## Index of Public Comments

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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
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, 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. 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. The caption in the rulemaking notice fails to comply with ORS

1 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.

2 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.

3 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. 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).

**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.

*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

Nathan J. Baker, OSB No. 001980
Senior Staff Attorney, Friends of the Columbia Gorge

GKK/blb
cc (via email): Clients
Patrick Rowe, Oregon Department of Justice
Todd Cornett, Oregon Department of Energy
My comment is that there is a significant difference from "may" meaning "possible" and "is reasonably likely to 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
2310 Adams Ave.
La Grande, Ore 97850
email: ott.irene@frontier.com
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,¹ 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.² 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.

¹ 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).

² 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, 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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3 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.


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.


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.


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. 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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4 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 maulering 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
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,
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<thead>
<tr>
<th></th>
<th>First Name</th>
<th>Last Name</th>
<th>Email Address</th>
<th>City</th>
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<th>Comment</th>
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</thead>
<tbody>
<tr>
<td>2</td>
<td>Paul</td>
<td>Caggiano</td>
<td><a href="mailto:prcaggiano@gmail.com">prcaggiano@gmail.com</a></td>
<td>Portland</td>
<td>OR</td>
<td>97203-3141</td>
<td>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</td>
</tr>
<tr>
<td>3</td>
<td>Ann</td>
<td>Watters</td>
<td><a href="mailto:twofivestars@comcast.net">twofivestars@comcast.net</a></td>
<td>Salem</td>
<td>OR</td>
<td>97301-4352</td>
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<td></td>
<td>Lucile</td>
<td>Brook</td>
<td><a href="mailto:babbles@nehalemtel.net">babbles@nehalemtel.net</a></td>
<td>Nehalem</td>
<td>OR</td>
<td>97131-0136</td>
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<td>5</td>
<td>Ian</td>
<td>Shelley</td>
<td><a href="mailto:ianjs@comcast.net">ianjs@comcast.net</a></td>
<td>Portland</td>
<td>OR</td>
<td>97225-6902</td>
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<td>Alyssa</td>
<td>Deardorff</td>
<td><a href="mailto:alyssadear@me.com">alyssadear@me.com</a></td>
<td>Molalla</td>
<td>OR</td>
<td>97038-9215</td>
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<td>Katherine</td>
<td>Wright</td>
<td><a href="mailto:kmhgw@yahoo.com">kmhgw@yahoo.com</a></td>
<td>West Linn</td>
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<td>97068-1651</td>
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<td>Sarah</td>
<td>Prowell</td>
<td><a href="mailto:sprowell@ix.netcom.com">sprowell@ix.netcom.com</a></td>
<td>Portland</td>
<td>OR</td>
<td>97239-2154</td>
<td>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 dangerous proposal.</td>
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<td>Dena</td>
<td>Turner</td>
<td><a href="mailto:denaturn62@gmail.com">denaturn62@gmail.com</a></td>
<td>Portland</td>
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<td>97215-2805</td>
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<td>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.</td>
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<td>10</td>
<td>Randall</td>
<td>Webb</td>
<td><a href="mailto:lawrkw@comcast.net">lawrkw@comcast.net</a></td>
<td>Portland</td>
<td>OR</td>
<td>97210-3490</td>
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<td>11</td>
<td>Jean</td>
<td>Svadlenka</td>
<td><a href="mailto:storm33@sonic.net">storm33@sonic.net</a></td>
<td>Wilsonville</td>
<td>OR</td>
<td>97070-8761</td>
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<td>12</td>
<td>April</td>
<td>Atwood</td>
<td>Portland</td>
<td>OR</td>
<td>97202-5442</td>
<td>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's 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 stay strong, our earth depends on us!</td>
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<td>Tamara</td>
<td>Westbrook</td>
<td>West Linn</td>
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<td>97068-4831</td>
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<td>Amy</td>
<td>Roberts</td>
<td>Albany</td>
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<td>Vayu</td>
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<td>Robert</td>
<td>Carothers</td>
<td><a href="mailto:bobcarothers@comcast.net">bobcarothers@comcast.net</a></td>
<td>Lake Osweg</td>
<td>OR</td>
<td>97035-4551</td>
<td>Please retain ,Áúmay affect,Áù language.</td>
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<tr>
<td>Bill</td>
<td>O'Brien</td>
<td><a href="mailto:wobobr123@yahoo.com">wobobr123@yahoo.com</a></td>
<td>Beaverton</td>
<td>OR</td>
<td>97005-1360</td>
<td>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.</td>
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<tr>
<td>Janice</td>
<td>Karpenick</td>
<td><a href="mailto:jkarpenick@gmail.com">jkarpenick@gmail.com</a></td>
<td>Portland</td>
<td>OR</td>
<td>97229-6383</td>
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<td>Michael</td>
<td>Wilson</td>
<td>michaelamarwilson@gm</td>
<td>Portland</td>
<td>OR</td>
<td>97214-2651</td>
<td>When it comes to using natural resources, careful public deliberation is necessary. Everyone has a stake and ought to be consulted. Haste makes waste.</td>
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<tr>
