



# Oregon

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**To:** Energy Facility Siting Council

**From:** Sisily Fleming, Fiscal Analyst

**Date:** September 11, 2020

**Subject:** Agenda Item I (Information Item): Financial Management Overview – for September 25, 2020 EFSC Meeting

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The following is a high-level overview of the governing statutes. Additional details will be provided during the meeting presentation.

## **Project Expense Allocation and Tracking**

Program Cost Accounts (PCAs) are established for specific phases of a project review as well as compliance.

- All necessary, just, and reasonable expenses related to the Council’s review and decision of an application as well as ongoing compliance are allocated to the designated PCA, including working done by:
  - Staff
  - Reviewing Agencies
  - Department of Justice
  - Contractors
- Detailed time tracking is maintained by PCA and task monthly
  - Ability to track actuals to estimates by task.

## **EFSC Meeting Expenses and Travel Expense Reimbursements**

- Meeting expenses are allocated to application fees based on estimated timelines developed for each meeting.
  - Most expenses related to meeting including meeting room, Council member lodging and travel expense reimbursements, etc. are pro-rated to this allocation
  - Division staff such as the Council Secretary or Administrative assistant also allocate their time and expenses to this pro-rated allocation
  - Siting Analysts allocate their time and expenses based on their specific agenda items.

## **Statutes authorizing funding for EFSC and the Siting Division**

The work of EFSC and Siting division staff is primarily funded through cost recovery authorized by Oregon Revised Statutes (ORS).

*ORS 469.421 Fees; exemptions; assessment of certain utilities and suppliers; penalty.*

*(1) Subject to the provisions of ORS 469.441, any person submitting a notice of intent, a request for exemption under ORS 469.320, a request for an expedited review under ORS 469.370, a request for an expedited review under ORS 469.373, a request for the State Department of Energy to approve a pipeline under ORS 469.405 (3), an application for a site certificate or a request to amend a site certificate shall pay all expenses incurred by the Energy Facility Siting Council and the department related to the review and decision of the council. Expenses under this subsection may include:*

*(a) Legal expenses;*

*(b) Expenses incurred in processing and evaluating the application;*

*(c) Expenses incurred in issuing a final order or site certificate;*

*(d) Expenses incurred in commissioning an independent study under ORS 469.360;*

*(e) Compensation paid to a state agency, a tribe or a local government pursuant to a written contract or agreement relating to compensation as provided for in ORS 469.360; or (f)*

*Expenses incurred by the council in making rule changes that are specifically required and related to the particular site certificate.*

Rulemaking, general tasks, or other activities that cannot be attributed to a specific application or certified facility are allocated to the Energy Supplier Assessment (ESA) under ORS 469.421(8)(a).

*ORS 469.421(8) (a) In addition to any other fees required by law, each energy resource supplier shall pay to the department annually its share of an assessment to fund the programs and activities of the council and the department.*

## **Necessary, Just and Reasonable and EFSC Fee Schedule**

Subject to judicial review, all expenses allocated to a fee paid by an applicant must be necessary, just and reasonable related to the Council's review and decision. Every other year, EFSC evaluates and adopts a fee schedule establishing the initial fees for applicable review.

*ORS 469.441 Justification of fees charged; judicial review.*

*(1) All expenses incurred by the Energy Facility Siting Council and the State Department of Energy under ORS 469.360 and 469.421 that are charged to or allocated to the fee paid by an applicant or the holder of a site certificate shall be necessary, just and reasonable. Upon request, the department or the council shall provide a detailed justification for all charges to the applicant or site certificate holder. Not later than January 1 of each odd-numbered year, the council by order shall establish a schedule of fees which those persons submitting a notice of intent, a request for an exemption, a request for a pipeline described in ORS 469.405 (3) or a request for an expedited review must submit under ORS 469.421 prior to submitting the notice of intent, request for exemption, request for pipeline or request for expedited review. The fee schedule shall be designed to recover*

