <Jules.Moritz.330821869@p2a.co>  
**Sent:** Wednesday, July 15, 2020 1:36 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

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In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Jules Moritz  
8285 NW Mitchell Dr  
Corvallis, OR 97330

## CLARK Christopher \* ODOE

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**From:** Lois Barry <Lois.Barry.330836638@p2a.co>  
**Sent:** Wednesday, July 15, 2020 2:20 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

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In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Lois Barry  
PO Box 566  
La Grande, OR 97850

## CLARK Christopher \* ODOE

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**From:** Damon Motz-Storey <Damon.MotzStorey.330947509@p2a.co>  
**Sent:** Wednesday, July 15, 2020 9:35 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

The contested case process is an immensely important tool in the Council's rules for examining and ultimately getting to the truth of whether a proposed project will comply with the law, and for allowing the public to meaningfully participate in that review. Under Council rules that have been in place for decades, the public has the right to request a contested case, and if such a request raises issues that "may affect" the Council's ultimate determination of whether the energy project complies with the law, then a contested case will be held to resolve those issues.

In contrast, if the proposed rule change goes through, it would impose new, unfair burdens on the public. Under the proposed rule, concerned members of the public would be required to demonstrate—at the time they request a contested case—that the issues they raise are "reasonably likely to affect" the Council's review. This new burden would be unfair and inappropriate because it would require the Council to prematurely evaluate the ultimate merits of the issues, based on limited or no evidence, before a contested case is held to adjudicate those issues. This would turn the established decision-making process on its head, squelching public participation and decreasing transparency.

In fact, the proposed new "reasonably likely to affect" standard for justifying a contested case could in many situations be impossible to meet at such an early stage in the process. For example, the public may need a contested case in order to obtain critical evidence that lies only in the hands of energy developers, or may need to hire expert witnesses to submit sworn testimony, subject to cross-examination, in a contested case. The proposed rule change would forever shut the door on such public participation opportunities by penalizing the public for not yet having that evidence in hand. Such a rule change could hardly be deemed fair or appropriate.

Nor would I support changing the "may affect" language in the rules to some other new language. The "may affect" language has been in the Council's rules for twenty years, and it establishes a level playing field for the public to participate in the Council's review process. There is no need to change this long-standing language, which is fundamental to the Council's rules. The old adage applies here: "if it ain't broke, don't fix it." The "may affect" language should be retained.

In conclusion, I ask the Council to please support public participation and transparency in the decision-making process by retaining the "may affect" language in the rules. The Council should terminate this rulemaking so that it may focus its

valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Damon Motz-Storey  
5835 NE 33rd Ave  
Portland, OR 97211

## CLARK Christopher \* ODOE

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**From:** Michael Dianich <Michael.Dianich.218847190@p2a.co>  
**Sent:** Wednesday, July 15, 2020 10:30 PM  
**To:** EFSC Rulemaking \* ODOE  
**Subject:** Please Terminate "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments"

Members of the Energy Facility Siting Council,

As an Oregonian and as a supporter of the Columbia River Gorge National Scenic Area, I have an interest in EFSC maintaining a fair and open process for evaluating proposed site certificate amendments for energy facilities in the Columbia River Basin. Because these values are important to me, I am strongly opposed to the so-called "Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments." This proposal severely undermines transparency and public participation in the Council's review processes, and should be immediately terminated.

My first concern with this rulemaking is that the official rulemaking notice is very misleading and therefore fails to advise me and other members of the public how our current rights would be affected. According to the official notice, this rulemaking is merely intended to make a "clarification" to the existing rules. However, the actual proposed rule language would instead delete the current threshold standard for determining whether there should be contested cases and would replace it with a substantially different standard. By framing this substantial change as a simple "clarification," the notice misleads the public and buries what is actually under consideration.

The contested case process is an immensely important tool in the Council's rules for examining and ultimately getting to the truth of whether a proposed project will comply with the law, and for allowing the public to meaningfully participate in that review. Under Council rules that have been in place for decades, the public has the right to request a contested case, and if such a request raises issues that "may affect" the Council's ultimate determination of whether the energy project complies with the law, then a contested case will be held to resolve those issues.

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valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,  
Michael Dianich  
42740 E Larch Mountain Rd  
Corbett, OR 97019