<td>Jamie</td>
<td>Shields</td>
<td><a href="mailto:jfillmore66@gmail.com">jfillmore66@gmail.com</a></td>
<td>Portland</td>
<td>OR</td>
<td>97229-8985</td>
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<td>Don</td>
<td>Jacobson</td>
<td><a href="mailto:donjphoto@gmail.com">donjphoto@gmail.com</a></td>
<td>Portland</td>
<td>OR</td>
<td>97201-6304</td>
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<tr>
<td>lorraine</td>
<td>foster</td>
<td><a href="mailto:lorraine@spiretech.com">lorraine@spiretech.com</a></td>
<td>Portland</td>
<td>OR</td>
<td>97202-6533</td>
<td>I fully concur with the above statements. Lorraine Foster</td>
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<td>Jean</td>
<td>Rosenbalm</td>
<td><a href="mailto:jean.rosenbalm@gmail.com">jean.rosenbalm@gmail.com</a></td>
<td>Beaverton</td>
<td>OR</td>
<td>97007</td>
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<td>24</td>
<td>John McSwigan</td>
<td><a href="mailto:mcswigan@gmail.com">mcswigan@gmail.com</a></td>
<td>Hillsboro</td>
<td>OR</td>
<td>97124-5044</td>
<td>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.</td>
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<tr>
<td>25</td>
<td>Lise Hull</td>
<td><a href="mailto:castlesu@aol.com">castlesu@aol.com</a></td>
<td>Bandon</td>
<td>OR</td>
<td>97411-9651</td>
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<td>26</td>
<td>Gregory Monahan</td>
<td><a href="mailto:gregorymonahan29@gmail.com">gregorymonahan29@gmail.com</a></td>
<td>Portland</td>
<td>OR</td>
<td>97219-2015</td>
<td>Weakening the public’s right to protect the environment is just flat wrong!</td>
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<td>27</td>
<td>Teresa DeLorenzo</td>
<td><a href="mailto:tde@teleport.com">tde@teleport.com</a></td>
<td>Astoria</td>
<td>OR</td>
<td>97103-8469</td>
<td>We need clear, fair procedures that are totally transparent, and actively engage the public.</td>
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<tr>
<td>28</td>
<td>dana Bleckinger</td>
<td><a href="mailto:wooflevi@yahoo.com">wooflevi@yahoo.com</a></td>
<td>Yachats</td>
<td>OR</td>
<td>97498-0904</td>
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<td>29</td>
<td>Ron Ennis</td>
<td><a href="mailto:ronfennis@gmail.com">ronfennis@gmail.com</a></td>
<td>Portland</td>
<td>OR</td>
<td>97213-1247</td>
<td>Equal rights for all</td>
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<tr>
<td>30</td>
<td>Paulette Meyer</td>
<td><a href="mailto:meyer4842@comcast.net">meyer4842@comcast.net</a></td>
<td>Portland</td>
<td>OR</td>
<td>97215-3414</td>
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<td>31</td>
<td>Mark McCormick</td>
<td><a href="mailto:markmccormickart@gmail.com">markmccormickart@gmail.com</a></td>
<td>Portland</td>
<td>OR</td>
<td>97206</td>
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<td>32</td>
<td>Patty Larsen</td>
<td><a href="mailto:pklaaslarsen@yahoo.com">pklaaslarsen@yahoo.com</a></td>
<td>Astoria</td>
<td>OR</td>
<td>97103-6436</td>
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<td>33</td>
<td>Carolina</td>
<td>Hood</td>
<td><a href="mailto:cvhood@gmail.com">cvhood@gmail.com</a></td>
<td>Eugene</td>
<td>OR</td>
<td>97402-3730</td>
<td>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?</td>
</tr>
<tr>
<td>34</td>
<td>Valerie</td>
<td>Blackmore</td>
<td><a href="mailto:bobval22@comcast.net">bobval22@comcast.net</a></td>
<td>Columbia</td>
<td>OR</td>
<td>97018-0453</td>
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<td>35</td>
<td>Cheryl</td>
<td>Erb</td>
<td><a href="mailto:awdsn@gmx.com">awdsn@gmx.com</a></td>
<td>Salem</td>
<td>OR</td>
<td>97301-2547</td>
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<tr>
<td>36</td>
<td>Deborah</td>
<td>Honthaner</td>
<td><a href="mailto:honthand@yahoo.com">honthand@yahoo.com</a></td>
<td>Portland</td>
<td>OR</td>
<td>97223-3670</td>
<td>It's time to STOP trying to make this change, the Oregon Supreme Court said No!</td>
</tr>
<tr>
<td>37</td>
<td>Catherine</td>
<td>Keys</td>
<td><a href="mailto:valkate@comcast.net">valkate@comcast.net</a></td>
<td>Medford</td>
<td>OR</td>
<td>97501-9070</td>
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<td>38</td>
<td>D</td>
<td>Stirpe</td>
<td><a href="mailto:dolcezza077@yahoo.com">dolcezza077@yahoo.com</a></td>
<td>Portland</td>
<td>OR</td>
<td>97214-1633</td>
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<td>39</td>
<td>Rick</td>
<td>Ray</td>
<td>cumbiariverkeeper@ric</td>
<td>Troutdale</td>
<td>OR</td>
<td>97060-9380</td>
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<td>40</td>
<td>Jeffrey White</td>
<td><a href="mailto:rogue576@gmail.com">rogue576@gmail.com</a></td>
<td>Forest Grove OR</td>
<td></td>
<td>97116-8523</td>
<td>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.</td>
<td></td>
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<tr>
<td>41</td>
<td>Anna Cowen</td>
<td><a href="mailto:annaysun@yahoo.com">annaysun@yahoo.com</a></td>
<td>Portland OR</td>
<td></td>
<td>97266-2532</td>
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<td>42</td>
<td>Ryan Schwartz</td>
<td><a href="mailto:losetheshoes@gmail.com">losetheshoes@gmail.com</a></td>
<td>Portland OR</td>
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<td>97213-5410</td>
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<tr>
<td>43</td>
<td>Dana Weintraub</td>
<td><a href="mailto:mrdanaweintraub@tutanota.com">mrdanaweintraub@tutanota.com</a></td>
<td>Beaverton OR</td>
<td></td>
<td>97003-4249</td>
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<tr>
<td>44</td>
<td>Joel Porter</td>
<td><a href="mailto:joelypozole@gmail.com">joelypozole@gmail.com</a></td>
<td>Portland OR</td>
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<td>97293-0515</td>
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<td>Phoenix Oaks</td>
<td><a href="mailto:peaceloveandart89@gmail.com">peaceloveandart89@gmail.com</a></td>
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<td>46</td>
<td>Kima</td>
<td>Garrison</td>
<td><a href="mailto:kimasuegarrison@gmail.com">kimasuegarrison@gmail.com</a></td>
<td>Portland</td>
<td>OR</td>
<td>97211-6341</td>
<td>The public needs accountability, transparency, and the right to include input on anything that directly affects ALL OF US!</td>
</tr>
<tr>
<td>47</td>
<td>Richard</td>
<td>Jaffe</td>
<td><a href="mailto:rljaffe@gmail.com">rljaffe@gmail.com</a></td>
<td>Portland</td>
<td>OR</td>
