



# Oregon

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**To:** Energy Facility Siting Council

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

**Date:** July 10, 2020

**Subject:** Agenda Item D (Possible Action Item):  
Rulemaking to Clarify Standard for Contested Case Requests for Type A Amendments – Review of Public Comments and Consideration of Permanent Rules for July 23-24, 2020 Council Meeting.

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

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## RECOMMENDED COUNCIL ACTION

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

## BACKGROUND

At its March 13, 2020 meeting, the Council initiated rulemaking to clarify the standard for an issue to justify a contested case under the Type A amendment review process. The proposed rules would amend OAR 345-027-0371(9) to provide that “to determine that an issue justifies a contested case proceeding, the Council must find that the request raises a significant issue of fact or law that *is reasonably likely to affect the Council’s determination that the facility, with the change proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24.*” (Emphasis added.) The Council authorized Staff to issue a Notice of Proposed Rulemaking at the same meeting.

Staff filed the Notice with the Secretary of State on May 5, 2020. Staff subsequently posted a copy of the notice to its website and provided notice as required by ORS 183.335(1) and OAR 345-001-0000. For reference, the Notice is included as **Attachment 1** to this report. The Notice requested public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

The Council held a hearing on the proposed rules on June 25, 2020. In response to a request from an interested stakeholder, the hearing officer extended the deadline for public comments

on the proposed rules until Thursday July 16, 2020 at 5:30 pm. The Council also deferred its deliberation of comments and final decision on the proposed rules until its July meeting.

### **CONSIDERATION OF PUBLIC COMMENTS**

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

Exact copies of all public comments received before the close of the public comment period, and a summary of testimony provided at the June 25, 2020 hearing will be provided to the Council as **Attachment 2** to this staff report before the Council's July meeting.

### **STAFF RECOMMENDATION**

A document providing staff's summary of and recommended responses to the significant data, views, and arguments contained in the public comment received before the close of the public comment period will be provided to the Council as **Attachment 3** to this staff report before the Council's July meeting.