*the council's actual costs of evaluating the notice of intent, request for exemption, request for pipeline or request for expedited review subject to any applicable expenditure limitation in the council's budget. Fees shall be based upon actual, historical costs incurred by the council and department to the extent historical costs are available. The fees established by the schedule shall reflect the size and complexity of the project for which a notice of intent, request for exemption, request for pipeline or request for expedited review is submitted, whether the notice of intent, request for exemption, request for pipeline or request for expedited review is for a new or existing facility and other appropriate variables having an effect on the expense of evaluation.*

## **EFSC Review Phases**

- **Notice of Intent, Request for Exemption or Expedited Review**

*ORS 469.421 (2) Every person submitting a notice of intent to file for a site certificate, a request for exemption or a request for expedited review shall pay the fee required under the fee schedule established under ORS 469.441 to the department prior to submitting the notice or request to the council. To the extent possible, the full cost of the evaluation shall be paid from the fee paid under this subsection. However, if costs of the evaluation exceed the fee, the person submitting the notice or request shall pay any excess costs shown in an itemized statement prepared by the council. In no event shall the council incur evaluation expenses in excess of 110 percent of the fee initially paid unless the council provides prior notification to the applicant and a detailed projected budget the council believes necessary to complete the project. If costs are less than the fee paid, the excess shall be refunded to the person submitting the notice or request.*

- Monthly statements are issued detailing expenses incurred during the period. If costs exceed the fee paid, monthly invoices are issued. If the costs are less than the fee paid the balance is either refunded or may be rolled forward toward the application review phase.

- **Application for Site Certificate**

*ORS 469.421 (3) Before submitting a site certificate application, the applicant shall request from the department an estimate of the costs expected to be incurred in processing the application. The department shall inform the applicant of that amount and require the applicant to make periodic payments of the costs pursuant to a cost reimbursement agreement. The cost reimbursement agreement shall provide for payment of 25 percent of the estimated costs when the applicant submits the application. If costs of the evaluation exceed the estimate, the applicant shall pay any excess costs shown in an itemized statement prepared by the council. In no event shall the council incur evaluation expenses in excess of 110 percent of the fee initially estimated unless the council provided prior notification to the applicant and a detailed projected budget the council believes is necessary to complete the project. If costs are less than the fee paid, the council shall refund the excess to the applicant.*

- Initial fee payment representing 25% of the estimated costs is held on deposit and invoices are issued monthly to recover actual costs incurred until incurred expenses reach 75% of the estimate. At that time, expenses are applied against the deposit.

- Certified Facilities

*ORS 469.421 (5) Subject to the provisions of ORS 469.441, each holder of a certificate shall pay an annual fee, due every July 1 following issuance of a site certificate. For each fiscal year, upon approval of the department's budget authorization by an odd-numbered year regular session of the Legislative Assembly or as revised by the Emergency Board meeting in an interim period or by the Legislative Assembly meeting in special session or in an even-numbered year regular session, the Director of the State Department of Energy promptly shall enter an order establishing an annual fee based on the amount of revenues that the director estimates is needed to fund the cost of ensuring that the facility is being operated consistently with the terms and conditions of the site certificate, any order issued by the department under ORS 469.405 (3) and any applicable health or safety standards. In determining this cost, the director shall include both the actual direct cost to be incurred by the council and the department to ensure that the facility is being operated consistently with the terms and conditions of the site certificate, any order issued by the department under ORS 469.405 (3) and any applicable health or safety standards, and the general costs to be incurred by the council and the department to ensure that all certificated facilities are being operated consistently with the terms and conditions of the site certificates, any orders issued by the department under ORS 469.405 (3) and any applicable health or safety standards that cannot be allocated to an individual, licensed facility. Not more than 35 percent of the annual fee charged each facility shall be for the recovery of these general costs. The fees for direct costs shall reflect the size and complexity of the facility, the anticipated costs of ensuring compliance with site certificate conditions, the anticipated costs of conducting site inspections and compliance reviews as described in ORS 469.430, and the anticipated costs of compensating state agencies and local governments for participating in site inspection and compliance enforcement activities at the request of the council.*

- Assessment invoices are issued annually to site certificate holders based on facility specific estimates. Monthly statements are issued detailing incurred expenses. If costs exceed the fee paid, invoices are issued monthly until the next assessment period. If costs are less than the fee paid, the balance is either refunded or applied to the next assessment period.