<td>97229-2599</td>
<td>I Have read and agree with this prepared statement. Please do not change these standards.</td>
</tr>
<tr>
<td>48</td>
<td>Matthew</td>
<td>Barmann</td>
<td><a href="mailto:chiakacomm@mac.com">chiakacomm@mac.com</a></td>
<td>Hood River</td>
<td>OR</td>
<td>97031-1211</td>
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<td>49</td>
<td>Susan</td>
<td>Vosburg</td>
<td><a href="mailto:fgtaxsusan@gmail.com">fgtaxsusan@gmail.com</a></td>
<td>Gales Creek</td>
<td>OR</td>
<td>97117-9419</td>
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<td>Kyle</td>
<td>Rolnick</td>
<td><a href="mailto:charo33@centurylink.net">charo33@centurylink.net</a></td>
<td>Lorane</td>
<td>OR</td>
<td>97451-0999</td>
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<td>Melissa</td>
<td>Rehder</td>
<td><a href="mailto:misslissr@yahoo.com">misslissr@yahoo.com</a></td>
<td>Portland</td>
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<tr>
<td>David</td>
<td>Grant</td>
<td><a href="mailto:d2avid@charter.net">d2avid@charter.net</a></td>
<td>Medford</td>
<td>OR</td>
<td>97504-9734</td>
<td>You've 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's overall interest at all. Try doing the right thing. Your children and grandchildren will thank you.</td>
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<td>Diana</td>
<td>Pope</td>
<td><a href="mailto:diana.s.pope@gmail.com">diana.s.pope@gmail.com</a></td>
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<tr>
<td>Francisco</td>
<td>Gadea</td>
<td><a href="mailto:frankie0004260@gmail.c">frankie0004260@gmail.c</a></td>
<td>Portland</td>
<td>OR</td>
<td>97212-2356</td>
<td>Please do right by the people of the state and be more transparent not less!!!</td>
<td></td>
</tr>
<tr>
<td>Steve</td>
<td>Sheehy</td>
<td><a href="mailto:sheehy.s@charter.net">sheehy.s@charter.net</a></td>
<td>Klamath</td>
<td>OR</td>
<td>97603-8303</td>
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<tr>
<td>Jean</td>
<td>Culp</td>
<td><a href="mailto:jazcfhc@gmail.com">jazcfhc@gmail.com</a></td>
<td>Bandon</td>
<td>OR</td>
<td>97411-6362</td>
<td>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.</td>
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July 23-24, 2020  
Agenda Item D, Att. 2
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<td></td>
<td>Laura</td>
<td>Hanks</td>
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<td>97222-2325</td>
<td>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.</td>
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<td>Tora</td>
<td>Bengochea</td>
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<td>97527-9721</td>
<td>There are no jobs on a dead planet!</td>
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<td>Bell</td>
<td><a href="mailto:cathiebell@gmail.com">cathiebell@gmail.com</a></td>
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<td>Pamela</td>
<td>Vasquez</td>
<td><a href="mailto:cayetanatabullo@gmail.com">cayetanatabullo@gmail.com</a></td>
<td>Salem</td>
<td>OR</td>
<td>97305-3062</td>
</tr>
<tr>
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<td>Victoria</td>
<td>Holzendorf</td>
<td><a href="mailto:vinvanmo@yahoo.com">vinvanmo@yahoo.com</a></td>
<td>Lake Oswego</td>
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<td>97034-4118</td>
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<td>Benton</td>
<td>Elliott</td>
<td><a href="mailto:benton.elliott@gmail.com">benton.elliott@gmail.com</a></td>
<td>Eugene</td>
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<td>97401-3986</td>
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<td>Gretchan</td>
<td>Jackson</td>
<td><a href="mailto:gretchan.jackson@gmail.com">gretchan.jackson@gmail.com</a></td>
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<td>John</td>
<td>Barger</td>
<td><a href="mailto:john@johnbarger.com">john@johnbarger.com</a></td>
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<td>Linore</td>
<td>Blackstone</td>
<td><a href="mailto:lblackstone@comcast.net">lblackstone@comcast.net</a></td>
<td>Portland</td>
<td>OR</td>
<td>97213-2113</td>
<td>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.</td>
</tr>
<tr>
<td>Eric</td>
<td>Lambart</td>
<td><a href="mailto:eric-crk@nomeaning.org">eric-crk@nomeaning.org</a></td>
<td>Portland</td>
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<td>97217-5834</td>
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<td>Drew</td>
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<td><a href="mailto:drewbradbury@gmail.com">drewbradbury@gmail.com</a></td>
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<td><a href="mailto:dianajeffers44@gmail.com">dianajeffers44@gmail.com</a></td>
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<td><a href="mailto:cgagen@spiretech.com">cgagen@spiretech.com</a></td>
<td>Enterprise</td>
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<td>Stephen</td>
<td>Bachhuber</td>
<td><a href="mailto:srbachhuber1@gmail.com">srbachhuber1@gmail.com</a></td>
<td>Portland</td>
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<tr>
<td>John</td>
<td>Reynolds</td>
<td><a href="mailto:johnxr@protonmail.com">johnxr@protonmail.com</a></td>
<td>Portland</td>
<td>OR</td>
<td>97222-7938</td>
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<td>Larry</td>
<td>Morningstar</td>
<td><a href="mailto:manapranabanana@gmail.com">manapranabanana@gmail.com</a></td>
<td>Talent</td>
<td>OR</td>
<td>97540-7005</td>
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<tr>
<td>Cindy</td>
<td>Allen</td>
<td><a href="mailto:womaninthehood@gmail.com">womaninthehood@gmail.com</a></td>
<td>Hood River</td>
<td>OR</td>
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<td>Jamie</td>
<td>Melton</td>
<td>jamie@<a href="mailto:columbiariverkeeper@gmail.com">columbiariverkeeper@gmail.com</a></td>
<td>Portland</td>
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<td>David</td>
<td>Nichols</td>
<td><a href="mailto:davemult@aol.com">davemult@aol.com</a></td>
<td>Portland</td>
<td>OR</td>
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<td>Portland</td>
<td>OR</td>
<td>97201-6132</td>
<td>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.</td>
</tr>
<tr>
<td>John</td>
<td>Schumann</td>
<td><a href="mailto:jschumann8@earthlink.net">jschumann8@earthlink.net</a></td>
<td>Portland</td>
<td>OR</td>
<td>97212-2708</td>
<td>The &quot;may affect&quot; 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: &quot;if it ain't broke, don't fix it.&quot; The &quot;may affect&quot; language should be retained.</td>
