



Oregon

Kate Brown, Governor



550 Capitol St. NE
Salem, OR 97301
Phone: 503-378-4040
Toll Free: 1-800-221-8035
FAX: 503-373-7806
www.oregon.gov/energy

To: Energy Facility Siting Council

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

Date: September 11, 2020

Subject: Agenda Item E (Information Item):
2019 Housekeeping Rulemaking Update for the September 25, 2020 EFSC Meeting

Attachments: Attachment 1: Permanent Administrative Order EFSC 10-2019

STAFF RECOMMENDATION

Based on the absence of comments or complaints related to the implementation of the rules adopted under Administrative Order EFSC 10-2019, that the rules appear to be achieving their stated objectives.

BACKGROUND

The Council adopted permanent rules under the 2019 Housekeeping Rulemaking Project (R192) on September 27, 2019. The rule changes were intended to facilitate electronic communication in the siting process and improve consistency of Council's noticing requirements with local government practice. Specifically, the Notice of Proposed Rulemaking identified three primary objectives for the rulemaking project: (1) to facilitate electronic transmission of application materials, (2) to improve the consistency of noticing requirements with statute and local government processes, and (3) reduce administrative and reporting costs to applicants and certificate holders. The rulemaking also had a secondary objective of improving the clarity, consistency, and readability of the rules.

During the public comment period of the rulemaking proceeding, the Council received two pieces of testimony requesting "a statement that identifies the objective of the rule and a statement of how the agency will subsequently determine whether the rule is in fact accomplishing that objective" under ORS 183.335(3)(d).¹ While these requests were not made by the deadline for a response to be mandatory, the Council considered the request during its deliberation on the adoption of permanent rules at its September 27, 2019 meeting in Clatskanie, Oregon. The Council discussed several options for how to determine whether the

¹ The requests came from Gary K. Kahn, representing Friends of the Columbia Gorge et. al (August 22, 2019) and Jim and Fuji Kreider (August 23, 2019.)

proposed rules are accomplishing their objectives, and ultimately directed staff to flag any issues with the implementation of the rules raised in complaints or comments from stakeholders and provide an evaluation one year from the date of adoption of the rule.² The remainder of this report provides that evaluation.

STAFF EVALUATION

Staff have not identified any complaints about the implementation or operation of the rule changes in the year since their adoption. Based on this lack of complaints, it appears that rules allowing certain notices to be sent by mail or email and rules reducing the number of printed copies of application materials that must be submitted to the Department are achieving their objectives of facilitating electronic communication and reducing administrative and reporting costs without creating unintended barriers for the public to access information.

Staff did receive some questions from applicants and certificate holders about the applicability of the new property owner notification requirements immediately following their adoption, but have not otherwise identified any complaints or concerns with the implementation of the changes to property owner notification requirements in the new rules. We have some evidence that the new rules are achieving their objective of improving consistency with the noticing practices of local jurisdictions which use property boundaries, rather than project boundaries, as the basis for determining which land owners must be noticed, without adding significant costs to the siting review process. For example, Avangrid was required to update the property owner list for the Bakeoven Solar Project based on the new rule requirements prior to issuance of the Draft Proposed Order in that proceeding. The new property list covered 71 tax lots, about twice as many tax lots as were included in the list prepared under the previous rules. The increase in the notification area resulted in a net increase of 5 landowners being added to the property owner notification list. This is consistent with our expectation that the new rules would result in a small increase in the number of property owners noticed, depending on the size and scale of the project. We also believe the revisions to property owner notification requirements have achieved their objective of improving consistency with the noticing practices of local jurisdictions without creating unreasonable burdens on applicants and certificate holders.

RECOMMENDED COUNCIL ACTION

Staff recommends that, based on the absence of comments or complaints related to the implementation of the rules adopted under Administrative Order EFSC 10-2019, that the rules appear to be achieving their stated objectives. Staff recommends that no further evaluation of the rules is necessary, but staff will continue to track any issues or complaints related to noticing requirements for consideration in future rulemaking.

² See meeting minutes for September 27, 2019 EFSC Meeting, Agenda Item I