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<td>78</td>
<td>Jan</td>
<td>Polychronis</td>
<td><a href="mailto:jp21florida@gmail.com">jp21florida@gmail.com</a></td>
<td>The Dalles OR</td>
<td>97058-0639</td>
<td>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</td>
</tr>
<tr>
<td>79</td>
<td>Ann</td>
<td>Turner</td>
<td><a href="mailto:annturnerpdx106@gmail.com">annturnerpdx106@gmail.com</a></td>
<td>Portland OR</td>
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<td>81</td>
<td>Kay</td>
<td>Nolan</td>
<td><a href="mailto:kaynell47@gmail.com">kaynell47@gmail.com</a></td>
<td>Gresham OR</td>
<td>97030-6919</td>
<td>Any attempt to weaken the participation of citizens in the decision making process should not be allowed!</td>
</tr>
<tr>
<td>82</td>
<td>Craig</td>
<td>Mackie</td>
<td><a href="mailto:beachbum@nehalemtel.net">beachbum@nehalemtel.net</a></td>
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<td>O’Hanley</td>
<td><a href="mailto:kohanley@gmail.com">kohanley@gmail.com</a></td>
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<td>Cale</td>
<td>Christi</td>
<td><a href="mailto:cale.austin@gmail.com">cale.austin@gmail.com</a></td>
<td>Chiloquin OR</td>
<td>97624-9711</td>
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<td>85</td>
<td>Beth</td>
<td>Levin</td>
<td><a href="mailto:bethagl@yahoo.com">bethagl@yahoo.com</a></td>
<td>Portland OR</td>
<td>97213-2415</td>
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<tr>
<td>86</td>
<td>Barbara</td>
<td>Krupnik-Goldman</td>
<td><a href="mailto:bkgold2@gmail.com">bkgold2@gmail.com</a></td>
<td>Portland OR</td>
<td>97216-3501</td>
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<tr>
<td>87</td>
<td>Craig</td>
<td>Heverly</td>
<td><a href="mailto:heverlyjc@hevanet.com">heverlyjc@hevanet.com</a></td>
<td>Portland OR</td>
<td>97202-3757</td>
<td>This expresses my feelings exactly!</td>
</tr>
<tr>
<td>88</td>
<td>David</td>
<td>Edwards</td>
<td><a href="mailto:david@riverbird.com">david@riverbird.com</a></td>
<td>Eugene OR</td>
<td>97404-1292</td>
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<td>Mary</td>
<td>Peterson</td>
<td><a href="mailto:mary.peterso@gmail.com">mary.peterso@gmail.com</a></td>
<td>Newport</td>
<td>OR</td>
<td>97365-9605</td>
<td>This is the only earth we have. Keep it safe.</td>
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<tr>
<td>Anne-Marie</td>
<td>Claire</td>
<td><a href="mailto:amclaire_2000@yahoo.com">amclaire_2000@yahoo.com</a></td>
<td>Portland</td>
<td>OR</td>
<td>97212-5249</td>
<td>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 “may affect,” language in the rules. Anne-Marie Claire</td>
</tr>
<tr>
<td>Dan</td>
<td>Jaffee</td>
<td><a href="mailto:dsjaffee@gmail.com">dsjaffee@gmail.com</a></td>
<td>Portland</td>
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<td>97211-5011</td>
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<td>joan</td>
<td>viers</td>
<td><a href="mailto:joan@wbcable.net">joan@wbcable.net</a></td>
<td>Hubbard</td>
<td>OR</td>
<td>97032-9200</td>
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<td>John</td>
<td>Nettleton</td>
<td><a href="mailto:jpn5710@yahoo.com">jpn5710@yahoo.com</a></td>
<td>Portland</td>
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<td>97202-3276</td>
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<td>Katelyn</td>
<td>Entzeroth</td>
<td><a href="mailto:katelyn@entzeroth.com">katelyn@entzeroth.com</a></td>
<td>Portland</td>
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<td>95</td>
<td>Sandi</td>
<td>Cornez</td>
<td><a href="mailto:sandicornez@gmail.com">sandicornez@gmail.com</a></td>
<td>Portland</td>
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<td>97219-5208</td>
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<tr>
<td>96</td>
<td>Linda</td>
<td>Bolduan</td>
<td><a href="mailto:lindabolduan@comcast.net">lindabolduan@comcast.net</a></td>
<td>Lake Oswego</td>
<td>OR</td>
<td>97034-6447</td>
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<td>97</td>
<td>Rae</td>
<td>Gholson</td>
<td><a href="mailto:dorothydisko@gmail.com">dorothydisko@gmail.com</a></td>
<td>Vancouver</td>
<td>WA</td>
<td>98661-4103</td>
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<td>98</td>
<td>Lori</td>
<td>Kunkel</td>
<td><a href="mailto:kunkelpdx@comcast.net">kunkelpdx@comcast.net</a></td>
<td>Portland</td>
<td>OR</td>
<td>97203-5021</td>
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<td>99</td>
<td>Susan</td>
<td>Heath</td>
<td><a href="mailto:forbux@hotmail.com">forbux@hotmail.com</a></td>
<td>Albany</td>
<td>OR</td>
<td>97322-8898</td>
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<td>100</td>
<td>Kent</td>
<td>Sugnet</td>
<td><a href="mailto:kent@fossilcartel.com">kent@fossilcartel.com</a></td>
<td>Portland</td>
<td>OR</td>
<td>97215-3527</td>
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<tr>
<td>101</td>
<td>Capt. Peter</td>
<td>Wilcox</td>
<td>peter@decarbthepassage</td>
<td>Portland</td>
<td>OR</td>
<td>97211-1074</td>
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<tr>
<td>102</td>
<td>Susan</td>
<td>Haywood</td>
<td><a href="mailto:susansaphone2@yahoo.com">susansaphone2@yahoo.com</a></td>
<td>Portland</td>
<td>OR</td>
<td>97210-3526</td>
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<td>103</td>
<td>Charles</td>
<td>Townsend</td>
<td><a href="mailto:charlesntownsend@gmail.com">charlesntownsend@gmail.com</a></td>
<td>Portland</td>
<td>OR</td>
<td>97212-3162</td>
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<td>104</td>
<td>Mary</td>
<td>Davis</td>
<td><a href="mailto:cysliders@aol.com">cysliders@aol.com</a></td>
<td>Portland</td>
<td>OR</td>
<td>97206-7856</td>
</tr>
<tr>
<td>105</td>
<td>Diana</td>
<td>Talcott</td>
<td><a href="mailto:diana.talcott@gmail.com">diana.talcott@gmail.com</a></td>
<td>Portland</td>
<td>OR</td>
<td>97202-2208</td>
</tr>
<tr>
<td>106</td>
<td>Hugh</td>
<td>Cochran</td>
<td><a href="mailto:hughc97404@gmail.com">hughc97404@gmail.com</a></td>
<td>Eugene</td>
<td>OR</td>
<td>97404-1944</td>
</tr>
<tr>
<td>107</td>
<td>Joann</td>
<td>Macey</td>
<td><a href="mailto:jomace123@gmail.com">jomace123@gmail.com</a></td>
<td>Portland</td>
<td>OR</td>
<td>97224-3381</td>
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</tbody>
</table>
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.
July 16, 2020

Oregon Energy Facility Siting Council
c/o EFSC Rules Coordinator
Via email to 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.” 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.” 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. Additionally, the court has clarified that “the legislature envisioned broad public participation in the energy facility siting process itself.” By imposing a higher threshold for review than the

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1 OR. ADMIN. R. § 137-003-0005(7)(a).
2 OR. REV. STAT. § 183.480(1).
3 See Kellas v. Dept. of Corrections, 341 Or. 471 (2006).
4 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.” 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.” 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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5 Executive Order 20-04 (2020).
6 Id. § 3(a).
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
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
Members of the Energy Facility Siting Council,

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Thank you for considering my comments,

Regards,
Sara Grigsby
37201 NE Benfield Loop
Corbett, OR 97019
Members of the Energy Facility Siting Council,

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Thank you for considering my comments,

Regards,
Robert Kimbro
7625 SW Wilson Ave
Beaverton, OR 97008
Members of the Energy Facility Siting Council,

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Judith Lienhard
4455 SW 94th Ave
Portland, OR 97225
Members of the Energy Facility Siting Council,

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Monica Gilman
25525 S Laura Ln
Estacada, OR 97023
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Regards,
Jaclyn Easton
155 Liberty St NE
Salem, OR 97301
Members of the Energy Facility Siting Council,

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Thomas Keys
1103 SE 21st Ct
Gresham, OR 97080
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Joel Kay
10707 SE Stanley Ave
Milwaukie, OR 97222
Members of the Energy Facility Siting Council,

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Sara Simon-Behrnes
7331 NE Sacramento St
Portland, OR 97213
Members of the Energy Facility Siting Council,

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Regards,
Linda Browning
7855 SW Matheny Dr
Beaverton, OR 97008
Members of the Energy Facility Siting Council,

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Thank you for considering my comments,

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

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

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Regards,
John Eskridge
18265 SE Vista View Ct
Sandy, OR 97055
Members of the Energy Facility Siting Council,

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Regards,
Grant Fujii
5906 N Depauw St
Portland, OR 97203
Members of the Energy Facility Siting Council,

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Regards,
Cory Buckley
11338 SW 91st Ct
Tigard, OR 97223
Members of the Energy Facility Siting Council,

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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
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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Thank you for considering my comments,

Regards,
Regna Merritt
260 NW Pittock Ave
Portland, OR 97210
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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Regards,
Doug Richardson
8122 N Jersey St
Portland, OR 97203
Members of the Energy Facility Siting Council,

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Regards,
Sally Reichmuth
607 Hazel Ave
Hood River, OR 97031
Members of the Energy Facility Siting Council,

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Maxine Sheets-Johnstone
330 King St
Yachats, OR 97498
Members of the Energy Facility Siting Council,

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Michael Robinson
28979 Hurlburt Rd
Corvallis, OR 97333
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.

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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
Members of the Energy Facility Siting Council,

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Thank you for considering my comments,

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

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Thank you for considering my comments,

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

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Regards,
Rick Ray
30777 NE Hurt Rd
Troutdale, OR 97060
Members of the Energy Facility Siting Council,

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Regards,
Michael Fieldnikki
534 SW 3rd Ave
Portland, OR 97204
Members of the Energy Facility Siting Council,

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Regards,
George Cummings
3816 NE 17th Ave
Portland, OR 97212
Members of the Energy Facility Siting Council,

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Regards,
Paige Unangst
12935 SW Cherry Blossom Ct
Beaverton, OR 97008
Members of the Energy Facility Siting Council,

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Regards,
Geoff Laroche
16070 SW Waxwing Way
Beaverton, OR 97007
Members of the Energy Facility Siting Council,

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

Regards,
Merle Clifton
4457 NE Campaign St
Portland, OR 97218
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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Thank you for considering my comments,

Regards,
Larry Martin
3715 Arrowhead Ave
Hood River, OR 97031
Members of the Energy Facility Siting Council,

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Thank you for considering my comments,

Regards,
Marianne Nelson
1644 SE Rex St
Portland, OR 97202
Members of the Energy Facility Siting Council,

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valuable time and resources elsewhere.
I have hiked in the Gorgr 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
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 attention on other important matters.
valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,
Christine Farrington
1119 SW Myrtle Dr
Portland, OR 97201
CLARK Christopher * ODOE

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”

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,
Bill kirkland
4050 SW Bancroft St
Portland, OR 97221
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,
Sally Stevens
9935 SE Grant Ct
Portland, OR 97216
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 Contesting 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.

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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
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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Thank you for considering my comments,

Regards,
Colleen Wright
4160 Chapman Way
Lake Oswego, OR 97035
Members of the Energy Facility Siting Council,

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valuable time and resources elsewhere.

Thank you for considering my comments,

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

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,
Howard Shapiro
2545 SW Terwilliger Blvd
Portland, OR 97201
Members of the Energy Facility Siting Council,

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Thank you for considering my comments,

Regards,
Mark McCormick
5602 SE Lexington St
Portland, OR 97206
Members of the Energy Facility Siting Council,

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Regards,
Steven Bruckner
2448 NW Westover Rd
Portland, OR 97210
Members of the Energy Facility Siting Council,

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Agenda Item D, Att. 2
130
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Thank you for considering my comments,

Regards,
patricia Hutchinson
4241 NE Laurelhurst Pl
Portland, OR 97213
Members of the Energy Facility Siting Council,

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Regards,
Patricia Rau
3169 Royce Way
Lake Oswego, OR 97034
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valuable time and resources elsewhere.

Thank you for considering my comments,

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

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John Hall
2141 NW Walmer Dr
Portland, OR 97229
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Regards,
Dave Shelman
36141 SE Hurlburt Rd
Corbett, OR 97019
Members of the Energy Facility Siting Council,

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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.

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

Regards,
KB Mercer
10811 SE Schiller St
Portland, OR 97266
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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Thank you for considering my comments,

Regards,
Galil Accuardi
27698 E Welches Rd
Mount Hood Village, OR 97067
Members of the Energy Facility Siting Council,

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

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Thank you for considering my comments,

Regards,
Barbara Coleman
2226 NE Hancock St
Portland, OR 97212
Members of the Energy Facility Siting Council,

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Thank you for considering my comments,

Regards,
Michael Wolf
3126 NE 7th Ave
Portland, OR 97212
Members of the Energy Facility Siting Council,

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Regards,
Sandra Joos
4259 SW Patrick Pl
Portland, OR 97239
Members of the Energy Facility Siting Council,

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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
Members of the Energy Facility Siting Council,

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Regards,
Paula Wood
23831 NE Treehill Dr
Wood Village, OR 97060
Members of the Energy Facility Siting Council,

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Thank you for considering my comments,

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

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David May
1803 SW Hawthorne Terrace
Portland, OR 97201
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,
James Marquard
9329 NW Old Skyline Blvd
Portland, OR 97231
Members of the Energy Facility Siting Council,

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Thank you for considering my comments,

Regards,
Roland Begin
2722 SW Huber St
Portland, OR 97219
members of the energy facility siting council,

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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
Members of the Energy Facility Siting Council,

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Regards,
Raymond Lewis
2415 NE 25th Ave
Portland, OR 97212
Members of the Energy Facility Siting Council,

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Craig Heverly
3712 SE 9th Ave
Portland, OR 97202
Members of the Energy Facility Siting Council,

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Dan Jaffee
4723 NE 14th Ave
Portland, OR 97211
Members of the Energy Facility Siting Council,

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Anthony Skowlund
18 Aquinas St
Lake Oswego, OR 97035
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Thank you for considering my comments,

Regards,
Ben Asher
900 NE 81st Ave
Portland, OR 97213
Members of the Energy Facility Siting Council,

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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
Members of the Energy Facility Siting Council,

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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,
Marguerie Zucker
1966 Orchard St
Eugene, OR 97403
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,
Leigh Schwarz
5858 S Riveridge Ln
Portland, OR 97239
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.

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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,

July 23-24, 2020

Agenda Item D, Att. 2
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.

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

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Regards,
Evelyn Bishop
13932 NE Beech St
Portland, OR 97230
Members of the Energy Facility Siting Council,

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Thank you for considering my comments,

Regards,
Helen Jaskoski
PO Box 66074
Portland, OR 97290
Members of the Energy Facility Siting Council,

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Thank you for considering my comments,

Regards,
Mauria McClay
8125 NE Wygant St
Portland, OR 97218
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,
Heather Marsh
44 Eagle Crest Dr
Lake Oswego, OR 97035
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,
Heidi Welte
18880 SW Hart Rd
Beaverton, OR 97007
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.
“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
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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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,
Don Jacobson
2545 SW Terwilliger Blvd
Portland, OR 97201
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.

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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
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.

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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
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
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
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
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,
Delores Porch
1212 34th Ave SE
Albany, OR 97322
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,
donald dickson
10543 SW River Dr
Tigard, OR 97224
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
Members of the Energy Facility Siting Council,

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 CONNIE Butler
 6405 N Burrage Ave
 Portland, OR 97217
Members of the Energy Facility Siting Council,

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Regards,
Diana Richardson
1905 SW Sunset Blvd
Portland, OR 97239
Members of the Energy Facility Siting Council,

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Regards,
Barbara Manildi
3525 Red Cedar Way
Lake Oswego, OR 97035
Members of the Energy Facility Siting Council,

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Regards,
Gail Massoll
922 NW 11th Ave
Portland, OR 97209
Members of the Energy Facility Siting Council,

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Laurel Turner
11333 SE Powell Ct
Portland, OR 97266
Members of the Energy Facility Siting Council,

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Karen Fletcher
5040 SE Henry St
Portland, OR 97206
Members of the Energy Facility Siting Council,

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Lorna Atherton
473 NE 25th St
Gresham, OR 97030
Members of the Energy Facility Siting Council,

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Michael Wilson

1405 SE Taylor St
Portland, OR 97214
Members of the Energy Facility Siting Council,

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Bill O'Brien
12520 SW Gem Ln
Beaverton, OR 97005
Members of the Energy Facility Siting Council,

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valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,
Brian Winter
5656
Portland, OR 97219
Members of the Energy Facility Siting Council,

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David Griffith
2700 SE 160th Ave
Portland, OR 97236
Members of the Energy Facility Siting Council,

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Regards,
Phillip Norman
1764 Bonniebrae Dr
Lake Oswego, OR 97034
Members of the Energy Facility Siting Council,

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Regards,
Ted Light
612 SE 48th Ave
Portland, OR 97215
Members of the Energy Facility Siting Council,

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Regards,
stephen couche
4718 SE 31st Ave
Portland, OR 97202
Members of the Energy Facility Siting Council,

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David Michalek
25 Eugene St
Hood River, OR 97031
Members of the Energy Facility Siting Council,

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Deb Lawless
3035 NE 62nd Ave
Portland, OR 97213
Members of the Energy Facility Siting Council,

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Andrea Partenheimer
1915 NE 70th Ave
Portland, OR 97213
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Carol Randell
8320 SW Maverick Terrace
Beaverton, OR 97008
Members of the Energy Facility Siting Council,

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Rhett Lawrence
6445 N Commercial Ave
Portland, OR 97217
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,

Regards,
Connie Price
16919 NW Stoller Dr
Portland, OR 97229
Members of the Energy Facility Siting Council,

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Regards,
Jan Kelley
2825 SW Upper Dr
Portland, OR 97201
Members of the Energy Facility Siting Council,

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Regards,
Kyle Haines
2685 Swyers Dr
Hood River, OR 97031
Members of the Energy Facility Siting Council,

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Regards,
Paul Caggiano
8578 N Oswego Ave
Portland, OR 97203
Members of the Energy Facility Siting Council,

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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
Members of the Energy Facility Siting Council,

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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
Members of the Energy Facility Siting Council,

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Erica Maranowski
22 NE 2nd Ave
Portland, OR 97232
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Rob Parker
826 N Blandena St
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Pamela Allee
7425 N Portsmouth Ave
Portland, OR 97203
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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
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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Thank you for considering my comments,

Regards,
Leif Schmit
10816 NE Skidmore St
Portland, OR 97220
Members of the Energy Facility Siting Council,

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Thank you for considering my comments,

Leslie Allen

Regards,
Leslie Allen
24407 E Welches Rd
Mount Hood Village, OR 97067
Members of the Energy Facility Siting Council,

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Thank you for considering my comments,

Regards,
Marilyn Stinnett
1089 W Yapoah Crater Dr
Sisters, OR 97759
Members of the Energy Facility Siting Council,

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Thank you for considering my comments,

Regards,
Lloyd Vivola
12120 SE Foster Pl
Portland, OR 97266
Members of the Energy Facility Siting Council,

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Regards,
Jan Golick
140 E 35th Ave
Eugene, OR 97405
Members of the Energy Facility Siting Council,

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Regards,
Mary Bailey
3131 NW Clubhouse Dr
Bend, OR 97701
Members of the Energy Facility Siting Council,

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Paul Hanrahan
2411 SE Ella Ave
Milwaukie, OR 97267
Members of the Energy Facility Siting Council,

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Thank you for considering my comments,

Regards,
Kathleen Boylan
7626 SE Martins St
Portland, OR 97206
Members of the Energy Facility Siting Council,

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Thank you for considering my comments,

Regards,
Walt Mintkeski
6815 SE 31st Ave
Portland, OR 97202
Members of the Energy Facility Siting Council,

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valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,
BENJAMIN WARD
4014 SE Ash St
Portland, OR 97214
Members of the Energy Facility Siting Council,

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Rebecca Clark
5035 N Depauw St
Portland, OR 97203
Members of the Energy Facility Siting Council,

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Regards,
Joana Kirchhoff
3414 NE 73rd Ave
Portland, OR 97213
Members of the Energy Facility Siting Council,

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Regards,
Katleen Batie
20400 NW Quail Hollow Dr
Portland, OR 97229
Members of the Energy Facility Siting Council,

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Regards,
Diane Craig
8525 SW Davies Rd
Beaverton, OR 97008
Members of the Energy Facility Siting Council,

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Regards,
Mary Hayden
18347 S Redland Rd
Oregon City, OR 97045
Members of the Energy Facility Siting Council,

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Regards,
Emille Laffite
11700 SW Allen Blvd
Beaverton, OR 97008
Members of the Energy Facility Siting Council,

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Regards,
Monica Donley
1610 NE 65th Ave
Portland, OR 97213
Members of the Energy Facility Siting Council,

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Thank you for considering my comments,

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

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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
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.

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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,
James Stratton
1925 W 24th Ave
Eugene, OR 97405
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,
Laura Hanks
6281 SE Deering Ct
Milwaukie, OR 97222
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.

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Thank you for considering my comments,

Regards,
John Christensen
39825 SE Gordon Creek Rd
Corbett, OR 97019
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,
Rochelle Nedeau
6016 S Idaho St
Portland, OR 97221
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.

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valuable time and resources elsewhere.

Thank you for considering my comments,

Regards,
Rick Ray
30777 NE Hurt Rd
Troutdale, OR 97060
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,
Susan Geer
906 Penn Ave
La Grande, OR 97850
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,
David Komlosi
906 Penn Ave
La Grande, OR 97850
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.

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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.

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
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.

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Thank you for considering my comments,

Regards,
Gregory Monahan
7225 SW 13th Ave
Portland, OR 97219
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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Thank you for considering my comments,

Regards,
Todd Weigand
404 N East St
Joseph, OR 97846
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,
Billy Oskay
PO Box 66
Corbett, OR 97019
Members of the Energy Facility Siting Council,

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Thank you for considering my comments,

Regards,
casey cunningham
7037 NE 8th Ave
Portland, OR 97211
Members of the Energy Facility Siting Council,

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Regards,
Steve Feldman
PO Box 948
La Grande, OR 97850
Members of the Energy Facility Siting Council,

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Regards,
Walter Englert
3525 SE Insley St
Portland, OR 97202
Members of the Energy Facility Siting Council,

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Regards,
Kathleen Weight
1010 W 28th Ave
Eugene, OR 97405
Members of the Energy Facility Siting Council,

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Regards,
John Milbert
1812 Jefferson Ave
La Grande, OR 97850
Members of the Energy Facility Siting Council,

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Thank you for considering my comments,

Regards,
Leslie Gatton
4449 Dancing Ground Rd
Santa Fe, NM 87507
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.

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Regards,
Debra Higbee-Sudyka
4750 SW Nash Ave
Corvallis, OR 97333
Members of the Energy Facility Siting Council,

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mary Camp
2100 Thompson Creek Rd
Selma, OR 97538
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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
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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Thank you for considering my comments,

Regards,
John Nettleton
4311 SE 37th Ave
Portland, OR 97202
Members of the Energy Facility Siting Council,

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Thank you for considering my comments,

Regards,
Veronica Poklemba
4417 SE Crystal Springs Blvd
Portland, OR 97206
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,
Cynthia Enlow
1460 NW Ashley Dr
Albany, OR 97321
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.

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Thank you for considering my comments,

Regards,
Kirsten Johnson
401 Aquarius Way
La Grande, OR 97850
Members of the Energy Facility Siting Council,

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Thank you for considering my comments,

Regards,
Rebecca Picton
1780 NW 17th St
Corvallis, OR 97330
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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Thank you for considering my comments,

Regards,
Mike Brinkley
2582 W 28th Ave
Eugene, OR 97405
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.

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Thank you for considering my comments,

Regards,
Anne March
206 Main Ave
La Grande, OR 97850
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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Thank you for considering my comments,

Regards,
Ann Brown
53313 Highway 203
Union, OR 97883
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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Thank you for considering my comments,

Regards,
Sue Craig
27233 Huey Ln
Eugene, OR 97402
Members of the Energy Facility Siting Council,

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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,
Jules Moritz
8285 NW Mitchell Dr
Corvallis, OR 97330
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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Lois Barry
PO Box 566
La Grande, OR 97850
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Damon Motz-Storey
5835 NE 33rd Ave
Portland, OR 97211
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Michael Dianich
42740 E Larch Mountain Rd
Corbett, OR 97019